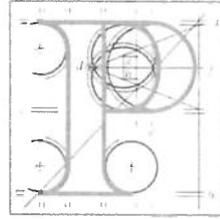


Our Case Number: ACP-323980-25



An
Coimisiún
Pleanála

Michael Hoey
152 Crann Nua
Portarlinton
Co. Laois
R32 PP68

Date: 10 March 2026

Re: Proposed Water Supply Project for the Eastern and Midlands Region
in the counties of Clare, Limerick, Tipperary, Offaly, Kildare, and Dublin.

Dear Sir / Madam,

An Coimisiún Pleanála has received your recent submission in relation to the above mentioned proposed development and will take it into consideration in its determination of the matter. Please accept this letter as a receipt for the fee of €50 that you have paid.

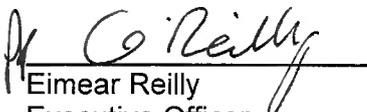
The Commission will revert to you in due course with regard to the matter.

Please be advised that copies of all submissions / observations received in relation to the application will be made available for public inspection at the offices of the local authority and at the offices of An Coimisiún Pleanála when they have been processed by the Commission.

More detailed information in relation to strategic infrastructure development can be viewed on the Commission's website: www.pleanala.ie.

If you have any queries in the meantime please contact the undersigned officer of the Commission. Please quote the above mentioned An Coimisiún Pleanála reference number in any correspondence or telephone contact with the Commission.

Yours faithfully,


Eimear Reilly
Executive Officer
Direct Line: 01-8737184

PA04

Teil
Glao Áitiúil
Facs
Láithreán Gréasáin
Ríomhphost

Tel
LoCall
Fax
Website
Email

(01) 858 8100
1800 275 175
(01) 872 2684
www.pleanala.ie
communications@pleanala.ie

64 Sráid Maoilbhríde
Baile Átha Cliath 1
D01 V902

64 Marlborough Street
Dublin 1
D01 V902

An Coimisiún Pleanála
64 Marlborough Street,
Dublin 1,
V902

AN COIMISIÚN PLEANÁLA	
LDG-	086763-26
ACP-	
25 FEB 2026	
Fee: €	50 Type: cash
Time: 10:39	By: Mord

152 Crann Nua
Portarlinton
Co Laois
R32PP68

20 02 2026

Dear Sir /madam

- I am entitled to be but have not been notified under section 21 of the Water Supplies Act of 1942.
On the 25 04 2025 I wrote to Uisce Éireann regarding; **Notification of the Proposed Water Supply Project Easter and Midlands Region, under section 21, of the Water Supplies Act of 1942.** To which I received an automatic response which categorised my request as being part of the public consultation period which began on the 7th January and ran for 8 weeks and ended on the 4th March 2025. My communication of the 25 04 2025 was made 21 days after the public consultation period had ended. (exhibit MH 1 h attached)
- I wrote to An Coimisiún Pleanála requesting clarification of section 111(4) of the environment, abstractions and impoundment act 2022.
"Under the access to information directives I am requesting clarification on the effects and correct procedures to be applied when Uisce Eireann make a proposal to take water from a source of water under the water supplies act of 1942, because of section 111(4) of the environment, abstractions and impoundment act 2022."
- Your letter Reference: AIE 378 dated 11th February 2026 (attached as **exhibit MH 6**) confirms to me that there have been no changes to procedures since 2001. That An Coimisiún Pleanála has no authority to adjudicate on the Interference Notice 2026 issued under section 21 of the WSA act of 1942 which I issue today.
- Your response includes 'There are numerous engagements from An Coimisiún Pleanála with the Environment, Abstractions and Impoundment Act 2022, which are listed within the legislation itself, which is publicly available. The legislation itself outlines our required actions which vary on a case-by-case basis, **for this reason we do not hold any internal process documents relating to it.**
- Consequently An Coimisiún Pleanála have no jurisdiction and or authority under section 21 of the Water supplies act of 1942.
- Before An Coimisiún Pleanála consider this proposal, you are obliged to return it back to Uisce Éireann and have them challenge all the Interference Notice's under section 21 (8) and to regularise their abstractions before proposing to increase or extend the volume of water to be taken from the Inland Navigation System for drinking water purposes.

Exhibits and procedures.

Along with the Interference Notice 2026 I have included, the most pertinent **exhibits MH 1 H and MH 6**, which need to be rectified before a valid application can be considered, in my one drive account.

Link to the [Shannon Abstraction folder](#)

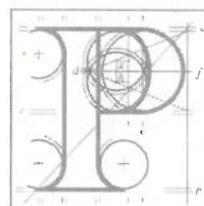
As a precaution If you or Uisce Éireann or anyone else are having difficulties accessing the account or wish to access the exhibits I will do so if contacted at the above address or by email.

Regards

Michael Hoey

A handwritten signature in blue ink that reads "Michael Hoey". The signature is written in a cursive style with a large initial 'M' and a long, sweeping tail on the 'y'.

77H.6.



An
Coimisiún
Pleanála

Our Reference: AIE 378

Email: hoeyndry@gmail.com

11th February 2026

Dear Mr. Hoey,

AN COIMISIÚN PLEANÁLA	
LDG-	_____
ACP-	_____
25 FEB 2026	
Fee: €	50 Type: cash
Time: 10:59	By: Hand

I refer to your request under the European Communities (Access to Information on the Environment) Regulations 2007. You requested:

"Under the access to information directives I am requesting clarification on the effects and correct procedures to be applied when Uisce Eireann make a proposal to take water from a source of water under the water supplies act of 1942, because of section 111(4) of the environment, abstractions and impoundment act 2022."

Our response

In order to process your request, we contacted the relevant personnel to establish as to whether any records exist within the scope. Following inspection, I must request clarification regarding the information you are seeking.

There are numerous engagements from An Coimisiún Pleanála with the Environment, Abstractions and Impoundment Act 2022, which are listed within the legislation itself, which is publicly available. The legislation itself outlines our required actions which vary on a case-by-case basis, for this reason we do not hold any internal process documents relating to it.

Based on this information and the general wording of your request, we would be inclined to refuse your request for the following reasons under the European Communities (Access to Information on the Environment) Regulations 2007:

- section 9(2)(b) which states that "A public authority may refuse to make environmental information available where the request remains formulated in too general a manner."
- Section 7 3 (a) (i) Where a request has been made to a public authority for access to environmental information in a particular form or manner, access shall be given in that form or manner unless— the information is already available to the public in another form or manner that is easily accessible

Should you wish to provide case numbers, we would be happy to process your request in a more case-specific manner.

Please advise by return as to whether you wish to provide case numbers or otherwise refine your request.

Teil	Tel	(01) 858 8100
Glaó Áitiúil	LoCall	1890 275 175
Facs	Fax	(01) 872 2684
Láithreán Gréasáin	Website	www.pleanala.ie
Ríomhphost	Email	communications@pleanala.ie

64 Sráid Maoilbhríde	64 Marlborough Street
Baile Átha Cliath 1	Dublin 1
D01 V902	D01 V902

Yours faithfully,

Cora Cunningham



Michael Hoey <hoeyndry@gmail.com>

Request under AIE regulations

1 message

Emma Haughan <e.haughan@pleanala.ie>
To: "hoeyndry@gmail.com" <hoeyndry@gmail.com>

11 February 2026 at 13:06

Dear Mr. Hoey,

Please find attached correspondence relating to your request made under the European Communities (Access to Information on the Environment) Regulations 2007.

I note that your original request was received through communications@pleanala.ie. Please note these requests should be forwarded to aie@pleanala.ie, to ensure they are received and dealt with in a timely manner. Additionally, it ensures our emails will go directly to your inbox and avoid any potential diversion to spam folders.

I apologise for our delay in issuing your correspondence, I will await your response regarding how to proceed.

Kind regards
Emma
FOI/AIE Unit

Emma Haughan
Executive Officer
Room 401
An Coimisiún Pleanála
64 Marlborough Street
Dublin 1
D01 V902
Tel: 01-873-7238
Facs: 01-8722684

Má fhaigheann tú an ríomhphost seo lasmuigh de na gnáthuaireanta oibre, ní bheidh mé ag súil le freagra ná gníomh lasmuigh de d'uaireanta oibre féin.

If you receive this email outside of normal working hours, I do not expect a response or action outside of your own working hours

Smaoinigh ar an timpeallacht sula ndéanann tú an ríomhphost seo a phriontáil.

Please consider the environment before printing this mail.

Fógra Rúin: Tá an ríomhphost seo agus aon chomhaid atá nasctha leis faoi rún agus dírithe amháin don seolaí. Má bhfuair tú an ríomhphost seo trí earráid, déan teagmháil le bainisteoir an chórais.

Tabhair faoi deara led thoil: aon tuairimí nochtaithe san ríomhphost seo is iad tuairimí an tseoltóra féin agus níl sé intuigthe gurb iad tuairimí An Coimisiún Pleanála nó go gcloíonn siad le polasaithe ráite An Coimisiún.

Confidentiality Notice: This email and any files transmitted with it are confidential and intended solely for the addressee. If you have received this email in error please notify the system manager.

Please Note: any views expressed in this email are those of the individual sender and may not necessarily reflect the views or accord with the stated policies of An Coimisiún Pleanála.



AIE 378 correspondence.docx

287K

EXHIBIT MM 1 h.

Notification of the Proposed Water Supply Project Easter
and Midlands Region, under section 21,
of the Water Supplies Act of 1942.

AN COIMISIÚN PLEANÁLA
LDG- _____
ACP- _____
25 FEB 2026
Fee: € 50 Type: Cash
Time: 10:59 By: Ward

152 Crann Nua
Portarlinton
County Laois
R32 PP68

25 04 2025

Irish Water/Uisce Éireann – By email to watersupply@water.ie

Dear Sir/madam,

‘Uisce Éireann is proposing the Water Supply Project Eastern and Midlands Region to provide a new supply to address the projected need for drinking water and increase the reliability of supplies in the Eastern and Midlands Region. The Proposed Project consists of an abstraction from Parteen Basin on the Lower River Shannon in County Tipperary, a new 172 km pipeline, five associated infrastructure sites, a Flow Control Valve and other ancillary infrastructure to treat the raw water to drinking water standard and transfer it to a new reservoir at Peamount in County Dublin.’ - ...a supply of water for the purpose of increasing, extending, or providing a supply of water under the Public Health Acts...

Take Notice;

1. That I Michael Hoey of 152 Crann Nua, Portarlinton, County Laois, R32 PP68 is a Navigation Authority for the purposes of section 21 of the Water Supplies Act of 1942. I have a live Interference Notice issued to Kildare County Council (which is being ignored with due process being denied since 2003) which has the force of law.
2. That no payment of damages and compensation has been paid since November 2001.
3. Section 114 (4) of The WATER ENVIRONMENT (ABSTRACTIONS AND ASSOCIATED IMPOUNDMENTS) ACT 2022 (No 48 of 2022.) applies;-

‘ (4) Where an application for compensation under sections 14 to 16 of the Act of 1942 has not been determined pursuant to those sections before the date of the coming into operation of section 7 (1)(a), the Act of 1942 shall continue to apply notwithstanding the repeal of that Act by section 7 (1)(a).’
4. I am requesting you Uisce Éireann to include in the Book of Reference and notify individually, me, Canalways Ireland Ltd. and Quigley’s Boat Hire of your proposal under section 21 of the Water Supplies Act of 1942, to the above address.

Yours Sincerely

Michael Hoey

Electronic signature of Michael Hoey

KILDARE COUNTY COUNCIL

**WATER STRATEGY FOR COUNTY KILDARE
PROPOSAL TO ABSTRACT WATER FROM THE RIVER BARROW**

IN THE MATTER OF THE WATER SUPPLIES ACT 1942

LOCAL GOVERNMENT (SANITARY SERVICES) ACTS 1878 TO 1995

PLANNING AND DEVELOPMENT ACT 2000

PLANNING AND DEVELOPMENT REGULATIONS 2001-2002

**WATER SUPPLIES (APPLICATION FOR PROVISIONAL ORDER)
REGULATIONS 2000**

NOTICE TO NAVIGATION AUTHORITIES

Notice is hereby given that Kildare County Council (hereinafter referred to as the Council) being the Sanitary Authority for the County Health District of Kildare, for the purpose of providing a supply of water to areas of west, mid and south Kildare, including the towns of Athy, Naas, Newbridge, Kildare Town and Kilcullen, by virtue of the powers conferred on it under and in accordance with the Local Government (Sanitary Services) Acts 1878 to 1995 and pursuant to the Water Supplies Act 1942 and the Water Supplies (Application For Provisional Order) Regulations 2000 has made a proposal under the Water Supplies Act 1942 to take the supply of water as follows:

- (a) The source of water from which the supply of water is proposed to be taken is the River Barrow.
- (b) The place at which the supply of water is proposed to be taken is in the townland of Srowland, upstream of Athy, County Kildare.
- (c) It is proposed to take part only of the water at such place.
- (d) The maximum rate at which it is proposed to abstract water is 40,000 cubic metres in any 24 hour continuous period.
- (e) Not Applicable
- (f) The estimated minimum quantity of water flowing past the proposed intake location in the summer during any continuous period not exceeding one day is 139,000 cubic metres per day. The minimum compensation flow downstream of the proposed abstraction will be 1.145 cubic metres

per second (99,000 cubic metres per day).

- (g) The proposal involves the carrying out of ancillary operations as defined under Section 1 of the Water Supplies Act of 1942 as follows:
- (i) An intake structure located in the bank of the river channel at the abstraction point consisting of concrete walls with openings covered with screening equipment. Water will flow from the river through these screens into a covered chamber below ground level where it will be pumped to raw water storage and treatment.

There are no other ancillary operations proposed within the definition of Section 1 of the Water Supplies Act of 1942 but the following works will also be constructed:

- (i) Raw water pumping station.
- (ii) Raw water bankside storage.
- (iii) Water Treatment Works capable of treating 40,000 cubic metres per day to potable water standards.
- (iv) High Lift Pumping Station for treated water.
- (v) Site roads and site pipelines.

Particulars of ancillary operations are included in the proposal, a copy of which is available for inspection with the Book of Reference

For your information a Book of Reference, containing the names of persons whom the Council has ascertained, after taking all reasonable measures, may suffer damage by the taking of the water, in the form prescribed and details of the proposal are available for inspection free of charge at the offices of Kildare County Council, St. Mary's, Naas, Co. Kildare between the hours of 9.00am to 1:00pm and 2.00pm to 5.00pm Monday to Friday and also at Athy Community Library, Emily Square, Athy, County Kildare, during opening hours, which are 10:00am to 8:00pm Tuesday and Thursday and 10:00am to 5:00pm on Wednesday, Friday and Saturday, the library is closed on Mondays. It should be noted that public holidays are excepted in both cases.

An Environmental Impact Statement has also been prepared in respect of the proposal and is available for inspection free of charge at the places and times described above and for purchase at the offices of Kildare County Council, St. Mary's, Naas, County Kildare.

If either no objection is duly made to the proposal or if every such objection so made is withdrawn, the proposal shall be deemed to have been agreed to and Kildare County Council will be empowered to take a supply of water in accordance with the proposal.

If any objection to the proposal is duly made and is not withdrawn, Kildare County Council will apply to An Bord Pleanála under the Water Supplies Act 1942 and the Water Supplies (Application for a Provisional Order) Regulations 2000 for a provisional order declaring that the proposal may come into force.

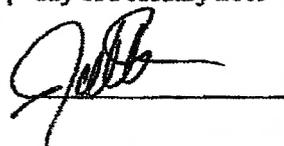
Any navigation authority, as defined in section 21 of the Water Supplies Act 1942, of the opinion that the taking of the water, in accordance with the proposal, makes or will make the navigation of such navigable water impossible or unreasonably difficult may make an objection to the proposal by giving to Kildare County Council a written statement comprising an interference notice and stating the reasons why it considers that the taking of the water, in accordance with the proposal, makes or will make the navigation of such navigable water impossible or unreasonably difficult.

The interference notice, and reasons thereof, must reach The Director Of Services, Housing and Water Services, Kildare County Council, St. Mary's, Naas, County Kildare, not later than 5pm on Wednesday the 12th March 2003.

If an interference notice to the proposal is duly made, Kildare County Council will consider the objections of the navigation authority, and shall negotiate with the navigation authority for the withdrawal of the interference notice. The navigation authority may withdraw the interference notice at any time by giving written notice to Kildare County Council in that regard. Kildare County Council may apply to the High Court to annul the interference notice under section 21 of the Water Supplies Act 1942.

Dated this 19th day of February 2003

Signed:



A.C. Talbot
County Secretary
Kildare County Council

AN COIMISIÚN PLEANÁLA	
LDG-	_____
ACP-	_____
25 FEB 2026	
Fee: €	50 Type: <i>cash</i>
Time: <i>10.59</i>	By: <i>Hand</i>

The Water Supplies Act of 1942.

Planning and Development act 2000, as amended.

Interference Notice

2001 –2026

Issued against Uisce Éireann's proposed Strategic Infrastructure Development planning application and Compulsory Purchase Order application for the Water Supply Project Eastern and Midlands Region- Proposal to take water from the Shannon navigation at Parteen Weir.

I Michael Hoey of 152 Crann Nua, Portarlinton, County Laois, R32 PP68, a 'navigation authority' for the purposes of section 21 (only) of the Water Supplies Act of 1942 do hereby serve a formal 'Interference Notice' for and on behalf of myself, my son Piet, and on behalf of my Barge Hire and boating business company Canalways Ireland Ltd., Quigleys Boat Hire and any other company I may form, on Irish Water/ Uisce Eireann,

and/or if necessary to.

Kildare County Council, Laois County Council, Offaly County Council, Westmeath County Council, Meath County Council, Clare County Council, Limerick County Council, Tipperary County Council, and South Dublin County Council, to the proposal to take water from the Shannon Navigation at Parteen Weir.

Statement of Reasons

I Michael Hoey am of the opinion that the taking of water in accordance with such proposal's makes or will make the navigation of such navigable water of the Barrow Navigation, the Grand Canal, the Royal Canal, the Boyne Navigation and the Shannon Navigation, impossible or unreasonably difficult.

Reason 1. An Coimisiún Pleanála appear to have no clear knowledge on how to process this Interference Notice are prohibited from adjudicating on this Interference Notice (2026) and the application until the Interference Notices previously issued are lifted or quashed by the High Court under section 21 (8) of the Water Supplies Act 1942.

I wrote to An Coimisiún Pleanála under the assess to information “*Under the access to information directives I am requesting clarification on the effects and correct procedures to be applied when Uisce Eireann make a proposal to take water from a source of water under the water supplies act of 1942, because of section 111(4) of the environment, abstractions and impoundment act 2022.*”

Their response dated 11 February 2026 ... “There are numerous engagements from An Coimisiún Pleanála with the Environment, Abstractions and Impoundment Act 2022, which are listed within the legislation itself, which is publicly available. The legislation itself outlines our required actions which vary on a case-by-case basis, **for this reason we do not hold any internal process documents relating to it.**

Based on this information and the general wording of your request, we would be inclined to refuse your request for the following reasons under the European Communities (Access to Information on the Environment) Regulations 2007.” **Exhibit MH 6.** (attached with cover letter)

This Interference Notice¹ (2026) updates the earlier Notices and is in addition to and incorporates the Interference Notices² already issued by Michael Hoey, on behalf of Canalways Ireland Ltd. and Quigleys Boat Hire, in 2001, 2002, and 2003 attached as **exhibits MH 1**, (when produced) **MH 1 a**, **MH 1 b** and **MH 1 c**. (when produced) Because of your previous decisions going back to 2001, Section 21 (8) of the Water Supplies Act of 1942, applies to this proposal.

- s. 21 (8) *A sanitary authority to whom an interference notice relating to any proposal has been given may apply to the High Court for the annulment of such notice and, if the High Court on such application is of opinion that the taking of water in accordance with such proposal does not make or will not make the navigation of the relevant navigable water impossible or unreasonably difficult, the High Court shall annul such notice.*

This Interference Notice -2026 is also an endorsement of the Interference Notice issued by An Taisce on the 20th of June 2003 on Meath County Council which I now adopt and incorporate along with my objection to the Meath Eastern Regional Water Supply Provisional Order, ref CW0502 dated 20th June 2003, which I restate and include in my statement of reasons below. (The An Taisce Interference Notice is attached as **exhibit MH 1 d along with my 2003 Petition to ABP ‘not to confirm the above Provisional Order without further enquiry’**. (exhibit MH 1e) (when produced.)

¹ See Legal advice to KCC re the status of a navigation authority **exhibit MH 1 f**. (when produced)

See **exhibit MH 1 i** (when produced) photographs of dredging at the Gas Pipe below Maganey of the Barrow Navigation approved by Waterways Ireland even though they were only notified of one abstraction and also approved by the NPWS to accommodate the loss of all the water from the SAC which is required for navigation. **Not all the water!!!**

² See **exhibit MH 1 j**. Notice to Navigation **Authorities** 19 Feb 2003. (when produced)
See **exhibit MH K** letter of 19 Feb 2003 from KCC highlighting the need to issue an Interference Notice. (when produced)

See also Reason 12 Judge Abbots clarification of section 21 of the Water Supplies Act of 1942.

These Interference Notices, are to be taken as one and read as one which includes the An Taisce Interference Notice which I now embrace and promote as my own because I have become familiar with the watered section of the Boyne Navigation which are an intensification of the abstractions from the inland navigations along with the continued ignoring of my Interference Notice, dated 17/01/02 and my two Notices stamped by Kildare County Council 10th March 2003.

- S. 21 (2) of the Water Supplies Act 1942. *‘Nothing in this Act shall be construed as entitling a sanitary authority to take water in such manner, or from such source of water, or of such amount as to make the navigation of any navigable water impossible or unreasonably difficult.’*
- Prior to the Water Supplies Act of 1942, navigation and water rights were protected by *“section 281 of the Public Health (Ireland) Act 1878; Saving for works and property of certain authorities, and for navigation and water rights etc. Nothing in this Act shall be construed to authorise any sanitary authority –*
 - (1) To use, injure or interfere with... hereafter made and used by any body of persons or person for the purpose of draining preserving or improving land under any local or private Act of Parliament or for the purpose of irrigating land; or*
 - (3) To Interfere with any river, canal, dock, harbour, lock reservoir, or basin so as to injuriously affect the navigation thereon...*
 - (4) To interfere with any watercourse in such manner as to injuriously affect the supply of water to any river, canal, dock, harbour, reservoir or basin... ”*
- Section 286 of the Public Health (Ireland) Act of 1878; *“Saving for water rights generally”*; *“286. Nothing in this Act shall be construed to authorise any sanitary authority to injuriously affect any reservoir canal river or stream, or the feeders thereof, or the supply, quality, or fall of water contained in any reservoir canal river stream, or in the feeders thereof, in cases where any body of persons or person would, if this Act had not passed, have been entitled by law to prevent or be relieved against the injuriously affecting such reservoir canal river stream feeders or such supply quality or fall of water unless the sanitary authority first obtain the consent in writing of the body of persons or person so entitled as aforesaid.”*
- In effect and until these Interference Notices including the An Taisce Interference Notice have been resolved and payment for the loss of water from the navigations Uisce Eireann are stealing the water.
- Until the Interference Notices are resolved the status of the abstractions remain similar to the Derrybrien windfarm case C-215/06 – has no legal status and are not entitled to legal protection from the courts.

Part Two

Reason 2 The cumulative effects of previous decisions have not been considered or assessed in a cumulative way.

The abstractions from the catchment of the River Barrow Navigation identified and detailed in Table 1. **exhibit MH 2.** (when produced) and especially because of exhibit MH 2.

Reason 2 a , The abstractions are in defiance of and contrary to section 21 (2) and 21 (8) of the WSA of 1942.

I quote Dr Ward from 'the Committee on Finance. - Water Supplies Bill, 1941—
Committee Stage;

'(8) Where notice of a proposal has been given under sub-section (3) of this section to a navigation authority and either such navigation authority has not within 21 days after the giving of such notice given an interference notice in relation to such proposal or any such notice so made has been annulled by the High Court or withdrawn, it shall not be open to such navigation authority to contend in any court that the taking of water in accordance with such proposal makes or will make the navigation of the relevant navigable water impossible or unreasonably difficult.

*The existing provisions of the Public Health Acts do not permit a sanitary authority to interfere with a canal, and it is proposed to protect, similarly, navigable water as regards the taking of water under this Bill. It is not a case for prohibiting altogether the taking of water, and, **if there is more water flowing than is required for the needs of the navigation authority, the surplus should be capable of being taken for a water supply.***

*The reasonable requirements of the navigation authority are met and the sanitary authority are prevented from taking water to such an extent as to make navigation impossible or unreasonably difficult. The amendment proposed will afford an opportunity for agreement between the sanitary authority and the navigation authority, **if ever the question arises.***

Should it appear to the sanitary authority that their proposals, for example, may possibly involve taking water from a river from which water is taken for a canal, they will give the navigation authority notice. If the navigation authority consider that navigation will be affected, they will serve an interference notice. The sanitary authority may amend the proposal, or may appeal to the courts against the interference notice, and the court can come to a conclusion in the case having regard to any amendments made by the sanitary authority in its original proposals. An amendment on those lines was referred to on Second Reading

***I undertook, on the Second Reading, to introduce an amendment protecting navigation rights.** I have tried, in this amendment, to protect navigation rights, and at the same time to permit of the possibility of taking from a canal surplus water that may be necessary for a water scheme and may not be necessary for navigation purposes.'*

This conclusion of protecting navigation rights is referred to by Dr Scannell in her communication to Nicholas O'Dwyer & Co. on the 20th September 2002, exhibit **MH 2f**. (when produced)

Kildare County Council Public Notices of abstractions and the Kildare Water Strategy.³
The Kildare Water Strategy (KWS) was prepared by Nicholas O'Dwyer Ltd, Patrick J. Tobin & Co. Ltd. and K.T. Cullen & Co. Ltd. The KWS was published in March 1999. At page 10/6 of the Strategy document states ⁴that; *"In the event that an EIS or similar study is carried out then the likely impact of the proposed abstraction on the natural environment and related riparian and groundwater rights would be determined by reference to a mathematical modelling exercise supported by comprehensive drain, well*

³ Kildare Water Strategy is based on the findings of the "Greater Dublin Water Supply Strategic Study published January 1996 – Generale Des Eaux, Ireland - MC O'Sullivan. That **water abstraction from the Barrow be limited to times of High Flow.**

⁴ A not dissimilar position to that of Mr Conor Skehan's recommendation that; ***An authoritative statement on the need to avoid unnecessary ELA will be included together with advice on the existence of other forms of appropriate evaluation.***

and ecological surveys. Potential significant impacts would be mitigated by the provision of deeper wells, low flow augmentation and other measures compatible with the concept of sustainable development.”

These details are taken from Table 1 **exhibit MH 2-**(when produced) Abstractions from the Barrow Catchment. Culminating in 182 ML/day approved on paper for abstraction. These figures were accurate up to 2015.

1. PW 2001

On the 22nd Nov 2001 Kildare County Council Publicly advertised.
The Water Strategy for County Kildare Proposal under the Water Supplies Act of 1942 to abstract Water from the River Barrow. The first application was withdrawn, the EIS was modified to facilitate the objectoꝝ’s information and resubmitted.

2. EC 2012

On the 22nd Nov 2001 Kildare County Council Publicly advertised
Water Strategy for County Kildare, Proposal to Abstract Groundwater from The North Kildare Aquifer, Robertstown, County Kildare. (Abstraction approved but did not commence yet.)

3. ED 2019

On the 17th January 2002 Kildare County Council Publicly Advertised
Water Strategy for County Kildare Proposed Wellfield Development at Rathangan proposal under part 8 of the Regulations.

4. ED 2020

On the 23rd May 2002 Kildare County Council Advertised
Water Strategy for County Kildare Proposed Wellfield Development in Area East of Johnstown Bridge under part 8 of the Regulations.

5. ED 2021

On 22nd November 2001, Kildare County Council also advertised an abstraction Hybla (not a proposal under the Water Supplies Act), but under Part 10 of the Regulations, (now PART 8 of the Planning and Development Regulations 2001) in the Leinster Leader.

Laois County Council abstractions.

EC 2009 Portlaoise Water Supply improvement scheme. – failed to apply the Water Supplies act of 1942.

On the 21 December 2002 Laois County Council advertised to take **20 ML/day** from the catchment ‘Public Notice European Communities (Environment Impact Assessment) (Amendment) Regulations 1989 To 2000 Planning and Development Act 2000 Portlaoise Water Supply Improvement Scheme Mountmellick Water Supply Improvement Scheme Increased Abstraction from the Portlaoise Limestone Aquifer’ The construction of 10 new wells, 12 kms. of new watermains, new reservoirs at Emo, Straboe, and Acragar and extended capacity at Kilminchy Water Treatment Plant. To **take 20ML/day** from the Portlaoise limestone aquifer.

Page 3 of the Deputy planning officers report. (Mr Jonathon Evans - Part Time Consultant. 16 April 2003.)

‘Mr. Michael Hoey served an "Interference Notice" to Laois County Council quoting section 21 of the Water Supplies Act 1942 and saying that the proposed abstraction of water would affect navigation. **A copy of this notice was forwarded by the Local Authority to An Bord Pleanála.** His objections also refer to lowered water levels in rivers and canals: in my opinion the notice under discussion is a legal matter between the Local Authority and Mr. Hoey. I will consider his objections below under "Submissions/observations".’⁵

In 2003 Laois CC advertised for ‘Groundwater 6 production wells for the improvement / increase in abstraction rate carried out under part 8 of LGPD Regs 2001.

No EIA or AA and no application to increase or extend under the Water Supplies Act.

Mountmellick Sewage decisions on JA 0026

On the 14th of May 2012, ABP grant planning permission for the application reference number 11.JA 0026 under section 175 of the Planning and Development Act 2000, as amended, in accordance with plans and particulars, including an environmental impact statement, lodged with the Board on the 18th day of February, 2011 for the upgrading of the waste water treatment plant to provide an increase in the capacity of the existing plant in two phases as follows: Phase 2: Upgrade to 8,000 population equivalent to provide capacity up to year 2029. Phase 3: Upgrade to 18,000 population equivalent to provide capacity for the future full development of the town (beyond 2029). The proposed development is located at Mountmellick, County Laois.

Page 2 of the Decision at Matters Considered it states:

“The Board considered the environmental impact statement submitted with the planning application (including mitigation measures therein), **the further information submitted** by the applicant in the course of the planning application, the observations on file and to the oral hearing, and the Inspector's assessment of environmental impacts which was noted. **The Board completed an environmental impact assessment** and concluded that the proposal would not give rise to significant adverse effects on the environment.

⁵ Mr. Eugene Daly said in his report to An Bord Pleanála on the Portlaoise Water Supply project dated 28/11/2002 ‘**my reading of the Water Supplies Act of 1942 suggests there is nothing in it that excludes groundwater.**’

In 2001 Kildare County Council’s Mr Eugene Daly who deals with the groundwater issue comprehensively and I refer to pages from the transcript of the oral hearing on the Barrow Abstraction proposal on the 17th June 2003 he said that the base flow of a river is almost completely groundwater if you hadn’t had any rainfall in the previous 48 hours.

When I asked Mr. Daly at the Oral hearing ‘What percentage of the Barrow River base flow is run off or drainage from the bogs?’ Mr. Daly did not know because he did not examine it as part of his brief.

Mr. Daly’s report on the Portlaoise Water Supply Project to An Bord Pleanála dated 28/11/2002 (page 21 of that report) states at: ‘(f) 1942 Water Supplies Act.

The inspector also refers to the 1942 Water Supplies Act. He makes reference to ‘surface waters. **‘It is generally considered, in local authority circles, that the 1942 only applies to surface waters. My reading of the Act suggests there is nothing in it that excludes groundwater.**’

The Board considered the report submitted to inform an appropriate assessment and carried out an appropriate assessment of the potential impacts on the River Barrow and River Nore SAC (site code 002162). The Board was satisfied that the proposed development **would not adversely affect the integrity of this European site either individually or in combination with other plans or projects** having regard to its conservation objectives.”

Portarlington Sewage system JA0027

Similar to JA 0026 the Dry weather flow (DWF) set by the EPA is forgotten about as is concern for the loss of water to the Barrow Navigation SAC, was compounded by the increase in the volume of discharge from Sewage Treatment works. On the 14th of May 2012, ABP grant planning permission for the application reference number 11.JA0027 under section 175 of the Planning and Development Act 2000, as amended, in accordance with plans and particulars, including an environmental impact statement, lodged with the Board on the 18th day of February, 2011 for; upgrading of the waste water treatment plant to provide an increase in the capacity of the existing plant in three phases as follows: Stage 1: Upgrade to 15,000 population equivalent to provide capacity up to year 2020. Stage 2: Upgrade to 20,000 population equivalent to provide capacity to 2028. Stage 3: Upgrade to 35,000 population equivalent to provide capacity for the future full development of the town (beyond 2028). The proposed development is located at Portarlington, County Laois.

At page 2 of the Decision at Matters Considered states;

“The Board considered the environmental impact statement submitted with the planning application (including mitigation measures therein), the further information submitted by the applicant in the course of the planning application, the observations on file and to the oral hearing, and the Inspector's assessment of environmental impacts which was noted. The Board completed an environmental impact assessment and concluded that the proposal would not give rise to significant adverse effects on the environment.

The Board considered the report submitted to inform an appropriate assessment and carried out an appropriate assessment of the potential impacts on the River Barrow and River Nore SAC (site code 002162). The Board was satisfied that the proposed development would not adversely affect the integrity of this European site either individually or in combination with other plans or projects having regard to its conservation objectives.”

Prior to these advertised projects, ED 2023 The Kildare Town Wellfield

We have ED 2023 -The Kildare town wellfield.

On the 28 July 1993 Kildare County Council published the Kildare Town By-pass Motorway Scheme. A scheme for the provision of a Motorway under Section 4 of the Local Government (Roads and Motorways) Act 1974.

Under section 4 KCC were obliged to identify and satisfy six provisions and had to provide the details of the relevant landowners of whom the compulsory purchase order was going to affect. In all there was 360 people and landowners in the scheme.

While the Kildare Water Strategy was not prepared as a public document for public consumption. It transpires that this unauthorised wellfield is one of the alternatives considered to the Barrow Surface abstraction which went ahead and commenced abstraction in 2005.

Offaly County Council abstractions.

- In 1998 Offaly CC reference 98/493 permission to abstract 5.760 ML/D. No EIA and No Water supplies act applied. (Exact figures are unknown at present)
- In 2006 Offaly County Council advertised to take 10,5 ML/day - PL 19. EL 2053 - Rhode Groundwater. Board inspector Mr Padraig Ó Gliasain failed to consider the cumulative effects. No oversight – no enforcement – no sustainable development.

Westmeath County Council

South Westmeath Regional Water Supply Scheme Provisional Order 2006. ABP approved the taking of water from the Shannon Navigation at Killenure Lough, Portaneena, Glasson. I believe that the abstraction at Parteen weir is an intensification of the abstraction at Killenure Lough and will have to be taken into consideration in a cumulative way along with all the abstractions from the Shannon Navigation.

Photographic record of historic silt accumulation and being removed at Clashganny Lock on the Barrow Navigation



1990 IWAI publication.



2025 IWAI publication.

2025 saw the closure of the Barrow Navigation.

2025 was a bumper year for Waterways Ireland, from pumping water from the Boyne (exhibit MH 1 P) to supplement the Royal Canal and by not removing the silt caused by natural flow and winter flood water which causes silt to accumulate at Clashganny on the Barrow Navigation.

The routine of removing the silt was almost annual event and we as boat hirers to the public were always conscious of the possibility of their being silt at several locations but especially at Clashganny. We had a policy of not allowing first time hirers to go down the Barrow. I.e., to turn around at Lock 28 Athy. The abandonment of their statutory duty of maintaining and restoring the navigation by the removal of the silt that has been accumulating as part of their annual duty to maintain the navigation above and below Clashganny Lock is self evident.



The photos included above and in **exhibit MH 1 i.** attached include the cover photo of the 1990 Barrow Guide and a 2025 version from the Inland Waterways News Autumn 2025 which demonstrate clearly what was normal practice and which has protected the relative newly dedicated SAC for Millenia.

Before Waterways Ireland discovered the importance of the Habitats directive 92/43/EEC as amended and in spite of this type of development being classified as exempt⁶ development Waterways Ireland now refuse to carry out essential maintenance work citing the Habitats directive. Is this not a case of double standards and possibly be the cause of their own undoing.

If only they had woken up to the potential of the Habitats directive in 2001, today we would have a completely different scenario facing the State.

A similar prognosis applies to ABP and An Coimisiún Pleanála

Instead of treating every application on its own, if ABP and now An Coimisiún Pleanála mapped their decisions instead of what they have been doing in a piece meal way since 1988.

⁶ Exhibit MH 4 – class 35 A & B exempted development regs 2024. (when produced)

I refer to exhibit MH 2 (when produced) a letter dated the 15th of April 2003 from An Bord Pleanála.

“Please note that the Board will not be dealing with these proposals and the current Barrow Abstraction proposal cumulatively. This is not how we process such applications.”

Part Three. Abstractions from the Boyne catchment.

Similar to the Barrow abstractions the abstractions from the Boyne catchment no cumulative EIA or appropriate assessment have occurred, and compensation has not been paid and is accumulating.

Table 2 exhibit MH 2 a (when produced) is a summary of the abstractions from the catchment of the Boyne Navigation carried out without compliance with the EIA and Habitats directives and the Water supplies act of 1942.

Meath County Council – Boyne catchment

Meath Eastern Regional Water Supply Provisional Order File Ref: - CW 0502. This abstraction was approved by ABP without even an EIS.

2025 saw the abstraction of water from the Boyne at the Boyne Aqueduct to supplement the water supply for the Royal Canal because Waterways surrendered their water rights to West Meath CC to supply Mullingar with drinking water.

Photos of the pumping arrangements for supplementing the water supply to the Royal Canal 2025. Waterways Ireland take from the River Boyne at the Boyne Aqueduct near Longwood. Water is pumped up to the Long level 9 (A 20mile or 32 km stretch) of canal unhindered by locks. The water is then pumped up from Lock No 18 where the water is pumped up, using separate equipment at each lock, to the next level at locks 19, 20, 21, 22, 23, 24 and 25.



This photo is of the Royal Canal at the next level above lock 25. (31 08 2025) – Not a pretty sight...and does not reflect the spirit or the words transcribed by Ruth Delaney and engineer John Killaly ...*“if it were properly managed.”*

Lough Owel –Ruth Delaney – Killaly - the main source of water to the Royal Canal.
Having a sufficient supply for the Royal Canal was a constant problem for management.

Ruth Delaney in her book *Ireland's Royal Canal* on page 59 quotes the engineer John Killaly in 1804 over 200 years *“...Killaly reported that Lough Owel was lower than it had ever been a few years before, though he believed a sufficient supply could be kept up if it were properly managed. A fishery had been established on the supply, so the company could no longer pound up the waters of the lake.”*

On page 190 of the 1992 publication Ruth Delaney synthesises and describes perfectly the regime at that time; *“In 1982 a threat arose to the main supply to the canal when a public enquiry was held to investigate Westmeath County Council's request to abstract 6.5 million gallons of water per day from Lough Owel. This was particularly suitable as a drinking-water supply because of the small catchment area of the lake and its pollution-free water. The council eventually undertook to guarantee a supply of water to the canal by pumping supplies from Lough Ennell if at any stage this proved necessary.*

The water lobby felt that it was being asked to exchange its supply of beautiful clear water, to which it had statutory rights, for the more dubious waters of Lough Ennell, but there was much talk of 'the common good' and little hope of preventing the scheme from being implemented.

Eventually a compromise was agreed and an adequate supply is now assured, although it may be necessary to supplement the supply to the western end of the canal by pumping water from the River Inny.”

Reason 3. The Newspaper Notice is not correct as it omits the Water Supplies Act of 1942.

Just in case there is any confusion about notifying Uisce Éireann about my status of a navigation authority for the purposes of section 21 of the Water Supplies Act of 1942.

- On the 20th October 2021, I wrote to Irish Water requesting “The documents and data necessary to establish the capacity of the river and the spare capacity of the river to justify the increased abstraction from the River Barrow at Scrowland Athy.”

In their response of the 29 October 2021 Irish Water / Uisce Éireann at para 6 it states ; I have been further advised by the relevant decision- maker that the Environmental Protection Agency (EPA) will adjudicate on “spare capacity of river”

- I wrote to Irish Water again on the 24th of January 2022 **exhibit MH 3.** (when produced)

‘I understand that Irish Water consider that there is spare water available from Srowland Athy. This is not so because the Interference Notice I issued to Kildare County Council on

the 18th January 2002 and on the 10th March 2003 remains unchallenged. I attach for your convenience the Interference Notice and the Notice to Navigation authorities (**exhibit MH 1 J**.) (when produced) and I await your response.'

- On the 25 04 2025 I wrote to Uisce Éireann regarding; **Notification of the Proposed Water Supply Project Easter and Midlands Region, under section 21, of the Water Supplies Act of 1942.** To which I received an automatic response which categorised my request as being part of the public consultation period which began on the 7th January and ran for 8 weeks and ended on the 4th March 2025. My communication of the 25 04 2025 was made 21 days after the public consultation period had ended. (**exhibit MH 1 h** attached with cover letter)

A quick summary at this stage.

There were no reasons of overriding public interest for the interference with the Barrow Navigation, the Grand Canal, the Royal Canal and particularly the Boyne Navigation which is privately owned by An Taisce.

Because of all the jurisprudence achieved since 2001, it shouldn't be necessary to seek an opinion from the European Commission regarding the status of all these abstractions and what is proposed at Parteen, given that in 2001 Article 6.6(1), 6 (2) 6 (3) and 6 (4) of the Habitats directives applied to all the abstractions from Barrow Navigation and the abstractions from the catchment of the Barrow and the Boyne since 1995 and in particular where Article 6.4 specifically states, that

'Where the site concerned hosts a priority natural habitat type and/or a priority species, the only considerations which may be raised are those relating to human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from the Commission to other imperative reasons of overriding public interest.'

Reason 4. I was not Formally Notified under section 21 of the Water Supplies Act 1942.

and Section 111 (4) of The Water Environment (Abstractions and Impoundments) act 2022 which applies to my circumstances and this proposal.

In spite of the efforts of the State to eliminate any reasonable opposition by repealing the Water Supplies act of 1942 and introduction more appropriate legislation to smooth the path.

Section 111 (4) of The Water Environment (Abstractions and Impoundments) act 2022 saves the threat of repeal and applies to my circumstances.

Section 111 (4) of The WATER ENVIRONMENT (ABSTRACTIONS AND ASSOCIATED IMPOUNDMENTS) ACT 2022 (No 48 of 2022.) applies; -

*'(4) Where an application for compensation under sections 14 to 16 of the Act of 1942 has not been determined pursuant to those sections before the date of the coming into operation of section 7 (1)(a), **the Act of 1942 shall continue to apply** notwithstanding the repeal of that Act by section 7 (1)(a).'*

Every person to whom damage has been or will be caused by the taking of water under the proposals is entitled to compensation in the amount of such damage. (section 14 and 15 of the WSA of 1942)

Section 4 (1) (a) provides the 'Procedure consequent upon making of proposal. 4.—(1) Whenever a sanitary authority have made a proposal they shall do the following things, that is to say:— (a) take all reasonable steps to ascertain the persons (if any) to whom damage may be caused by the taking of water in accordance with the proposal and **estimate as nearly as may be the amount of every (if any) such damage**, and⁷

In 2002 Kildare County Council deliberately failed to estimate the amount of my damages because their plan was to take all the water. In 2025 Uisce Éireann are trying to do the same 2025.

My claim and that of Canalways Ireland Ltd. for damages and compensation under the water supplies act has been accumulating since November 2001. for taking water from the river Barrow catchment has not been determined and subsequently the 1942 Water Supplies Act (unamended) stands intact.

Reason 5. Ther was no formal Notice issued to me under section 21 of the Water Supplies Act of 1942.

The WATER ENVIRONMENT (ABSTRACTIONS AND ASSOCIATED IMPOUNDMENTS) ACT 2022²⁰²² act fails to.

- clarify the position of An Coimisiún Pleanála when confronted with an Interference Notice.
- a Navigation Authority with a live Interference Notice issued and which has not been contested or withdrawn.

Consequently, we have a false start- No notice under section 21 of the Water Supplies act – no application in compliance with the legislation.

I attach as **exhibit MH 1 J**. (when produced) the formal Notice to Navigation Authorities prepared for Kildare County Council.

I also refer you to **exhibit MH 1 K** (when produced) letter of 19 February 2003 from KCC highlighting the need to issue an interference Notice.

Reason 6. The applicant has provided false and misleading information.

The proposal: to take a supply of water from a source of water for the purpose of increasing, extending, or providing a supply of water is remiss in that it is not accurate or in keeping with Uisce Éireann statutory duty because the applicant has provided false and misleading information.

Project Overview from the Uisce Éireann website 23 01 2025 – the need for the project.

'Today, **we have just one source** to supply 85% of the water for the Greater Dublin Area – the river Liffey. This dependence on the Liffey (and the two main treatment plants of

⁷ Further reading see p 312-314 McDermot and Woulfe, Compulsory Purchase and Compensation in Ireland, 1992.

Ballymore Eustace and Leixlip) results in a serious vulnerability to risks such as prolonged drought and/or contamination. Furthermore, economic growth, population growth including the demand for housing and the impact of climate change means our forecasts show that the region will need 34% more water by 2044 than is available today. This combination of a growing water supply deficit and lack of supply resilience is not sustainable-we need a new source of water.

This statement is completely disingenuous and misleading and is a bad reflection on Uisce Éireann and a good demonstration of the level of attention to detail for what is to come. This statement completely omits the 140 ML/day approved by an Bord Pleanála and the destruction meted out not only of the environment but also of the fledgling tourism industry across the region and down to New Ross and Waterford which the quest for water has been caused to the Navigations and the natural environment since the first proposal to take surface water from the Barrow Navigation in November 2001.

Reason 7. The influencers and or players along the potholed and winding road of depriving me of my navigation and water rights and the attempted purification of the new regime. – you cannot build on a negative.

A brief history on the attempts to clear the path for this abstraction from the Shannon navigation by providing alternative and in my case unusable legislation which was deliberately designed with the intent of continuing the interference with my navigation and water rights with the redefinition of the definition of ‘source of water’.

KCC/ Uisce Éireann being a judge in their own court.

Mr Brendan Slattery was the solicitor dealing with Kildare County Council’s plan to implement the Kildare Water Strategy with Arthur Cox and co and responded on the 10th February 2005 to my WARNING letter dated 1st February 2005 about the Breach of Interference Notice. **Exhibit MH 7** (when produced)

Mr Slattery states that “No proposal under the Water Supplies Act, of 1942 was required or made for the development of the wellfield and reservoir projects at Hybla, Rathangan and the Red hills. As you know, these projects relate to subterranean water or groundwater. As no proposal was made, it is not possible for any interference notice to have been served in connection with these projects. Quiet simply, the purported interference notices to which you refer, and the correspondence that you attach, are not relevant to these projects.”

Contrary to the legal advice given to Kildare County council Arthur Cox to KCC **exhibit MH 1 f.** (when produced) Mr Slattery continues to argue what he knows to be untrue.

“For the avoidance of doubt, please be advised that **your claim that Canalways Ireland Limited is a Navigation Authority for the purposes of the Water Supplies Act, 1942 is rejected.**”

I expect the Mr Slattery was not as familiar with the Water Supplies act as he should have been. He and his dogma as does the legal advice supplied to KCC (exhibit MH 1 g) (when produced) completely ignores and fails to grasp that while or when a local authority is engaged in the process of actually paying for the excess /surplus to requirements of the water from a navigation - **the cumulative effects** of the abstractions which is covered by section 15 (2) (d).

“(d) when determining the amount of such compensation, the arbitrator shall have regard to any undertaking given by the sanitary authority to provide an alternative or additional water supply.”

I quote from Paragraph 9.5.1 of the Kildare Water Strategy (which was not prepared as a public document) states that the development of both groundwater and an abstraction from the Barrow are essential elements of the long term Water Strategy for County Kildare.

The second page of Mr Slattery’s letter of the 10th February 2005 details the reasons for non compliance with the Water Supplies Act or the EIA and Habitats directives and is sufficiently for the purposes of this exercise.

Mr Brendan Slattery of Arthur Cox⁸ 2005. Presentation at University College Cork, Law and the Environment 2005 (exhibit MH 7 a.) (when produced)

On Thursday, 14th April 2005, Presented at University College Cork, Law and the Environment 2005, **Water Supply Infrastructure: Local Authority Projects: the methods and the myths.**

On page 16 of 21 Mr Slattery avers that; ‘The Water Supplies Act, 1942 permits a sanitary authority to take a supply of drinking water from a “source of water” under and in accordance with a provisional order that has been made and confirmed under that Act. The expression “source of water” is defined to mean “any lake, river, stream, well, or spring”, i.e., all existing sources of water. 53.

Mr Slattery’s footnote no 53 ‘The Water Services Bill, 2003 defines “source” (for different purposes) to exclude “well” and include “impoundment” and “aquifer”.’

Mr Slattery’s dogma **exhibit MH 7 a.** (when produced) Some of the document may be informative, such as *The ultra vires rule* (page 3)

“In this context it is important to remember that the *vires* of statutory corporations are limited and circumscribed by the relevant statutes and

“extend no further than that which is expressly provided by them or is necessarily and properly required for carrying into effect the purposes of its incorporation or may fairly be regarded as incidental or consequential upon those things which the legislature has authorised”.⁹

The logical consequence is that local authorities are limited in the kinds of project may be undertaken by them and the manner by which such projects may be delivered. For example, it would be difficult for any local authority to identify statutory purposes that would justify the provision of turf accountancy¹⁰ or brothel services.

⁸Mr Slattery was a partner with Arthur Cox and represented Kildare County Council in confirming the Provisional Order 2005- in *Canalways Ireland v Kildare County Council*. High Court Record 2004/151/CA. He joined Barry Doyle & Co in 2013 who were solicitors amongst others to An Bord Pleanála and the EPA.

⁹ *per Lardner J., Huntsgrove Developments Limited v. Meath County Council* [1994] 2 ILRM 36.

¹⁰ Although arguments to the contrary might be raised where the racing industry is important to some areas, e.g., in Kildare.

This is known as the *ultra vires* rule, the effect of which might include invalidity for acts carried out in the absence of the relevant statutory purpose.¹¹

I will leave the rest of the assessment of DOGMA to someone more qualified.

Dr Yvonne Scannell 2002 to Nicholas O'Dwyer – consultant to Kildare County Council

I refer to exhibit MH 2 F (when produced) where Dr Yvonne Scannell wrote to Mr. Jim Oliver of NICHOLAS O'DWYER & Co. on the 20th September 2002 and said in the second paragraph... *I have also attached the relevant part of the Committee proceedings on section 19 of the later Supplies Bill, 1941 (which became section 21 of the 1942 Act). It doesn't answer our issue about the scope of "Navigation Authority"- but it does confirm that the intention of the section is to protect navigation rights (suggesting that it may indeed be open to contend that a barge operator might be a navigation authority, as one who possesses navigation rights).*

Dr Yvonne Scannell– 2006, the proposed new act does not address fundamental questions arising.

In her 2006 publication '**Environmental and Land Use Law**'- THOMSON ROUND HALL 2006. At 7-170 Water Abstractions Yvonne Scannell states that.

"The law on water abstractions will shortly be addressed in the proposed Water Services Act, but the proposed Act does not address fundamental questions which are arising in this area."

I believe that there is no doubt that one of the fundamental questions arising in this area is in general the ownership of the water and the water rights contained in the sources of water required for navigating i.e., navigation rights and riparian rights.

Reason 8. The proposal includes A lacuna and renders the application invalid.

The supporting documentation is remiss in not identifying accurately enough the current source of water supplying the region. The applicant has failed fraudulently to identify the most recent sources of water correctly. This information gap is fatal to an overall assessment of our water supplies which could be promoted as a need for more sustainable abstraction's instead we are getting more of the same abuse and pattern established since 2001.

This misinformation is advertised and repeated on the Uisce Éireann web site.

'Why do we need the Water Supply Project.

The river Liffey supplies 85% of the water requirements for 1.7 million people in Dublin, Meath, Kildare, and Wicklow.' – By depending on one source, there is no alternative if there is a contamination or weather event.'

¹¹ Footnote 8 ; ¹¹ per Lardner J., *Huntsgrove Developments Limited v. Meath County Council* [1994] 2 ILRM 36.

Project Consultation Brochure January 2025

‘Project Background – The Water Supply Project Eastern and Midlands Region (The Proposed Project) is a generational project and is the first major ‘new source’ infrastructure in the region in the last 60 years.’... – ‘and the capability to promote balanced regional development across the region.’

Benefits of Proposed Project¹²

This document must have been put together by AI because it selectively omits the consequences of previous decisions and is completely detached from the reality of what has been happening on the ground over the last 25 years across the region causing “pollution” which *“means the discharge by man, directly or indirectly, of substances or energy into groundwater, the results of which are such as to endanger human health or water supplies, harm living resources and the aquatic ecosystem or interfere with other legitimate uses of water”*, and the destruction of the inland waterway system and the connected tourism and commercial use it supported.

Reason 9. The applicant has failed to identify clearly ‘the source’ to be in compliance with the 1942 act or its statutory procedures¹³.

‘The proposed Water Supply Project Eastern and Midlands Region will abstract a maximum of 2% of the average flow of the River Shannon at Parteen Basin. The project is in line with the National Water Resources Plan (Framework Plan) and the Regional Water Resources Plan for the Eastern and Midlands Region.’

While the project may or may not be inline it does not identify the source correctly and it certainly does not identify the unregulated discharge from any of the bogs be they intact or cutaway.

This is the same scenario as the Barrow and Boyne catchments – the bogs are depleted, and the water is allowed to flow freely and are not regulated at present.

Reason 10. The false figures and the sums –(see table 1 exhibit MH 2) (when produced)

I believe that the applicant may have provided false and misleading figures. Has the applicant not been aware of or made aware of the 180 ML/day approved for abstraction (in table 1) from the Barrow Catchment?

300 minus 180 – approximately half the amount needed.

or

Has the applicant inflated the amount to be abstracted at Parteen weir? In order to satisfy the Governments, need to do it big or is the total volume to be abstracted just plucked from the sky.

¹² Page 4 of Project Summary Report - executive summary – January 2025.

¹³The correct procedures to be applied **exhibit MH 1 g.** (when produced) Prepared by Arthur Cox and Co for KCC.

Background to the Water Supplies act of 1942, No 1 of 1942.

The Water Supplies Act of 1942 was enacted because of the Barrow Drainage scheme of 1926 and 27 whereby 60,000 hectares of land which would normally flood was prevented from flooding. The infrastructure, locks and weirs installed at that time are with us today. In 1935 the Grand Canal Company sued the OPW for the loss of water causing permanent and temporary damage to the Barrow Navigation.

Reason 11. - Due process under section 21 and Section 23 of the Water Supplies Act is being denied to me since 2001.

Your decision to treat my Interference Notices have assisted the local authorities in taking the water without having regard to due process and the statutory obligations to treat section 21 of the water Supplies act of 1942 with due regard.

The Dail debates on the Water Supplies Act of 1942 consider that section 23 of the Water Supplies Act that being covered for costs – otherwise it is an unfair advantage.

The rationale for section 23 is reflected in the McKenna Judgment where it was found to be unfair to expect ordinary citizens to protect their constitutional right against an element of the state. In this case the state has set out on the process of preparing a Provisional Order (a piece of legislation) to take away people's constitutional water and navigation rights.

In the making of the Provisional Order (2005) the proposed taking of water in that case affects 900 landowners and 9 Commercial Boat operators. (**exhibit MH 1 m**)

We the commercial operators were not recognised at that time as individual Navigation Authorities in our own right. (but we are as we must be in our own right because we all run separate commercial risks while operating / working the waterway) see also the Dail debates)

A simple description of a navigation authority is that stated in the UK's land drainage act of 1930 (12 years before the 1942 act);

My status of Navigation Authority is also supported by section 81 of the (UK) Land Drainage Act 1930;

"Navigation authority" means any person or body of persons having powers under any Act of Parliament **to work** or maintain a canal or other inland navigation: (including a navigation in tidal water)' exhibit MH 5 (when produced) extract from the land drainage act 1930

In the UK they also have an association of Navigation Authorities namely, AINA.

Section 23 of the Water Supplies Act of 1942 protects me and any commercial operator who is familiar with the navigation and approved to operate a boating business being confronted by the state in the pursuit of water.

In the interest of completeness, in the case *Spuc v Grogan*, it was found that a Constitutional Issue trumps public interest; In *SPUC v Grogan* [1990] SC ILRIVI 350 the court found that; 'Where an injunction is sought to protect a constitutional right, the only matter which could

properly be capable of being weighed against the grant of such protection, is another competing right.' No such right has been put forward by KCC or any of its representatives to date.

In *people (AG) V O'Brien* 1965 I.R.142 Walsh J: "Constitutional rights trump the public interest where Constitutional rights are breached evidence will be excluded."

Having been Notified of the abstraction under section 21 a navigation authority has only three weeks to make up its mind to issue an Interference Notice or not. If not, it is deemed by all that the navigation authority was in favour of the abstraction proposal and by not issuing an Interference Notice they agree to not being able to raise the issue of low water in any court of law -ever.

Reason 12. Judge Abbots clarification of section 21 of the Water Supplies Act of 1942.

In *Canalways Ireland Ltd. V Kildare County Council* High Court Record 2004/151/CA.¹⁴ Judge Abbot was only dealing with an appeal of the confirmation of the provisional order (under section 8 of the water supplies act). He was not dealing with the interference notice under the section 21 (8) of the WSA.

Judge Abbott was very familiar with the law associated with local authorities and was curious about the status of a Navigation Authority for the purposes of section 21 of the Water Supplies Act of 1942¹⁵. He said, 'that the general does not repeal the particular, the Latin maxim *eneraliaspecialibusnon derogant* 'The specific prevails over the general: it does not matter which was enacted first.'

In essence the Water Supplies Act of 1942 is a specific sui generis (of its own right, that, constitutes a class of its own and the only one of its kind), set of procedures of the 1942 Water Supplies Act.

Kildare County Council and now Uisce Éireann are obliged to have the original 2001, 2002, and 2003 and this 2026 Interference Notice lifted before taking the water. To extend or increase the volume of water to be taken.

Remembering section 21 (2) of the Water Supplies Act of 1942.

'Nothing in this Act shall be construed as entitling a sanitary authority to take water in such manner, or from such source of water, or of such amount as to make the navigation of any navigable water impossible or unreasonably difficult.'

It should also be noted that in 1926 for the most part all or most of the raised peatlands in the catchment were intact and having a sponge effect on releasing the winter rainfall slowly. Since and since that time all of the raised bogs have been depleted¹⁶ Section 21 of the Water

¹⁴ In 2005, Judge Abbott said (transcripts available on request) that he would clarify the law regarding section 21 of the water supplies act of 1942 – but I am still waiting for his clarification and his written judgment.

¹⁵ from 53 of the transcripts of the hearing in discussion with Mr David Hardiman SC. - In *Canalways Ireland Ltd. V Kildare County Council* High Court Record 2004/151/CA

¹⁶For an insight into the law governing this type of procedure, See; *O'Brien v Bord na Mona* – where the Supreme Court found that the removal of peat was in the Interest of the Common good... Keane J. stated in *O'Brien v. Bord na Móna* that the difference between

Supplies Act of 1942 is specifically for the protection of the navigation which has been in existence for 235 years (exhibit)¹⁷ and navigation rights on the Barrow Navigation.

Reason 13. The applicants definition v the definition of ‘Source’ of water and the Water Supplies Act of 1942

The Interference Notice which I issued in 2001, 2002, and 2003 has the benefit of the force of law which has to be overcome by (s. 21.8) before any of the water can legitimately be taken for a potable water supply. It protects the navigation and all its sources of water. (it is important to read ‘source’ and ancillary operations together) ;

‘the expression "source of water" means any lake, river, stream, well, or spring;

the expression "ancillary operations" means any of the following operations, that is to say, the embanking, damming, dredging, deepening, widening, straightening, diverting, altering the level of, or otherwise affecting a source of water or any lake, pond, river, canal, or **other water connected directly or indirectly with a source of water;**

Section 21 of the Water Supplies Act which is for the protection of navigable Rivers and Canals in the common interest was deliberately set into the act by the drafters in 1942.

Section 21 (2) of the Water Supplies Act of 1942; *Nothing in this Act shall be construed as entitling a sanitary authority to take water in such manner, or from such source of water, or of such amount as to make the navigation of any navigable water impossible or unreasonably difficult.*

“Ancillary Operations” and An Coimisiún Pleanála in 2003

At that time, I was also following up on the destruction of the Curragh aquifer and I wrote to ABP about “ancillary operations” in November 2003 and I attach as **exhibit MH 12** both documents ABP responded “re: Water Supplies Act, 1942, **please note that**

constitutional justice in this jurisdiction and natural justice in the British context was to be explained “by the absence in England of a written constitution containing express guarantees of fundamental rights and fair procedures in the protection of those rights.”

Therefore, “natural justice” as a common law right to fair procedures may be rebuttable, whereas **“constitutional justice” is judicially regarded in Ireland as one of the unenumerated rights under Article 40.3 of our Constitution.** The significance of this is **that it would be unconstitutional for an Irish statute to attempt to exclude the rules of constitutional justice.** Constitutional justice consists of two fundamental procedural rules. Firstly, **the decision-maker must not be biased** or *nemo iudex in causa sua* and, secondly, **that anyone who may be adversely affected by a decision should not be condemned or unheard but rather should have the best possible chance to put forward his side of the case** or *audi alteram partem*. Each rule is important but arguably the first rule, aspects of which form the subject matter of this article, is the more important.

Footnotes to this extract.

4. [1983] I.R. 255 at 270.

5. G. Hogan and D.G. Morgan, *Administrative Law in Ireland*, 3rd ed. (Dublin: Thomson Round Hall, 1998) at 501

1. While the River was navigable from earlier times, the Barrow Navigation Company was incorporated by charter dated 5 May 1790, to complete the navigation.

there is no legislative provision in the Water Supplies Act 1942 for the Board to determine the matters raised. exhibit MH 12. (when produced)

Consequently, the current application to increase the amount of water being taken from the navigation system must now consider and take into account the cumulative loss of water to the certified navigations because of these abstractions as direct, indirect and cumulative effects on the Barrow Nore SAC which is also a certified navigation. The assessment must also consider the loss of water when the water from the bogs is regulated to be in compliance with the Memorandum of Understanding made with the European Commission in 1995.

Reason 14. The Draft of the Barrow Navigation is not being maintained as a consequence of ABP and or An Coimisiún Pleanála decisions.

The draft of the Barrow Navigation is defined in Article 14, of SI No 247 of 1988, the Canals Act (Bye-laws) 1988 which defines the Maximum dimensions of boats which are allowed to navigate on the Grand Canal and Barrow Navigation as being 1.2 meters.

An additional 300mm is required by Waterways Ireland and agreed with NICHOLAS O'DWYER & consultants to Kildare County Council on the 15 March 2002 for boat drawdown. **Exhibit MH 14 b.** (when produced)

On page 41 of his report to An Bord Pleanála inspector Mr Dom Hegarty appointed for the Barrow surface water abstraction stated on page 41 of his report. **Exhibit MH 14 d.** (when produced)

"The declared minimum draft on the Barrow, quoted by the navigation authority, Waterways Ireland, in its published guidebook for boat users is 760mm. (I do not accept that the 1.2m maximum draft quoted in the Canals Act has any relevance in that context and the Council engineers were of the opinion that it would never have been the norm for boats of 1.2m to navigate the Barrow)."

Mr Hegarty did observe the absence of Waterways Ireland from the hearing and stated at page 42 of his report; **"It is significant, I feel, that the navigation authority Waterways Ireland have not objected to the proposal."**

After discovering the reality of the loss of the water in the Barrow at Scrowland Athy from the Curragh Aquifer by the destruction of the aquifer itself it was decided to increase the capacity from 9,700 to 42,000 p.e. and move the discharge location to the River Barrow to Crosskeys west of Kildangan a location north of the Abstraction at Scrowland. This would ensure a constant flow to supplement the seasonal low flow in the Barrow at the abstraction point at Scrowland. Of course, the only inspector for the job was Dom Hegarty of the (Barrow surface water abstraction)

The cumulative effects and Conor Skehan

I would like to congratulate the Board and all its advisers and backroom boys for contributing to this debacle over the water supply for the Country. I suspect that the source of the trouble and destruction of the environment caused by the failure of the Irish authorities to carry out one assessment in 27 years is traced back to advice received from MR Conor Skehan who promoted himself as EIS ltd who stated in his advice to the EPA "Guidelines on the information to be contained in Environmental Impact Statements". **Exhibit MH 14 c** (when produced)

The extract from the document in relation to Screening.

*'Screening is a crucial issue because of the divergences of views which can exist on the same topic. **An authoritative statement on the need to avoid unnecessary EIA will be included together with advice on the existence of other forms of appropriate evaluation.**'*

The Waste Assimilative capacity and Conor Skehan

After ignoring the cumulative effects when deciding the Barrow Surface Water Abstraction Mr Hegarty adjudicating on the expansion of the Kildare Town Sewage Treatment works ref 09.EL2048 Mr Hegarty states at paragraph 1 on page 6 of his report *'(Note -Waste Assimilative Capacity (WAC) defines the maximum amount of waste that may be discharged to a river at a particular point without leading to unacceptable deviations of the quality of the receiving water from the designated water. ...)*

4th Para on page 8

'The MBR technology is a recently developed process for the treatment of wastewater to a high standard. The MBR process is a suspended growth activated sludge process that utilises a single tank for biological treatment and separation of the biomass from treated effluent. As I have stated earlier, due to the higher cost of this technology relative to the conventional activated sludge or SBR processes and to the necessity of separate phosphorous removal facilities, it is only likely to be offered where a very high level of treatment is required.' ..

On page 12 (2nd para) Mr Hegarty comments *'It would make little sense if this water was of such a low quality as to incur exorbitant purification costs.'*

On page 14 at para 1 of his report Mr Hegarty *'The Health Service Executive are concerned that "the projected increase in population and increases in other development and resultant need for waste water discharge have not been adequately addressed in calculating the waste assimilative capacity of the River Barrow." .. **The suggestion of the HSE that the outfall be located downstream of the water abstraction point is neither necessary nor practical.**'*

You would expect that with the change to the discharge point 13 Km upstream, when the people of the Greater Dublin Region are obliged to consume this somewhat diluted waste water being discharged that the use of the Membrane Bioreactor Process (MBR) was a must – no matter the cost, not to mention the existing and pending cumulative effects from all the towns in the catchment on the Barrow.

Dredging

As the bottom of the river was becoming close to the top of the river the expression "ancillary operations" frame for posterity and describe adequately the dredging taking place on the 28 09 2004 at the gas pipe (below Maganey lock) to facilitate the only official proposal to take water from the Barrow Navigation and I attach for the record **exhibit MH 1 i.** (when produced) photographic evidence of the dredging and ironically a boat stuck on the bottom above the location which was being dredged.

See **exhibit MH 14** (when produced) the emailed letter from the EPA Jan 2020 regarding Waterways Ireland's statutory responsibility to maintain and restore the draft of the Barrow Navigation.

As stated below these groups of bogs fall within single river catchments either the Barrow or Boyne with one or two exceptions. If the Water Framework Directive is to be implemented correctly and it will not be possible to carry out an assessment without taking into account the draft of the individual navigations (1.5 metres) connected to each of the individual groups of bogs.

I attach as **exhibit MH 14** correspondence from the EPA setting out the statutory duty of Waterways Ireland to maintain the Barrow Navigation dated January 2020 from the EPA which states that **the certified draft of the navigation is not explicitly considered in the implementation of the Water Framework directive and that the surface water quantitative status is not assessed under the Water Framework Directive.**

Because of the continued failure to apply the EIA and Habitats or to take into account the proper requirements for compliance with the Water Framework Directive by An Bord Pleanála and or the EPA the direct and indirect effects to be assessed include the loss of water to and the restoration of the draft of the Barrow and Boyne Navigation's.

The removal of peat from the individual catchments in cumulation with other projects and the use of natural resources (bog which contains 94% water in its natural state) and also includes the loss of water from the catchment detailed in Table 1- **exhibit MH 2.** (when produced) abstractions from the Barrow Catchment and table 2 for the Boyne along with the discharges from Local Authorities/ Irish Water discharges from sewage treatment works to the catchments.

Waterways Ireland gave me an undertaking that Kildare County Council and now Uisce Éireann are under Notice to provide a new source of water for the Grand Canal.

exhibit MH 14 a, (when produced) is a the letter dated 17 October 2006 from MR Brian Mullan of Waterways Ireland when he gave me an undertaking to ensure Kildare County Council provide a new source of water for the Grand Canal.

This water must be the same chemical status as the water from Pollardstown Fen not like the water coming from Daingean Rathdrum bog since around 1998.

I refer to an extract from the submission of the OPW to the Public Inquiry into the Bypass in 1993, which stated that:

"The quantity of water available at present [to feed the Grand Canal] is only just sufficient to maintain the entire canal in operation and there have been occasions in recent dry summers where it was inadequate. Without an assured and adequate supply of good quality water, such as has been available from Pollardstown Fen for over 200 years, the canal would quite simply cease to exist in its present state. The canal cannot afford any diminution in the quality of water available and even if alternative supplies were provided it is very unlikely that they could have similar physio-chemical parameters with the result that the overall quality status of the waterway would be seriously affected."

Reason 15 Management of the water. There is no maintenance or restoration of the draft of the Barrow Navigation

Waterways Ireland is one of the six all-Ireland North/South implementation bodies established under the Belfast Agreement. Under section 1.4 of the British –Irish

Agreement Act 1999 (No.1 of 1999) is responsible for the management, maintenance, development, and restoration of inland navigable waterways and has its principal offices at 2 Sligo Road, Enniskillen, Co. Fermanagh BT74 7JY.

On the 19th of February 2003, Waterways Ireland was advised by Kildare County Council to issue an Interference Notice but failed to do so. (see **exhibit MH 1 k**) (when produced);

Reason 16. The Heritage act 2018 and Waterways Ireland

The Heritage Act is contrary to the obligations of Waterways Ireland which is to **maintain** and **restore** the navigations in their care. Besides not considering the loss of water to the SAC's a simple formula for calculating the loss to a commercial operator is that a 48-inch draft of a commercial (CIE) barge is equal to 48 tons. Any diminution of water levels in the system causes problems for the operators and costs money.

The introduction of the Heritage act 2018 is another attempt to regularise / offset the damage caused to the navigation. It is also an attempt to satisfy Waterways Ireland (or to save face) take the blame for the destruction of the main source of water for the Grand Canal. The introduction of the 2018 act is also being fuelled by the need for more water and was introduced because of the method chosen to construct the Kildare By-Pass and the irreversible impact on Pollardstown Fen. Since the unauthorised wellfield incorporated into the drainage system of the By-pass and permanent drawdown of water from the Curragh Aquifer (the destruction of the Curragh aquifer as we knew it) all developments since that time connected with the Curragh Aquifer and not for the benefit of the Curragh Aquifer and or Pollardstown Fen are without any legal status.

For the record

With reference to the Kildare Water Strategy and Mitigation Measures for the Kildare Bypass, ABP wrote to Mr Tadhg O'Cruadhlaioich on the 9th April 2003 and stated that ; 'Kildare County Council **stated that it is not proposed to abstract water from the Curragh Aquifer as part of the Kildare Water Strategy.**' Exhibit MH 1 L. (when produced)

I refer to exhibit MH 2 b (when produced) where John McKeown of Waterways Ireland having been notified of the first proposal to take water from the Barrow Navigation predicted the inevitable closure of the Barrow Navigation.

I exhibit MH 2 c, (when produced) page 37 of the Conservation Plan for Pollardstown-Fen SAC.

Where Mr Tom Beglin of Waterways Ireland admit their legal obligation for Pollardstown Fen , 'Waterways who have a legal responsibility to maintain the quantity of water flowing to the summit level of the canal via the Milltown Feeder.'

The Heritage act 2018 masks the fact that a new regime is being implemented to allow the water levels to be reduced on a permanent or ad hoc basis which is contrary to the statutory obligations of Waterways Ireland. This is an admission that Waterways Ireland are no longer able to maintain and restore the navigation and represents the closing down of the

Grand and Royal Canals and the Barrow Navigation as we know it.¹⁸ 2025 was the year that the navigation was closed to commercial traffic. The bottom line is that Waterways Ireland have no word and cannot be relied on to assure any navigable depth in the Shannon or anywhere. I refer to **exhibit MH 14 a**, (when produced) the letter dated 17 October 2006 from MR Brian Mullan of Waterways Ireland when he gave me an undertaking to ensure Kildare County Council provide a new source of water for the Grand Canal.

Par 6.5 of the Non-Technical Summary for the Shannon abstraction at Parteen Weir

6.5 Water Framework Directive

146. The Water Framework Directive (WFD) is a directive of the European Parliament which establishes a framework for action in the field of water policy. The WFD requires all water bodies to maintain or achieve good ecological status (or good ecological potential where water bodies are heavily modified or artificial).

147. To be compliant with the requirements of the WFD, any activity which has the potential to have an impact on WFD water bodies must be assessed to determine whether it could cause deterioration in the ecological status or potential of a water body. A Water Status Impact Assessment Report has been prepared for the Proposed Project and has been submitted with the planning application. The assessment has concluded that the Proposed Project would not compromise WFD objectives or cause a deterioration in the status of any surface water or groundwater WFD designated water body and/or jeopardise the attainment of good surface water (or good ecological potential) or groundwater status.'

It should be taken into consideration that there is a statutory Obligation under the Water Framework directive to restore the draft of the Barrow and Boyne navigations

Reason 8 a. The Charters for the Grand and Royal Canals

All the water needed for the Canal navigations is vested in the Navigations through Section 68 of the Charter for the Grand & Royal Canals. (**exhibit MH 9**) (when produced) Section 68 of the Charter for the Royal Canal 1789; 68.-¹⁸ *And be it enacted: ... and further that such subscribers and undertakers when incorporated shall be vested with like powers, to make, turn, and draw into the said navigations and off branches, the waters of all such rivers, rivulets, lakes and brooks, as may be necessary for carrying on the aforesaid works, first making compensation as by the said Acts directed, to the proprietors of any mills or bleach greens were erected before the first day of April, one thousand seven hundred and eighty nine.*

Reason 16 a. The current status of the cutaway bogs.

¹⁸ It should be noted that it was only in 2025 that Waterways Ireland engaged their own in house Hydrologist.

On the 28 04 2020 ABP made a decision ABP-306241-19 (Board Direction and Order to grant leave to apply for substitute consent under section 177D of the Planning and Development Act 2000.

Reasons and Considerations; the size and scale of the peat harvesting area and (ancillary works) within the Bog of Allen Group located in Counties Offaly, Westmeath, Meath, Laois and Kildare which was carried out subsequent to 20th September 2012 and to the proximity of the peatland sites to a number of European sites,

The Board is satisfied that;

- (a) an environmental impact assessment and appropriate assessment were required in respect of the development concerned and
- (b) exceptional circumstances exist such that the Board considers it appropriate to permit the opportunity for regularisation of the development by permitting an application for substitute consent.

The Board considered that –

- the regularisation of the development concerned would not circumvent the purpose and objectives of the Environmental Impact directive or the Habitats directive;
- the applicant had, or could reasonably have had, a belief that the development was not authorised¹⁹;
- the ability to carry out an assessment of the environmental impacts of the development for the purpose of an environmental impact assessment or an appropriate assessment, and to provide for public participation in such an assessment, has not been substantially impaired;
- the actual or likely significant effects on the environment or adverse effects on the integrity of a European site, if any, resulting from the carrying out of the development, could likely substantially remediated; and
- the applicant has not otherwise carried out any unauthorised development.

Comments

By allowing the applicant to withdraw the application ABP deprived the public participation.

See my submission to ABP on the substitute consent exhibit MH 16. (when produced)

Previous to this; the planning and development regulations 2001 – 2013 applied to this application which states at 3.3; “peat extraction” includes any related drainage of bogland;

And in particular Part 3 *Peat extraction* CLASS 17 applies to this application;

Peat extraction in a new or extended area of less than 10 hectares, **or**

- (c) Peat extraction in a new or extended area of 10 hectares or more, where the drainage of
- (d) the bogland commenced prior to the coming into force of these Regulations.

Previous to this; PART IV of Statutory Instrument SI. 349 of 1989 applied to this development ;

‘PART IV ENVIRONMENTAL IMPACT ASSESSMENT OF CERTAIN

DEVELOPMENT BY STATE AUTHORITIES; ‘23 Environmental impact assessment of certain development by State authorities .23. (1) (a) A State authority shall, before undertaking any development of a class specified under Article 24 of these Regulations, or any development which would be of such a class but for not exceeding a quantity, area

¹⁹ See the status of the Bogs when BNM were obliged for a **three-month period** to submit an EIS with their application for a licence to the EPA.

or other limit specified in relation to such class and which in the view of the State authority would be likely to have significant effects on the environment, prepare a statement of the likely effects on the environment (hereinafter referred to as an "environmental impact statement") of the proposed development.

In the knowledge that there has been no real change to the assessment process since the finding of the CJEU in case C-50/09 Commission v Ireland and I restate the situation which was conveyed to the European Commission in 1995;

Paragraph 2.1.3.4 of the Memorandum of Understanding at ; Environmental (EIS) states;

As part of the necessary planning and environmental requirements, both at Irish and EU levels, the developer submitted an Environmental Impact Statement to the Environmental Protection Agency in May 1999. Edenderry Power Ltd received the Integrated Pollution Control (IPC) Licence in July 1999 in accordance with Section 85(2) of the Environmental Protection Agency Act 1992. A copy of the IPC Licence is held on file in the Department of Public Enterprise.

Again, I repeat that by making this application the applicant has conceded that although EIA has been a mandatory requirement since 1998 three years after the commencement of the EIA Directive 85/337/EEC and appropriate assessment has been required since 1992. No EIA or appropriate assessment was ever carried out for the Edenderry Powerstation. Consequently, no real exceptional circumstances exist.

The applicant was in full knowledge (as was and still is their legal advisers Arthur Cox & Co) of its obligations to comply with the various directives because of their Statutory obligations under Section 56 of the Turf Development Act 1990; Bord na Mona **will ensure that its activities afford protection for the environment and archaeological heritage** and have chosen to resist compliance at all cost. In this case the applicant and their advisers have run out of road.

The applicant has benefited from the advice to continue the position of non-compliance following on from the case C-392/96 against Ireland for project splitting and for failing to consider cumulative or in combination effects for which the Irish authorities enacted SI 93/1999.

Splitting the assessment process & IPC Licence

SI 93/1999 : European Communities (Environmental Impact Assessment) (Amendment)

Regulations, 1999 which came into operation on 1 May, 1999 (for a three month period) and imposed an obligation to apply for planning permission and carry out an EIA for peat extraction.²⁰

The applications for all the IPC licences were made in or about the 9th of June 1999 but the EPA ignored the obligation to carry out EIA under SI 93/1999 regulations. I refer to and submit as appendix an extract (page 11 of 40) the application form for IPC no 502 on page 11 where Bord Na Mona (and which was accepted by the EPA) were under the impression that: 'Bog development and peat production was and are developments exempt from planning permission by virtue of Sections 4(1)(a) and 2(1) of the Local Government (Planning and Development) Act 1963.

Again, I repeat that by making this application the applicant has conceded that although EIA has been a mandatory requirement since 1998 three years after the commencement of the EIA Directive 85/337/EEC and appropriate assessment has been required since 1992. no EIA or appropriate assessment was ever carried out for the Edenderry Powerstation.

²⁰SI 92 of 1999 Local Government (Planning and Development Act) Regulations which was signed on 14th Day of April 1999 also applies.

Subsequently, in reaching their decision the Board and the EPA are obliged to assess and establish the permanent and temporary loss of water to the Grand and Royal Canals, the Barrow, Boyne and Shannon Navigations by the removal of the peat which constituted 95% water. This water was and is connected to the and for the benefit of the various connected SAC's which have benefited by the waterways being designated and Certified Navigations.' – extract from **Exhibit MH 16**. (when produced)

An Bord Pleanála /An Coimisiún Pleanála had no authority to allow the applicant Bord Na Mona to withdraw the applications to retain the cutaway bogs and not assess and establish the damage that was being caused for the last 100 years by removing the peat.

On the 14 09 2021 I made a submission to An Bord Pleanála regarding an application made by Bord Na Móna Plc for substitute consent for part only of the historic peat removal from bogs in their care reference no's 307278, 307279, 307280, 307281, 307282, 307283, 307284

On the 2nd of June 2020 Bord Na Móna made applications ABP-307279-20, ABP-307280-20, ABP-307281-20, ABP-307282-20 and ABP-307283-20 for substitute consent.

Following on from that, on the 03 February 2021 An Bord Pleanála wrote to me regarding the decision of the applicant Bord Na Móna to withdraw case numbers ABP-307279-20, ABP-307280-20, ABP-307281-20, ABP-307282-20 and ABP-307283-20.

An Bord Pleanála / An Coimisiún Pleanála having previously decided that EIA was required to establish the damage caused to the Barrow Navigation SAC, by the removal of the peat and the sponge effect which supplied water to the navigations over the summer months, overstepped **their authority** and have no discretion to allow Bord Na Móna withdraw their application when they already decided that an EIA was required.

When An Bord Pleanála /An Coimisiún Pleanála made the decision that an EIA and an Appropriate Assessment was required there is no going back or reeling out of it by Bord Na Móna and consequently the decision of the board to allow a withdrawal of the application is Ultra Vires the powers of An Bord Pleanála / An Coimisiún Pleanála.

I believe that a Strategic Environmental Impact Assessment is also required to establish the damage caused by the removal of the peat over the last 100 years or so.

In addition to and previous to this debacle.

In their direction on application ABP-306247 at (b) the Board declare that exceptional circumstances exist to permit the retention and continued use of the bogs. I contend that no legitimate circumstances exist to facilitate the continued use. The use of the word exceptional is a misconstruction of the word and the word unacceptable is the correct reaction.

I refer to; para3.2. of the inspectors report An Bórd Pleanála 306247-19 -A Referral case which states;

PL25.RL.2975 - The Board decided, in April 2013, that the drainage of boglands and extraction of peat at the Lower Coole, Mayne, County Westmeath after the 20th September 2012, was development and not exempted development, having regard to the introduction

of section 4(4) of the Planning and Development Act, as inserted section 17 of the Environment (Miscellaneous Provisions) Act, 2011, **and on the grounds that the development requires an environmental impact assessment and appropriate assessment**. The referral was the subject of a Judicial Review (2013/398/JR) and on 8th February 2018 the High Court upheld the Board's decision [2018] IEHC 58.'

And continuing

The Board appear to have conveniently forgotten about their decision in the Killamuck or Abbeyleix bog case 11 RF 1078 in 2002, whereby; 'in exercise of the powers conferred on it by Section 5 of the Local Government (Planning and Development) Act, 1963, hereby decides that the works at Killamuck Bog, Abbeyleix, County Laois **are not exempted development**. Consequently the words 'the drainage of boglands and extraction of peat at the Lower Coole, Mayne, County Westmeath after the 20th September 2012' in this case applies to the Bord Na Mona bogs since 1988.

In the interests of completeness I exhibit as MH 16 a, the Duchas submission²¹ to the EPA in 1999 regarding an application by BNM for IPC licence to discharge bog water to the Grand Canal at Daingean Rathdrum bogs.

'It is our wish that the Grand Canal should not be exposed to the significant risk of the adverse effects on the ecology and function of the canal which appear to be posed by the emissions from Bord Na Mona production bogs.'

The well drafted objection had No affect, the water from Daingean Rathdrum Bog was allowed to discharge to the Grand Canal whereby the canal acts as a settling bed and allows the peat silt to settle and fill the canal with silt. I discovered this silt mound myself when I was navigating from Shannon Harbour to Rathangan in 2007 which continues.

²¹ This detailed Duchas submission makes interesting reading when you consider the polluted black water currently passing through Tullamore in the Grand Canal.



Photo of peat coloured water instead of crystal clear at Daingean Rathdrum Bog taken by the author in 2021.

Reason 17. No account has been taken of the unregulated water from the connected bogs in the catchment which currently flows freely into the Shannon.

The Appropriate Assessment screening report does not take account of the water from the connected bogs which currently flows freely into the Shannon, being regulated. The AA should be capable of removing all reasonable doubt as to the effects on the protected sites concerned.

With reference to Article 6.4 of the Habitats directive, the role of the intact raised bogs habitat which are connected to and necessary for the Barrow Navigation, the Boyne Navigation, and the Shannon navigation but now depleted and which are mute and have no planning status must be revisited in a plan to restore the Barrow and Boyne navigations along with the Grand Canal and the Royal Canal.

Reason 18. The Remedy and the immediate procedure to be applied excludes An Coimisiún Pleanála

Although Kildare County Council and now Uisce Éireann are statutorily obliged to have the interference Notice overturned, are reluctant, to apply to the High Court to have the Interference Notice lifted under section 21 (8) of the water Supplies Act 1942. This has not occurred and that the Interference Notice has not been overturned by the High Court. But Kildare County Council and Irish Water now Uisce Éireann have adopted a policy of

ignoring the Interference Notice and have proceeded to take all the available water for drinking water purposes.

Before anything else this 2026 Interference Notice along with the Interference Notices which I issued on my own behalf and that of my company Canalways Ireland Ltd. Along with the Interference Notice issued by An Taisce have to be dealt with in the court. This of course should not include An Coimisiún Pleanála.

Reason 19. The status of the Barrow SAC is unknown.

It should be noted at this stage, that as part of this decision-making process, the status of the Barrow Nore Sure SAC site code 002162. Because of the consequences of previous decisions by the board and by the various local authorities all of which will have to be taken into consideration particularly because of the surface and groundwater abstractions from within the catchment of the Barrow.

The surface and groundwater abstractions including all the abstractions in the Kildare Water Strategy and from the catchment of the Barrow is relevant to this application.

The 'Komex' Report on the Kildare Water Strategy.

For a detailed analysis of the Kildare Water Strategy see the KOMEX report which I commissioned. **exhibit MH 15**, the Komex Report. (when produced)

Reason 20. The Status of the Boyne SAC is not accounted for and is unknown.

I endorse and adopt the Interference Notice issued by an Taisce on the 20th Day of June 2003 and resubmit the Interference Notice along with my submission to An Bord Pleanála dated 20th June 2003 (both attached when produced as **exhibit MH 1 d** in regard to the abstraction proposal to take surface water from the River Boyne, termed as the Meath Eastern Regional Water Supply Provisional Order , both attachments of which I now attach to my Interference Notice issued to Kildare County Council in 2002 and will issue and reissued my Interference Notices to Irish Water /Uisce Éireann when they proceed with the abstraction of water proposal from Parteen weir on the Shannon.

The Boyne and a particular point of interest about the Boyne abstraction. No EIS.

Is the fact that An Bord Pleanála granted planning permission (not Development Consent) for the Boyne abstraction without any overall assessment or even an EIS or an Appropriate Assessment.

The Need for EIA –I quote from the Inspectors Report in 2003 – Boyne abstraction.

As regards the need for an Environmental Impact Statement, Mr. Fahy stated that the E.I.A. Regulations 1989/1999 as amended by S.I. 600/2001 contains no development class that relates to water abstraction. **In his opinion there is no legal requirement for an E.I.S. to be prepared in respect of the proposed development.**²²

²² I expect that this misguided opinion could have been led astray by Mr Skehans advice to EPA **exhibit MH 14 c** (when produced) " Guidelines on the information to be contained in Environmental Impact Statements"

Notwithstanding this, an Environmental Impact Report (E.I.R.) was prepared. The purpose of this report was to provide the planning authority with an assessment of environmental issues, which were relevant to the current proposal. He stated that the E.I.R. established that the development would not have significant impact on the environment. In response to Mr. McEntee, he pointed out that the Boyne Valley is designated in terms of landscape classification as being very sensitive to all categories of new development.

However, the technical and engineering advice available to the County Council identified the River Boyne as the only suitable available source of water in the county.²³

The jurisprudence now established regarding the proper interpretation of the European Union renders the abstraction and all of the abstractions in the Boyne catchment the same status as the Derrybrien Windfarm case C- 215/06 ie, for that reason An Coimisiún Pleanála are powerless to adjudicate on a proposal for development consent for any proposed development.

- A similar fatal diagnosis applies to all of the abstractions from the Barrow Catchment; and
- of course all of the bogs in both catchments receive the same status, (see below)
- as does the developments granted planning by both county councils and An Bord Pleanála /An Coimisiún Pleanála which have already been constructed and or in the process of being constructed on the cutaway bogs. **Ie, they have no legal status.**
- In case there is any doubt the same diagnosis applies to all discharges to the Barrow and Boyne catchments. **Ie, they have no legal status.**

Both Interference Notice's still has the force of law and this issue (the Interference Notices) has to be resolved before An Bord Pleanála/ An Coimisiún Pleanála can reach a conclusion on the cumulative effects associated with this proposed application. Part of the reason for not contesting the Interference Notice is because Kildare County Council and Uisce Éireann have carried out the alternatives as well as the main proposal to the Barrow Surface water proposal without any overall or cumulative assessments.

Reason 21 Because of the previous stated reasons and that which follows, this is application to take water from the Shannon Navigation at Parteen Weir is in conflict with section 21 (2) of the WSA of 1942 and is not sustainable²³;

We are at 'stage 3 -6 the stage of Option Development, involving the identification of a **possible Option that is unconstrained by cost, feasibility or specific environmental requirements (Unconstrained Options)**.(more of the same that I have witnessed over the last 25 years but only worse if this project is allowed to commence)

²³I refer to the Irish Water | Regional Water Resources Plan – Eastern and Midlands.

This proposal is contrary to section 21 (2) of the Water Supplies Act of 1942; *Nothing in this Act shall be construed as entitling a sanitary authority to take water in such manner, or from such source of water, or of such amount as to make the navigation of any navigable water impossible or unreasonably difficult.*

This is a proposal for a compulsory Purchase Order (a piece of legislation similar to that granted to Kildare County Council by the High Court in 2005) application for the Water Supply **'for the purpose of increasing, extending, or providing a supply of water'** titled *Water Supply Project Eastern and Midlands Region.*

I quote from page 73- the Irish Water | Regional Water Resources Plan – Eastern and Midlands.

'The hydrological yield across our surface water sources varies notably with approximately 70% of the region's surface water sources characterised by a yield of over 100 m³/d, whilst approximately 10% are characterised by a yield of over 50,000 m³/d. The highest yielding sources include: Ballymore Eustace and Leixlip on the Liffey, the River Barrow at Srowland, Staleen and Navan on the River Boyne and sources drawing from the River Shannon, including Limerick.' ²⁴

I quote from Uisce Eireann -Needs 3- publication.

Irish Water | Regional Water Resources Plan – Eastern and Midlands at 3.1 Introduction

'To plan for future water supplies it is necessary to assess public water supply requirements over our 25-year planning period. This assessment will identify whether there is likely to be a surplus or shortfall of available water; and whether our infrastructure can reliably deliver water supplies and ensure a risk-based approach to continuously meet water quality standards.

This defines our current and future water supply needs and forms the first stage of our eight (8) stage process to develop our plan level Preferred Approach (PA) to delivering secure and safe water supplies. The process is referred to as our Options Assessment Methodology. The key stages of the process are illustrated in Figure 3.1 and summarised below.

Stage 1: Identify the 'Need' based on the Supply Demand Balance (SDB) and Drinking Water Safety Plan (DWSP) Interim Barrier Assessment (Section 3). The SDB calculates the difference between the water we have available in our supplies compared to the Demand for water. The DWSP Interim Barrier Assessment identifies water Quality and Reliability driven Need. • Stage 2: Scope the Study Areas to determine existing infrastructure deficiencies (Section 4). •

Stage 3 to Stage 6: Option Development, involving the identification of a list of possible Options that are unconstrained by cost, feasibility or specific environmental requirements (Unconstrained Options List); assessment of these Options through a two (2) stage screening process (Coarse Screening and Fine Screening) to produce a Feasible List of Options (Section 6). • Stage 7: Approach Development, which tests a range of Options and Option Combinations to select the 'best value' solutions to address our Deficits. These are

²⁴ (So Uisce Eireann did know something about the Barrow and the Kildare Water Strategy)

assessed against five (5) criteria (Resilience, Deliverability and Flexibility, Progressibility, Sustainability and Cost) reflecting the objectives of our NWRP and associated Strategic Environmental Assessment (SEA). Stage 7 produces our plan level Preferred Approach at a Study Area spatial level (Section 7) and Regional spatial level (Section 8). • Stage 8: Monitoring and Feedback, where we identify how we will address gaps in data and information to improve the next iteration of our NWRP. The process is described in further detail in Section 8 of our Framework Plan.

The plan level Preferred Approach is the combination of solutions that are assessed as the most effective in meeting the objectives of the National Water Resources Plan (NWRP). Section 6,7 and 8 of the RWRP-EM provide further details.’

Reason 22. You cannot build on a negative²⁵

This submission will prove that neither the applicant nor Uisce Éireann /An Bórd Pleanála have acted ‘in good faith’ and that the principle of not being allowed to build upon a negative in the finding of the ECJ in case C-91/92 Faccini Dori v Recreb, applies to this application; ... ‘It need merely be noted here that, as is clear from the judgment in Marshall, cited above (paragraphs 48 and 49), the case-law on the possibility of relying on directives against State entities is based on the fact that under Article 189 a directive is binding only in relation to ‘each Member State to which it is addressed’. **That caselaw seeks to prevent ‘the State from taking advantage of its own failure to comply with Community law’.** (para 22)

(Since November 2001 the State has taken advantage of me, and my family barge hire and boating Business has been on hold and was voluntary removed from the register of active companies. My statutory claim has been accumulating – during this time I have been a reluctant /unofficial water provider to the state. I am now setting out to be an official water provider with a plan for the Midlands utilising and harnessing the cutaway bogs.

²⁵ CJEU in case C-216/18 Commission v Ireland at paragraph 117; ‘In accordance with the case-law recalled in paragraph 75 above, in the event of a breach of the obligation to assess the environmental impact, Member States are nevertheless required by EU law to eliminate at least the unlawful consequences of that breach (see, to that effect, judgment of 26 July 2017, Comune di Corridonia and Others, C 196/16 and C 197/16, EU:C:2017:589, paragraph 35);

‘35 Under the principle of cooperation in good faith laid down in Article 4 TEU, Member States are nevertheless required to nullify the unlawful consequences of that breach of EU law. The competent national authorities are therefore under an obligation to take all measures necessary, within the sphere of their competence, to remedy the failure to carry out an environmental impact assessment, for example by revoking or suspending consent already granted in order to carry out such an assessment (see, to that effect, judgments of 7 January 2004, Wells, C 201/02, EU:C:2004:12, paragraphs 64 and 65; of 3 July 2008, Commission v Ireland, C 215/06, EU:C:2008:380, paragraph 59; and of 28 February 2012, Inter-EnvironnementWallonie and Terre wallonne, C 41/11, EU:C:2012:103, paragraphs 42, 43 and 46).

Reason 23. The true workings of section 21 of the Water Supplies Act of 1942 and the case Cityview Press.

Section 21 (1) *"the expression "navigation authority" means, in relation to any navigable water, the person entitled to navigate thereon or to receive tolls or dues in respect of navigation thereon."*

Dail debates section 1

Mr. Cosgrave

"It appeared to me, when I saw this amendment, that the Parliamentary Secretary went a good deal of the way towards meeting the case that was put up on behalf of the Grand Canal Company by Deputy Alderman Doyle, the Lord Mayor. Now, my opinion is that the company is not quite satisfied."

Dr Ward –

"In drafting this amendment, as the amendment indicates on the face of it, I had in mind, primarily and mainly, the question of safeguarding the navigation rights of a navigation company in navigable waters. In so far as it has been possible, within the framework of the Bill, to protect and safeguard these rights I think the amendment does so. Deputy Cosgrave has now raised other matters which I have no doubt are matters of very serious concern to the Canal Company and perhaps to other navigation companies, and I shall readily undertake very carefully to examine the points and the representations he has made in the matter..."

*... "That aspect will also have to be kept in mind. Having said so much, I only want to indicate to the interested parties that I thought I had gone as far to meet them as I would be asked to go and **that it will be with considerable reluctance I shall place them in a privileged position.**"²⁶*

Section 21 is for the 'Protection of navigable rivers and canals' it ensures navigation rights and in this case my navigation rights.

In the case, In Cityview Press Limited and Oliver Fogarty, I.R. 381 20th December, 1978 where Justice McMahon J., said "**the ultimate responsibility rests with the Courts** to ensure that constitutional **safeguards** remain, and that the exclusive authority of the National Parliament in the field of law-making is not eroded by a delegation of power which is neither contemplated nor permitted by the Constitution."

Section 21 (8) of the Water Supplies Act of 1942 is the safeguard concerned.

Reason 23 a. The unconstitutionality of the 2018 Heritage Act and the 2022 Water Environment (Abstractions and Impoundments) act 2022.

The lawmakers -the Oireachtas (Article 15.2.1) under Article 15.2.2 may create and recognise subordinate legislators. For instance, Local Authorities and or An Coimisiún

²⁶ Extracted from the Dail debates (section 1) on the Water Supplies Act Bill of 1941.

Pleanála are/were empowered to prepare and execute compulsory purchase Orders to take surplus water from a source of water which was vested in a navigation which became law.

In *East Donegal Co-operative Livestock Mart Ltd v Attorney General* (1970) case 61, held that the Oireachtas could not confer on the executive a power to exempt a party from the provisions of the law. Walsh J. explained:

The constitutional right of the Oireachtas in its legislation to take account of the difference of social function and difference of capacity, physical and moral, does not extend to delegating that power to members of the executive, to the exclusion of the Oireachtas, in order to decide as between individuals ... which of them shall be exempted from the applications of [Law].

The supreme Court left open what would be the effect, if any, of the Oireachtas exempting named individuals from the application of the law. In *Cityview Press Limited and Oliver Fogarty*, it was argued that a statute which permitted a body to impose a levy was an unconstitutional delegation of this power. While rejecting the claim, the Supreme Court per O'Higgins CJ, gave some guidelines as to what, if any, delegation was permissible:

The ultimate responsibility rests with the courts to ensure that constitutional safeguards remain, and that the exclusive authority of the National Parliament in the field of law-making is not eroded by a delegation of power which is neither contemplated nor permitted by the Constitution.

*In discharging that responsibility, the courts will have regard to where and by what authority the law in question purports to have been made... the test is whether that which is challenged as an unauthorised delegation of parliamentary power is more than mere giving effect to principles and policies which are contained in the statute itself. If it be, then it is not authorised: for such would constitute a purported exercise of legislative power by an authority which is not permitted to do so under the Constitution. On the other hand, if it be within the permitted limits – if the law is laid down in the statute and details only are to be filled in or completed by the designated Minister or subordinate body – there is no unauthorised delegation of legislative power.*²⁷

The Dail debates on the Water Supplies Act of 1942.

Allows for a proposal to be made if there is Surplus water to requirements.

A local authority and Uisce Éireann has three options when they are issued with an Interference Notice ; (1) reduce the volume of water to be taken,

(2) negotiate to have the Interference Notice lifted,

(3) apply to the High Court for the annulment of such notice (s21.(8))

None of these statutory obligations has occurred and have been denied to me since 2001.

Reason 23 1. Navigation Authority - Legal advice to Kildare County Council

Just in case there is any doubt about my status i attach the legal advice prepared for Kildare County Council

²⁷ Constitutional Law and Constitutional Rights in Ireland. Brian Doolan – Gill & Macmillan 1994.

Reason 24. There was no Formal Notification to Navigation Authorities and no Book of reference.

I attach the Notification to Navigation Authorities prepared by Arthur Cox for Kildare County Council **exhibit MH 1j**. (when produced)

Reason 24 a' There is No Book of Reference provided for this proposal to take water at Parteen Weir.

Section 4 of the Water Supplies Act of 1942 states.

"Procedure consequent upon making of proposal. 4.-(1) Whenever a sanitary authority have made a proposal they shall do the following things, that is to say:

- (a) take all reasonable steps to ascertain the persons (if any) to whom damage may be caused by the taking of water in accordance with the proposal and estimate as nearly as may be the amount of every (if any) such damage, and"
- (b) prepare in duplicate a list (in this Act referred to as the book of reference) showing, in respect of every person ascertained under the immediately preceding paragraph and whose name and address of ordinary residence are ascertainable by reasonable inquiry, such name and address, and
- (c) deposit for inspection one copy of the proposal and one copy of the book of reference, and

(d) give to every person whose name appears in the book of reference as a person to whom damage may be caused a written notice conforming with this section of the proposal, and

(e) publish a notice conforming with this section of the proposal in a newspaper circulating in any sanitary district in which is situate any place at which water is proposed to be taken.

Part 4

Part 4 - The status of the abstractions from the Barrow catchment.

Reason 25. The cumulative effects of the previous decisions of An Coimisiún Pleanála / ABP has to be considered.

Given that the findings of the Report titled the Greater Dublin Water Supply Strategic Study was to restrict the abstraction from the Barrow to times of high flow.

On the 11th January 1996 the Greater Dublin Water Supply Strategic Study (GDWSSS) which was carried out for the Department of the Environment by a collaboration between M. C. O'Sullivan & Co and Generale Des Eaux Ireland was

published. One of the conclusions and recommendations of the report is that; “The potential for using water from the Barrow and/or the Slaney would therefore be limited to supplementing the Liffey system at times when flows are high.”

Because Kildare County Council chose to ignore my Interference Notice’s and increased the volume of water to be taken and activated all the alternatives to the proposal, without a cumulative assessment, are now rendered mute and the **Provisional Order** granted to Kildare County Council (a piece of legislation) has to fall; ‘That the Provisional Order made by An Bord Pleanála dated the 4th day of November 2003 and entitled the “Kildare Water Strategy – Proposal to Abstract Water from the River Barrow at Srowland, Athy, Provisional Order 2003, has no legal status and has to fall, similar to the Derrybrien case and the judgment of the European Court of Justice in Commission v. Ireland Case C- 215/06 [2008] E.C.R. 1-4911 which culminated in a decision of the Supreme Court Appeal No. 51/2009. I attach the Order of Judge Abbot in Canalways Ireland v Kildare County Council, 26 May 2005, High Court Record 2004/151/CA. as **exhibit MH 24.** (when produced)

Reason 25 1. The cumulative effects should also consider the implications to date on public health of ingesting Trihalomethanes.

Trihalomethanes (THMs) are toxic compounds which occur as a result of a reaction between organic materials, like peaty soil, when chlorine is added as a disinfectant. According to an information sheet from the HSE some scientific studies suggest a link between long term exposure to THMs and cancer as well as reproductive effects.

Reason 26. The cumulative effect of the decisions of An Bord Pleanála /An Coimisiún Pleanála = Pollution.

This is the 25th Anniversary of the first proposal to take surface water from the barrow and I include the highlights of the decisions of An Bord Pleanála / An Coimisiún Pleanála taken from table 1; (**exhibit MH 2**) (when produced)

Since 2001 An Bord Pleanála adjudicated on;

case reference: CH09.305399Irish Water Compulsory Purchase (Barrow Water Supply Scheme Area Extension Project) Order, 2019 –

Reason 27. There is no Need for this development, or the destruction caused since 2001.

There is no need for this development because of the 26,000 ha of cutaway bog.

All the destruction of the Curragh Aquifer, Pollardstown Fen, the abstractions and subsequent decisions were completely unnecessary because of the agreement made with the European Commission in 1995.

The Memorandum of Understanding²⁸

In 1995 the European Commission secured control over 26,000 ha of cutaway bog when they funded the fuel supply arrangement for the Edenderry Powerstation. The construction and operation of this power plant, burning peat from Irish boglands was co-funded (€26 million) and permitted by the European Commission in accordance with a Memorandum of Understanding between the Irish Government and the European Commission. Directly arising from this decision of the European Commission to co-fund the power station, peat was permitted to be harvested from an area of bogland extending to 26,000 hectares from specifically designated boglands subject to the proviso that all peat harvesting operations would cease, generally by 31st Dec 2015. (The extract of the Memorandum is at **exhibit MH 25**) when produced))

The CARBAL Report²⁹ -Carbon and Methane Emissions. Exhibit MH 25 a. (when produced)

In 1999 Bord na Móna initiated and funded what is called the CARBAL project to investigate carbon dioxide (CO₂) and methane (CH₄) exchange in a number of potential after uses for industrial cutaway peatlands. These were:

- (1) commercial Sitka spruce afforestation,
- (2) natural regeneration to birch/willow woodland and
- (3) wetland creation.

The main findings of CARBAL:

‘From the results of this study, it is clear that ranges of management options are required in order to both minimise losses of C from the cutaway and maximise uptake.

1. Prior to the cessation of peat harvesting, **a clear coherent after use plan** with regard to C should be in place for each cutaway peatland.
2. For wetland creation, **it is essential that the water table be maintained close to the surface throughout the year in order to minimise persistent losses of CO₂ from both the bare peat surfaces and vegetation communities.** As aerobic decomposition occurs up to 10,000 times faster than anaerobic decomposition, a high-water table will have the dual effect of reducing CO₂ emissions and will also promote recolonisation by appropriate wetland vegetation and, over time, may lead to the return of the CO₂ sink function. However, high water tables combined with the return of wetland vegetation may also to the annual C balance, is to reach a point where the losses of CH₄ are offset by CO₂ uptake.
3. Management of the naturally regenerated woodlands may result in higher rates of C uptake than in unmanaged stands.’

Therefore, the CARBAL report must be fully considered and implemented on all of the boglands.

Page 65 of the EIS provided for the original application for Edenderry powerstation discusses the Memorandum of Understanding and our first commitment to Kyoto; ‘As part of the EU negotiations in advance of the Kyoto convention, the Irish declared an energy policy to limit total emissions of the main greenhouse gases in the year 2010 to 15% above 1990 levels.

A Memorandum of Understanding, which set out the conditions for the provision by the EU of 26 million pounds of grant-aid towards the Power Plant, was signed by the Minister for Energy Mr

²⁸ It should be borne in mind that I have set out to and am in the process of registering the interests of the inland navigations in the cutaway bogs.

²⁹Link to the full CARBAL report; <https://www.ucd.ie/ferg/Research/Projects/CARBAL.html>

Michael Lowry and the EU Commissioner for Regional Policy in April 1995. The Memorandum sets out a schedule for the decline in CO2 emissions from peat Power Plants up to the year 2023. The schedule shows that CO2 emissions from peat Power Plants will peak in 2003 at 3.5 million tonnes, reduce to 2.09 million tonnes in 2010, and to 1.65 million tonnes in 2020.'

- **What are the Irish Authorities doing to reduce our CO2 emissions?**
- Are we going to meet our emission targets?

Reason 28. An Bord Pleanála/ An Coimisiún Pleanála are in full knowledge of the Memorandum of Understanding since 1998 and have been reminded by me over the years to no avail.

In your decision on Offaly County Council 98/437 and ABP No 19.107858 to approve the new peat burning powerstation at Edenderry County Offaly (EPL) I refer you to pages 14, 15 and 16 from the inspector's report for planning file reference (98/437 and 19.107858

Bord Na Móna an emanation of the state is determined not to implement the agreement that was made with Ireland in 1995 whereby Bord Na Móna received £26,000,000 million pounds for 26,000 hectares of cutaway bog. The now cutaway Bogs were and still are a source of water for both the Barrow and the Boyne navigations.

Reason 29. The loss of water to the Barrow Navigation from the bogs in the midlands has never been considered.

All concerned ignored the Memorandum of Understanding which is now required to restore the loss of water to the Barrow and Boyne Navigations and SAC's. This agreement with the commission is not being complied with by the Irish Authorities but has been concealed from the public since planning permission was granted for Edenderry Powerstation. These bogs most of which are in the catchment of the river Barrow and Boyne were supposed to be landscaped planted and flooded. The bogs were to be made available for tourism and leisure purposes by December 2015.

The bogs associated with the Memorandum of Understanding formed and are still an integral part of the navigation since the Act of 1715 Geo 1, when the bogs were drained to form canals and navigations.

The navigations have first call on the water required for Navigation.

Reason 30. The need for EIA and SEA.

During the first phase (2001) of the attack on the water required for navigation along with the rush for water there was also a rush on the need to carry out a Strategic Environmental Assessment (SEA)

I quote from para 3 of a Letter from Mr Liam Cashman of the European Commission dated 12th January 2005 ... **‘the fact that it points to a relationship between component projects is a relevant factor for implementing the Directive in relation to those projects, especially if the individual projects are serving the same strategic needs and drawing from the same or inter-connected water resources.’** (exhibit MH 8)

In this case Uisce Éireann are proposing to transfer water from one catchment to another which certainly needs an SEA.

Reason 31. The draft of the navigation is omitted.

The draft of the navigation is not discussed in the Project Summary Report 2025.

The single use of the word navigation is on page 33 of the Project Summary Report 2025 ‘The statutory compensation water of 10 m³/s passed through Parteen Weir into the ‘Old Shannon River’ will remain unchanged and undiminished under this proposal. Navigation and beneficial uses focused on tourism will experience the same operating water level range as normal.’

In short, the statutory duty of maintaining the draft of the Barrow Navigation helps to achieve the Objective of preventing deterioration of the habitats contained in the Habitats Directive 92/43/EEC as amended.

Reason 32. There is a further obligation to restore the draft of the Barrow Navigation under the Water Framework Directive 2000/60 EC.

Reason 33. There has been no noticeable contribution or concern from Tourism Ireland since 2001 to date.

Reason 34. Justifying the increased abstraction of surface water from the Barrow

On the 24 September 2021 16:28 I requested from Uisce Éireann under FOI to ‘ please provide the documents and the data necessary to establish the capacity of the river and the spare capacity of the river to justify the increased water abstraction from the River Barrow at Srowland Athy.’

- On Thursday the 23rd January 2025 I wrote to the EPA in relation to the Spare Capacity of the River Barrow and said, “I understand from Uisce Eireann that the EPA are adjudicating on the ‘Spare capacity of the river’ the intensification of abstraction at Scrowland Athy.”
I requested a list of all documents generated and held by the EPA on the capacity and the spare capacity of the River Barrow’.
- On the 21 February 2025 the EPA responded and refused my request and said amongst other things that;

Following review, I've sought and concluded that the EPA has no records relating to this request... the comment, made by Uisce Éireann in October 2021, that "*the EPA will adjudicate on the spare capacity of River*", is **inaccurate and misleading**.

Reason 35. Notification under section 21 of the Water Supplies Act of 1942 has not occurred.

On 25 04 2025 I wrote to Uisce Éireann requesting to be included in the Book of Reference and notify individually, me, Canalways Ireland Ltd. and Quigley's Boat Hire of your proposal under section 21 of the Water Supplies Act of 1942.

Reason 36. Alternatives to the proposal to take water at Parteen Weir has not been considered sufficiently.

In the Uisce Éireann document titled 'Preliminary Options Appraisal Report (POAR) – Non Technical Summary –November 2015.

On page 2 - **Moving from Four Possible Options to One Emerging Preference**. It details the four viable options which had been under consideration at that time. (1) Lough Derg (Direct). (2) Lough Derg and Storage, (3) Parteen Basin Direct. And (4) Desalination.

(**exhibit MH 8 a**) is Uisce Éireann attempt which excludes the only alternative already approved by the European Commission.

The flooding of the cutaway bogs in compliance with the Memorandum of Understanding 1995 which was agreed with the European Commission and the harnessing of the water has not been but must be considered.

In the case C-461/17 the court of justice (second chamber) on a preliminary ruling (Kilkenny ring road) found that; 1. *Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora must be interpreted as meaning that an 'appropriate assessment' must, on the one hand, catalogue the entirety of habitat types and species for which a site is protected, and, on the other, identify and examine both the implications of the proposed project for the species present on that site, and for which that site has not been listed, and the implications for habitat types and species to be found outside the boundaries of that site, provided that those implications are liable to affect the conservation objectives of the site.*

2. *Article 6(3) of Directive 92/43 must be interpreted as meaning that the competent authority is permitted to grant to a plan or project consent which leaves the developer free to determine subsequently certain parameters relating to the construction phase, such as the location of the construction compound and haul routes, only if that authority is certain that the development consent granted establishes conditions that are strict enough to guarantee that those parameters will not adversely affect the integrity of the site.*

3. *Article 6(3) of Directive 92/43 must be interpreted as meaning that, where the competent authority rejects the findings in a scientific expert opinion recommending that additional information be obtained, the 'appropriate assessment' must include an explicit and detailed statement of reasons capable of dispelling all reasonable scientific doubt concerning the effects of the work envisaged on the site concerned.*

4. Article 5(1) and (3) of, and Annex IV to, Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment, must be interpreted as meaning that the developer is obliged to supply information that expressly addresses the significant effects of its project on all species identified in the statement that is supplied pursuant to those provisions.

5. Article 5(3)(d) of Directive 2011/92 must be interpreted as meaning that the developer must supply information in relation to the environmental impact of both the chosen option and of all the main alternatives studied by the developer, together with the reasons for his choice, taking into account at least the environmental effects, even if such an alternative was rejected at an early stage.

Correspondence with Uisce Éireann

On Thu 23 Jan, 2025 10:47 I requested from Uisce Éireann 'A list of the options and alternatives considered'

On the 4th February 2025 @14:10 I received a response from Irish Water (attached)

The communication to me dated 4th February 2025 fails to identify a real alternative to the current proposal.

And on the 25 April 2025 at 14:03 by email I requested to be notified of your proposal to take water from Parteen Weir, under section 21 of the Water Supplies Act 1942. This request was ignored and or refused.

Reason 37. There is no overall assessment which demonstrates the interconnectedness of the Boyne and Barrow and Liffey catchments.

I would like to draw your attention to the fact that stated at 3.5.5 Groundwater of the EIS provided for the Robertstown Groundwater Abstraction EIS

" The North Kildare Aquifer straddles the boundary between the Barrow, Boyne and Liffey River catchments. Groundwater discharging from the North Kildare Aquifer flows into the tributaries and main channels of these river systems. The Robertstown abstraction involves groundwater that would form part of the Barrow River base flow through contributions from its Slate and Figile tributaries."

The Boyne rises in County Kildare –one source is just north of Timahoe bog at Donadea and the other rises a few kilometres north of Trinity Well, near Carbury County Kildare.

Reason 38. The overall workings of the CPO is that all abstractions from the navigations and their sources are to be accounted for under section 15, 2.(d) of the Water Supplies Act of 1942 ;

'(d) when determining the amount of such compensation, the arbitrator shall have regard to any undertaking given by the sanitary authority to provide an alternative or additional water supply.'

‘(4) Where an application for compensation under sections 14 to 16 of the Act of 1942 has not been determined pursuant to those sections before the date of the coming into operation of section 7 (1)(a), the Act of 1942 shall continue to apply notwithstanding the repeal of that Act by section 7 (1)(a).’

Reason 39. The WATER ENVIRONMENT (ABSTRACTIONS AND ASSOCIATED IMPOUNDMENTS) ACT 2022 is unconstitutional,

as it sets out to deprive me of my navigation and property rights.

Section 111 (4) appears to temporarily relieve the repeal but it is my understanding that a local authority can only take what is surplus to the navigations requirements in this case the local authorities and now Uisce Éireann appear to be taking all the water required for navigation.

Reason 40. Uisce Éireann has a duty to regularise their affairs and pay the compensation due to me before they can proceed to make plans to take more water from the inland navigation system without including a plan to restore the water to the Grand, and Royal Canals , the Barrow and Boyne navigations.

Reason 41. I object to this proposal on the basis that the taking of water from the Barrow and Boyne catchments is contrary to section 21 (2) of the Water Supplies Act of 1942;

1. that the taking of water from the Barrow and Boyne catchment has made the navigating impossible and unreasonably difficult is contrary to section 21 (2) of the Water Supplies Act of 1942; Nothing in this Act shall be construed as entitling a sanitary authority to take water in such manner, or from such source of water, or of such amount as to make the navigation of any navigable water impossible or unreasonably difficult.

Reason 42 All but one abstraction identified in Table 1 **exhibit MH 2** (when produced) is without the benefit of having been subjected to the Water Supplies Act of 1942 procedures.

Reason 43. That the Local authorities and now Uisce Éireann are taking of the water from the navigations has been without an overall Environmental Impact Assessment (EIA) an Appropriate Assessment, or a Strategic Environmental Assessment.

Reason 44. unregulated water discharging from the cutaway bogs is causing and is likely to continue to cause Flooding has to be taken into account and considered.

It is presumed by Uisce Éireann that there will always be a plentiful supply at Parteen weir. The project overview at page 5 states that ; 'The proposed Water Supply Project Eastern and Midlands Region will abstract a maximum of 2% of the average flow of the River Shannon at Parteen Basin. The project is in line with the National Water Resources Plan (Framework Plan) and the Regional Water Resources Plan for the Eastern and Midlands Region.'

At present there is no regulation of the water from the bogs in the catchment leaving unregulated water flowing from the bogs in the catchment which is causing flooding. There has been no assessment of the flow in the rivers when the water from the bogs will be regulated.

Reason 45. The effects of implementing the Memorandum of Understanding for the 26,000 hectares of cutaway bog has not been considered or taken into account.

Reason 46. The need for a Strategic Environment Assessment has not been complied with.

'DIRECTIVE 2001/42/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment.

Article 3: Scope

1. An environmental assessment, in accordance with Articles 4 to 9, shall be carried out for plans and programmes referred to in paragraphs 2 to 4 which are likely to have significant environmental effects.

2. Subject to paragraph 3, an environmental assessment shall be carried out for all plans and programmes, (a) which are prepared for agriculture, forestry, fisheries, energy, industry, transport, waste management, **water management**, telecommunications, tourism, town and country planning or land use and which set the framework for future development consent of projects listed in Annexes I and II to Directive 85/337/EEC,

or (b) which, in view of the likely effect on sites, have been determined to require an assessment pursuant to Article 6 or 7 of Directive 92/43/EEC'.

Article 5 - Environmental report

1. Where an environmental assessment is required under Article 3(1), an environmental report shall be prepared in which the likely significant effects on the environment of implementing the plan or programme, and reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme, are identified, described and evaluated. The information to be given for this purpose is referred to in Annex I.

2. The environmental report prepared pursuant to paragraph 1 shall include the information that may reasonably be required taking into account current knowledge and methods of

assessment, the contents and level of detail in the plan or programme, its stage in the decision-making process and the extent to which certain matters are more appropriately assessed at different levels in that process in order to avoid duplication of the assessment.

3. Relevant information available on environmental effects of the plans and programmes and obtained at other levels of decision-making or through other Community legislation may be used for providing the information referred to in Annex I.

4. The authorities referred to in Article 6(3) **shall be consulted** when deciding on the scope and level of detail of the information which must be included in the environmental report'.

For other alarming concepts being introduced, designed to corrupt due process, see, section 68 on page 43 of the Water Environment (Abstractions and Impoundments) act 2022.

's.68 (7) For the avoidance of doubt and notwithstanding any other enactment, the Board is not required to carry out a screening for environmental impact assessment (within the meaning of the Act of 2000) or an environmental impact assessment (within the meaning of the Act of 2000) of a public abstraction for the purposes of considering an objection.'

Reason 47. Waterways Ireland - the status of Waterways Ireland.

Waterways Ireland are compromised because in 2001 when Kildare County Council first proposed to take surface water from the Barrow Navigation (which is also an SAC). and again in 2003 Waterways Ireland failed to issue an Interference Notice to protect the Barrow Navigation.

At and around that time Waterways Ireland failed to protect the Grand Canal by allowing Kildare County Council to integrate a wellfield into the drainage system of the Kildare By-Pass, whereby Waterways Ireland are complicit in the destruction of the Curragh Aquifer and for the loss of the main supply from Pollardstown Fen (which was/is an SAC).

Waterways Ireland have also allowed Westmeath County Council to take the water Supply for the Royal Canal from Lough Owell for the Royal Canal.

Consequently because of their track record over the last 25 years since 2001 Waterways Ireland is not a navigation authority protecting or restoring the Grand Canal, Barrow Navigation, or the Royal Canal.

Waterways Ireland is one of the six all-Ireland North/South implementation bodies established under the Belfast Agreement. Under section 1.4 of the British –Irish Agreement Act 1999 (No.1 of 1999) is responsible for the management, **maintenance**, development, and **restoration** of inland navigable waterways and has its principal offices at 2 Sligo Road, Enniskillen, Co. Fermanagh BT74 7JY.

Consequently Waterways Ireland do not have the authority to allow this proposed abstraction or allow these abstractions identified in table 1, **exhibit MH 2** (when produced) to occur which polluted the waterway of the Grand Canal, the Barrow Navigation and the Royal Canal which ruined my barge Hire and boating business.

I Notified Waterways Ireland of the 7 abstractions on the 5th of August 2002 **exhibit MH 2 d.** (when produced) – Waterways Ireland confirmed that they had received Notification of

no 2 (the Barrow surface water abstraction) and no seven 'the wellfield integrated into the drainage system of the Kildare By-Pass' (**Exhibit MH 2 e**) (when produced)

In their response of the 9th of August 2002 Waterways Ireland acknowledge by default being notified by me of all seven abstractions. This letter also confirms Waterways Ireland knowledge of the wellfield integrated into the drainage system of the Kildare By-Pass an unauthorised development the unlawful interference with the Curragh Aquifer which was the main source of water for the Grand Canal.

I refer now to the case which is best suited to the current circumstances surrounding the water and the use of it. The Proprietors of the Staffordshire and Worcestershire Canal Navigation v. The Proprietors of the Birmingham Canal Navigations House of Lords (HL) The Lord Chancellor (Lord Chelmsford), Lord Cranworth and Lord Westbury 1866 May 11, 14, 151 17; July 13. Held, that the powers granted by the Acts were granted **for specific purposes**³⁰, which were those of making and maintaining a free communication between different places by navigable canals; and that the ordinary doctrines as to the permissive use of water did not apply in such a case, and that no grant could be made by the B. Company of the use of any water which might injuriously affect those purposes.

The court also stated that; If The 2nd section of that Act (2 & 3 Will. 4, c. 71) applies to a claim to the use of water, which may be lawfully made at the Common Law, by custom, prescription, or grant. Custom and prescription are here out of the question, and if the Respondents could not have granted the use of the water to the Appellants, the Act is wholly inapplicable; but the Respondents **have not the water in their canal with an absolute power of dealing with it at their pleasure**. When the canal was made, under the provisions of the Act of 8 Geo. 3, the public had a right to use it upon payments of tolls, and the Respondents were bound to keep and maintain the canal in an efficient state for the passage of the traffic along it. They could not bind themselves that, for all time to come, a certain quantity of water should be discharged from their canal into that of the Appellants, because it was impossible *268 for them to know whether all the water beyond what was necessary to keep open the communication between the two canals would not be wanted for the purpose of their own canal. By a grant of the continual use of the quantity of water flowing from their canal into the canal of the Appellants, the Respondents would have **fettered themselves in the exercise of the powers vested in them by the Act for extending, preserving, and improving their canal**, for which the application of all the water beyond what was necessary for keeping up the communication between the two canals might have been essential.

To impose such a servitude upon the water in their canal as that contended" In Rochdale Canal Co. v Radcliffe (1852) 18 Q.B. 287 it was held that the defendants claim to draw off water from the canal was bad since **the canal company did not have the statutory power to grant water for such a purpose**. (for further reading see footnote ³¹)

³⁰ Nowadays that responsibility lays with Waterways Ireland is one of the six all-Ireland North/South implementation bodies established under the Belfast Agreement. Under section 1.4 of the British -Irish Agreement Act 1999 (No.1 of 1999) is responsible for the management, **maintenance**, development, and **restoration** of inland navigable waterways and has its principal offices at 2 Sligo Road, Enniskillen, Co. Fermanagh BT74 7JY. (excluding the Boyne)

³¹ With reference to para 50 of the case Bakewell Management Limited (Respondents) v. Brandwood and others (Appellants) [2004] UKHL 14 it was stated; "Radcliffe, a riparian

mill owner, had for upwards of 20 years extracted water and used it not merely for condensing steam but for a variety of other purposes. His claim to a prescriptive right failed because the canal company could not lawfully have granted him larger rights. To do so would have been beyond its powers and (to the extent that it might interfere with public rights of navigation) against the public interest. Coleridge J put the point very clearly (at p 314), "The foundation of the fourth plea is a supposed grant, the existence of which is to be shewn by acts of user. But, if the acts of user would not be legal, the grant cannot be inferred from them. The company here are not the owners of the water, but trustees for the public, under a very limited trust. They are bound to apply all the water that may be required to the purposes of the navigation; they are also bound to allow so much as is wanted for the particular use (specified in [the statute]), of the mill owners within a certain distance of the banks", Similar to the rule in *Rylands and Fletcher in Cambridge Water Co -v- Eastern Counties Leather* Pic H.L. and C.A. 1992 it was "Held, allowing the appeal, that foreseeability of harm of the relevant type by the defendants was a prerequisite of the recovery of damages both in nuisance and under the rule in *Rylands v. Fletcher*; "Sir Baliol Brett M.R. said, 29 Ch. D. 115, 119, that the proposition of law raised by the case seemed to the court to be clear. He described an aquifer as a "common source" and said, at pp. 121 and 122 that; "it seems to me that although nobody has any property in the common source, yet everybody has a right to appropriate it, and to appropriate it in its natural state, and no one of those who have a right to appropriate it has a right to contaminate that source so as to prevent his neighbour from having the full value of his right of appropriation.... Neither does it matter whether the parties are or not contiguous neighbours. If it can be shown in fact that the defendants have adulterated or fouled the common source, it signifies not how far the plaintiff's land is from their land. " In *Fitzgerald v Fairbank* [1897] 2 CH. 96 at 104 it was found that; "Once the act or omission complained of is of sufficiently substantial to constitute interference, there is no requirement to prove actual perceptible damage" (*Claxton v Claxton* (1875) I.R. 7 C. L. 23.), *McCartney v Londonderry & Lough Swilly Railway Co.* [1904] A.C 503, In *R. v Ward* Court of King's Bench [1835-1842] ALL ER Rep 664 is an earlier authority than *Cambridge Water* mentioned in the previous paragraph states that; "It is no defence to an allegation of the creation of a public nuisance to show that the public benefit resulting from the existence of the nuisance exceeds the public inconvenience arising from it: There is no other alternative navigable inland route to Waterford from Dublin. I refer to authorities, the case *Williams v Wilcox* and another, Q. B. [1835-1842] All ER Rep 25; where it was stated "The absence of any right to go *extra viam* (alternative route) in case of the channel being choked, and the want of a definite obligation on anyone to repair, only render it more important, in order to make the highway an effectual one, that the right of passage should extend to all parts of the channel." In *Orr Ewing v Colquhoun* [1837] H. L. 2 App Case 839 the court found that; "Finds and declares that the River Leven, throughout its course from Loch Lomond until it falls into the river or Firth of Clyde at Dumbarton, is a navigable river, free and open to the public; and that the Defenders have no right to execute any works which will in any way interfere with or obstruct the navigation thereof. or the free use of its banks and of the towing-path along the bank of the said river for the purposes of navigation, and decerns: Finds and declares that the piers recently erected by the Defenders in the bed of the said river near to the east bank are an obstruction to the free navigation thereof: Therefore decerns and ordains the Defenders forthwith to remove the said piers".

Notification to Waterways Ireland to issue an Interference Notice

On the 19th of February 2003, Waterways Ireland was advised by Kildare County Council to issue an Interference Notice (see **exhibit MH 1 k**,) (when produced) ;

... ‘Under the terms of the Water Supplies Act 1942, the objection of a navigation authority to the proposed abstraction should take the form of an interference notice. The procedure for submitting same is detailed in the attached navigation authority notice. The interference notice, and reasons thereof, must reach The Director Of Services, Housing and Water Services, Kildare County Council, St. Mary's, Naas, County Kildare, not later than 5pm on Wednesday the 12th March 2003.

With only 21 days to make their submission Waterways Ireland chose not to issue an Interference Notice for the Barrow Surface Water Abstraction. Thereby opening the gate for the local authorities to take all the water they pleased without any official control of the navigation and they did.

Reason 48. The Habitats Directive 92/43/EEC has not been complied with since 1995.

Ensure compliance with Article 3 of the EIA directive and compliance with Article 6 of the Habitats Directive in particular paragraph 44 of case C-258/11 (Sweetman no 1- no lacuna) and Sweetman no 2, Case C-323/17, where the Court found that ‘*Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora must be interpreted as meaning that, in order to determine whether it is necessary to carry out, subsequently, an appropriate assessment of the implications, for a site concerned, of a plan or project, it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site.*’

Article 6 of Directive 85/337/EEC

1. Member States shall take the measures necessary to ensure that the authorities likely to be concerned by the project by reason of their specific environmental responsibilities are given an opportunity to express their opinion on the request for development consent. Member States shall designate the authorities to be consulted for this purpose in general terms or in each case when the request for consent is made. The information gathered pursuant to Article 5 shall be forwarded to these authorities. Detailed arrangements for consultation shall be laid down by the Member States.

Reason 49. The ownership of the Boyne Navigation and the water abstractions from the catchment of the Boyne navigation has not been taken into account in any overall assessment. Neither has the cumulative impacts of the discharge to the Boyne River, SAC and navigation been taken into account with this proposal and or prior to this proposal.

Summary

In summary the abstractions identified in Table 1, Table 2 and Table 3 are similar to the Wells Case C-201/02 and the Derrybrien Case C- 215/06 consequently all the projects listed

are without any legal status and are not entitled to protection of the courts and have to be nullified.

It is clear from this submission that there is no proper oversight or control under the regime connected with the protection of the navigable waterways over the last 25 years. The first and only piece of legislation regulating the volume of water to be taken from a navigation has been completely obliterated and almost forgotten about. While there is plenty of evidence to prove non compliance with the EIA, Habitats, WFD , and SEA directives. Along with a clear policy of ignoring both my Interference Notice and that of An Taisce.

A clear violation of my constitutional right to participate as a Navigation Authority in the decision making process's connected with the inland Navigations.

Reason50. Splitting of the assessment process between the EPA and Uisce Éireann is not allowed.

Ireland has already been prosecuted by the European Commission for not completing a definitive EIA, AA, SEA, this position is supported by the jurisprudence established in Ireland and Europe since 1988.

Reason 51. To consider an Alternative proposal to modernise the Ard na Crusha generating station,

I believe the Board is obliged consider an alternative use for the Hydro electric plant such an alternative as to facilitate a reuse of the water used for generating electricity in a pumped storage arrangement. Hydro is the only reliable and sustainable method of generating electricity.

Reason 51. An Coimisiún Pleanála have no jurisdiction and or authority under section 21 of the Water supplies act of 1942.

Before An Coimisiún Pleanála consider this proposal, you are obliged to return it back to Uisce Éireann and have them challenge all the Interference Notice's under section 21 (8) and to regularise their abstractions before proposing to increase or extend the volume of water to be taken from the Inland Navigation System for drinking water purposes.

Milton Friedman, the American Economist and Statistician said.

"If you put the Irish Government in charge of the Sahara Desert, in five years there'd be a shortage of sand."

Exhibits and complete file.

I have included the complete file in my one drive account Shannon Abstraction folder

If An Coimisiún Pleanála or Uisce Éireann or anyone else are having difficulties accessing the account or wish to access the exhibits I will do so if contacted by email.

Signature. *Michael Hoey* signature of Michael Hoey **on the 24th February 2026.**
for and on behalf of Michael Hoey, on behalf of Canalways Ireland Ltd. Quigleys boat hire
and any other company I may form to implement a plan for the midlands to restore the
water supplies to the Grand Canal, the Royal Canal, the Barrow Navigation, the Boyne
Navigation.

I reserve the right to where, if and when necessary to amend, modify, adapt, correct,
update this document.



AN COIMISIÚN PLEANÁLA	
LDG-	_____
ACP-	_____
2 5 FEB 2026	
Fee: €	<u>50</u> Type: <u>Cash</u>
Time: <u>10:39</u>	By: <u>Hand</u>