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TO:	Arthur Cox	TELEFAX NO.:	6163815
ATTENTION:	Deborah Spence	FROM:	Jim Oliver
SUBJECT:	River Barrow Water Abstraction Order	PROJECT NO.:	20205
DATE:	5 July 2002	REFERENCE NO.	Yvonne Scannell 6180763
NO. OF PAGES:		COPY TO:	
		TICK IF ALSO SENT BY POST	<input type="checkbox"/>

Dear Deborah,

Thank you for the prompt response from Garrett Simons. We now require a complete review of the procedures to undertake under the Water Supplies Act 1942. In particular a complete search of all legislation since the 1942 Act that makes reference to the Act and how that impacts on the procedures as set out in the 1942 Act.

We note from Garrett's opinion that the Council should apply for a Provisional Order within six weeks of receiving *an objection*, are we to interpret that this is six weeks from the date of receiving the first objection, six weeks after the last objection or six weeks after the end of the period for receiving objections?

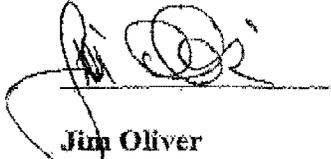
We would like clarification on a number of points in particular

1. Definition of a navigation authority under Section 21 of the 1942 Act. We received an 'Interference Notice' from a boat hire company under the previous notification period. This boat hire company owns land upstream of the proposed intake and were not included in the Book Of Reference. Waterways Ireland are responsible for Navigation in the Barrow and as such we would interpret them as being the Navigation Authority because by definition how could you have two authorities responsible for the same thing? We understand that Waterways Ireland give permits to approximately 700 users, including boat hire companies, on an annual renewable basis, to navigate the channel. Is this 'Interference Notice' valid?
2. With regard to navigation and these permit holders we understand that Waterways Ireland has the statutory duty under the 1986 Canals Act, to provide navigation for private and commercial boat operations during the boating season. Are these boat hire companies to be included in the Book Of Reference as persons to whom damage may be caused by the abstraction (refer to sections 4.1.a and 1.2.b). We would contend that it is a matter for Waterways Ireland to satisfy themselves that the proposed abstraction would not make navigation impossible or unreasonable difficult as they are the body who give out the permits and that these boat hire companies have no direct right to navigate on the channel but rather through permits issued by Waterways Ireland.

I'll copy this fax to Yvonne as she may be more familiar with the particular points raised. We have a meeting with Kildare County Council on Thursday next the 11th July and would appreciate a response before then.

If you have any queries please do not hesitate to contact me, I'm in the office for the rest of today and for most of next week.

Regards,



Jim Oliver
for Nicholas O'Dwyer Limited

E-mail

To: Jim Oliver (joliver@nicholasodwyer.com)
 Nicholas O'Dwyer
 From: Deborah Spence
 Cameron Herbert
 Date: 11 July 2002
 Subject: River Barrow Water Abstraction Order

Set out below are our responses to the questions posed by Jim Oliver in his fax of 5 July 2002.

"We now require a complete review of the procedures to undertake under the Water Supplies Act 1942. In particular a complete search of all legislation since the 1942 Act that makes reference to the Act and how that impacts on the procedures as set out in the 1942 Act."

There are a series of Acts and orders made since 1942 which impact on the Water Supplies Act, 1942. Most of these are very minor and do not affect the operation of the procedures in that Act which are relevant to the present case. The only relevant instruments are as follows:

- section 214 of the Planning and Development Act, 2000, which transferred responsibilities for the making of provisional orders from the Minister for the Environment and Local Government to an Bórd Pleanála;
- 2 section 217 of the Planning and Development Act, 2000, which provides that where an objection is made to a sanitary authority in accordance with section 6 of the Water Supplies Act and not withdrawn, the sanitary authority shall, within 6 weeks of receiving the objection, apply to an Bórd Pleanála for a provisional order in accordance with section 8 of that Act;
- 3 section 83 of the Local Government Act, 2001, which has the effect of transferring the functions of each "town sanitary authority" under the Water Supplies Act to the county council in which the relevant town sanitary authority is situated; and
- 4 the Water Supplies (Application for Provisional Order) Regulations, 2000 have now replaced the Water Supplies (Application for Provisional Order) Regulations, 1945. These govern certain procedural aspects of the provisional order application process, namely:
 - 4. the form of the certificate which is to accompany an application by a sanitary authority for a provisional order; and
 - 4.2 a requirement that the following documents shall accompany every application by a sanitary authority for a provisional order: (1) one copy of the notice of

such proposal given pursuant to section 4(1)(d) of the Act and (2) one copy of the notice of the application published in the newspaper.

"We note from Garrett's opinion that the Council should apply for a Provisional Order within six weeks of receiving an objection, are we to interpret that this is six weeks from the date of receiving the first objection, six weeks after the last objection or six weeks after the end of the period for receiving objections?"

The section which contains this requirement is section 217(1) of the Planning and Development Act, 2000, which provides:

"Where an objection is made to a sanitary authority in accordance with section 6 of the Water Supplies Act, 1942, and not withdrawn, the sanitary authority shall, within 6 weeks of receiving the objection, apply to the Board for a provisional order in accordance with section 8 of that Act."

While this section is ambiguous in that it only envisages one objection, for cautionary reasons we would interpret this requirement as meaning that an application for a provisional order must be made within 6 weeks of receiving the first objection. Even if there is doubt as to whether this is the correct interpretation, we would strongly recommend that this approach be followed, given that lodging the application within 6 weeks of receiving the first objection would satisfy the timing requirement regardless of which interpretation was taken. Accordingly, batching the notices and setting the time by which objections must be received can be controlled by you, and as discussed, the replies to objections can be simple acknowledgements of receipt, referring to your intention to apply for a provisional order. There is nothing to prevent you from subsequently corresponding with the objector(s) with a view to negotiating the withdrawal of the objection.

"Definition of a navigation authority under Section 21 of the 1942 Act. We received an 'Interference Notice' from a boat hire company under the previous notification period. This boat hire company owns land upstream of the proposed intake and were not included in the Book of Reference. Waterways Ireland are responsible for Navigation in the Barrow and as such we would interpret them as being the Navigation Authority because by definition how could you have two authorities responsible for the same thing? We understand that Waterways Ireland give permits to approximately 700 users, including boat hire companies, on an annual renewable basis, to navigate the channel. Is this 'Interference Notice' valid?"

Without viewing a copy of the 'Interference Notice' referred to, we cannot comment on whether the notice is valid as such, though we can make the following observations:

- 1 We suspect that this issue has arisen due to a misinterpretation of the legislation on the part of the boat hire company – in fact what the company was making was an objection to a proposal under section 6 of the Water Supplies Act, rather than lodging an interference notice under section 21 - which, as you rightly point out, can only be made by a navigation authority (which is the present case is Waterways Ireland, which has jurisdiction pursuant to Part II of the British-Irish Agreement Act, 1999).

2. Section 21(1) defines "navigation authority" to mean:

"... in relation to any navigable water, the person entitled to navigate thereon or to receive tolls or dues in respect of navigation thereon."

It could be argued that this definition extends to a boat hire company which holds a permit from Waterways Ireland to operate on the Barrow, as a "person entitled to navigate thereon", even though the company would not satisfy the alternative of receiving "tolls or dues" in relation to navigation.

In our view, however, this definition should not be interpreted to extend to the boat hire company, and should only extend to Waterways Ireland, for the following reasons:

- (a) the term used is navigation authority – the term "authority" is generally accepted as meaning a body or person "exercising a power or command", an "instrument set up to exercise control or execute a function in the public interest". A boat hire company operating on the Barrow pursuant to a permit granted by Waterways Ireland is accordingly not an authority; and
- (b) We read the role of the navigation authority under section 21(4) in providing its views on a proposal as being to provide an overall view of the impact of the proposed extraction on navigation of the waterway as a whole, rather than the impact on a particular individual or area of the waterway, which is the type of view which would be taken by a boat hire company. Waterways Ireland is the only body which is able to provide an opinion on any proposed extraction from a "whole of waterway" perspective.

It is noted that interpretation of the term "navigation authority" is not assisted by any other legislation, given that it is not used in any other Act or regulations.

Our interpretation of "navigation authority" as being Waterways Ireland leaves the Council with the issue of how to treat the 'Interference Notice' received from the boat hire company. There are several approaches which the Council could take in relation to this issue:

- **based on the view that the company is not a navigation authority, to disregard the notice completely;**
to seek a declaration in the Courts confirming that the notice is not valid;
- **to write to the company explaining its position and advising that the notice has been rejected as not being valid;**
to write to the company explaining its position and allowing the notice to be considered as an objection under section 6 of the Act, rather than as an interference notice under section 21.

Rejecting the notice outright could have the effect of encouraging the company to pursue further legal action. Obviously the Council would not want to take the second option of a declaration in the Courts, given the costs and time delays which might arise. The last option

is preferred over all options given that the company has an objection under section 6 (assuming that the notice period for making objections has not expired).

Regardless of which option is taken we recommend that we discuss the issues with the Council before deciding how to approach the matter.

"With regard to navigation and these permit holders we understand that Waterways Ireland has the statutory duty under the 1986 Canals Act, to provide navigation for private and commercial boat operations during the boating season. Are these boat hire companies to be included in the Book of Reference as persons to whom damage may be caused by the abstraction (refer to sections 4.1.a and 1.2.b). We would contend that it is a matter for Waterways Ireland to satisfy themselves that the proposed abstraction would not make navigation impossible or unreasonably difficult as they are the body who gives out the permits and that these boat hire companies have no direct right to navigate on the channel but rather through permits issued by Waterways Ireland."

We have not been provided details of which parties have been included in the book of reference for the present proposal, although we understand from Jim Oliver's fax that boat hire companies which own land upstream of the proposed extraction point were not included in the book of reference in the present case.

The test for inclusion of parties in the book of reference is set out in section 4(1)(a) of the Water Supplies Act, which relevantly provides that a sanitary authority must:

"... 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."

Section 1(2) of that Act provides:

"For the purposes of this Act, the damage caused to any person by the taking of a supply of water under a proposal means the total loss suffered by such person by either or both of the following, that is to say:

- (a) reduction caused by such taking of a supply of water in the value of any estate, interest, or right in or in respect of land had or exercised by such person on the date of the coming into force of such proposal,*
- (b) damage caused by such taking of a supply of water to a trade, business or profession carried on by such person on the said date."*

In our opinion the rationale for inclusion of parties in the book of reference in the present case should be as follows:

- 1 as the entity with ultimate responsibility for regulating and managing the waterway in question, Waterways Ireland should be included in the book of reference;
- 2 since boat hire companies currently operating on the Barrow pursuant to permits derive a commercial benefit from those operations (section 1.2(b)), they may be susceptible to "damage" caused by the taking of water in the following circumstances:
 - (a) where a boat hire company owns or occupies land downstream from the proposed extraction point; and
 - (b) where a boat hire company owns or occupies land upstream from the proposed extraction point, but which regularly conducts its operations downstream from that point.

The issue is problematic where a boat hire company owns or occupies land upstream from the proposed extraction point and which operates exclusively in upstream areas – given that such a company may indirectly be the subject of damage due to the extraction of water, for instance due to the possibility of increased competition from downstream boat companies deciding to relocate upstream.

In the case of boat hire companies operating upstream only, it will not be possible to make an accurate assessment of the likelihood of "damage" caused by such factors as increased competition, since it would be very difficult to accurately predict whether downstream boat companies would seek to relocate, and therefore cause damage to the upstream boat companies (such prediction could only be based on evidence of the downstream water level impacts, together with circumstantial evidence of the reaction from downstream users in other projects – whether or not there was any relocation and consequential effects on business). This exercise is contingent on future matters over which we have little or no control, which may or may not occur and where the damage potentially done is remote, at best.

On this basis, we are satisfied that the only persons who should be included in the book of reference in the present case are those which fall into the categories set out in points 1 and 2(a) and (b) above, although the very last reference (2(b)) is difficult to call, and will depend on what "regularly" means for the purposes of navigation and use generally.

The above advice is based on including more rather than less in the book of reference, given that although anyone may qualify for the payment of compensation where damage is caused (whether included in the book of reference or not), the limitation period for making a compensation claim is one year longer for parties not included on the book of reference.

If you have any queries, please let us know

Regards,

DEBORAH SPENCE / CAMERON HERBERT

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OUR REFERENCE

YOUR REFERENCE

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O.O
24/9

20th September, 2002

SSS3

RECEIVED 24 SEP 2002

Jim Oliver
Nicholas O'Dwyer & Partners
Carrick House
Dundrum Centre
Dundrum
Dublin 14

Dear Jim,

We have done some further research in relation to navigation authorities but haven't come up with much of assistance. Interestingly though, the transcript of the Parliamentary proceedings in 1941/42 confirms what we thought in that the intention of the Water Supplies Act is to deal with the compulsory acquisition of water rights, rather than any environmental issues per se.

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). The issue then becomes whether Waterways Ireland, as the authority which regulates the Barrow, has responsibility for the protection of navigation rights generally (ie every permit holder's navigation rights), or whether individual operators may seek to protect their rights as well. It seems impracticable to interpret it in the latter sense but not impossible.

Yours sincerely,

P. R. F. Scannell
YVONNE SCANNELL

JAMES O'DWYER PAUL McLAUGHLIN IAN A. SCOTT DANIEL E. O'CONNOR PETER McLAUGHLIN ROBERT BOLTON JOHN V. O'DWYER ROMAN WALSH DONOCH CROSBY JOHN S. WALSH MICHAEL McDERMOTT JOSEPH LEYDEN WILLIAM JOHNSTON EUGENE McCAULEY NICHOLAS G. MOORE DECLAN HAYES DAVID O'DONOGHUE COLM DUGGAN CARL O'SULLIVAN IANUS, FOLEY JOHN MEADE CONOR McDONNELL PATRICK MCGOVERN GRADINE HEARNESSE SEAMUS CIVEN COLM BYRNE CAROLINE DEVLIN CLAREN BOLGER GEMOCY CLINN DAVID POLEY STEPHEN MCGARTY DECLAN DINEANE SARAH GANNON KATHLEEN GIBNEY PADDY O'NEILL ELIZABETH BOTTLELL WILLIAM DAY ANDREW LEAHY JOHN MERTON PATRICK O'BRIEN CIARA O'CONNOR DEAN O'CONNOR MARK BAUNDRELL MARK DAY JOHN MATECH DEBORAH SPENCE MARGARET McLOONEY

CONSULTANTS VIRGINIA WALSH DENIS J. DERRON CHRISTOPHER HAMILTON DR. YVONNE SCANNELL DR. RICHARD CLARK JOHN O. PIER DR. MARY REDMOND

ARTHUR COX

Memorandum

Jim Oliver (Nicholas O'Dwyer)

From: Dr Yvonne Scannell/Cameron Herbert

20 September 2002

Subject: Barrow River Proposed Abstraction

Jim

Further to our discussions on 17 September, we set out below some additional comments on the statutory processes:

- 1 We need to consider how to approach the preparation of the new notices. For example, both the notices in the newspaper and the notices to persons in the book of reference could be framed to say that this is a new procedure necessitated by legislative changes in the new Planning and Development Act, 2000 (this is true). Our suggested addition to notice to people notified under Water Supplies Act, 1942 is as follows:

"This notice is substantially similar to the notices you received last year. Unfortunately, changes in legislation (i.e. the introduction of the new Planning and Development Act, 2000) and the extensive public consultation engaged after publication of the first notices earlier this year necessitates the withdrawal of the original proposal and the making of this new one. The Environmental Impact Statement accompanying the application for approval for this development under the Planning and Development Act, 2000 is also somewhat different because of information taken into account since the first environmental impact statement was made."

Original proposal stands. New notification procedure

- 2 We have considered whether it would be feasible to simply inform objectors to the original proposal that their original objection will ~~stand in~~ ^{not} relation to the new proposal unless they advise otherwise. However this will work, since these objectors made their objection in the context of the original (withdrawn) EIS and the original (now revised) book of reference.
- 3 An additional matter relevant to the notification process is whether we should state in the notice under the Water Supplies Act that in addition to the public display of the abstraction proposal there is also an EIS on public display under the planning legislation (the purpose of this being to avoid confusion arising from two notices being issues for different purposes, but for the same project, on the same day). Perhaps we can discuss this.
- 4 We agree that the timing of the process for public exhibition of:
 - (a) the abstraction proposal under the Water Supplies Act; and

(b) the EIS under the Planning and Development Act,

should be able to be synchronised around a six week period from late October into early December. We will shortly forward to you a suggested timeline for the notices and public exhibition.

5. As discussed on 17 September, we need to form a conclusive view on who should be notified as navigation authorities. Section 21 of the Water Supplies Act is drafted in such a way that it *could* be interpreted that a navigation authority is anyone who has a right to navigate on the waters in question. The better view is that there is only one navigation authority for the Barrow – Waterways Ireland – and we understand that Waterways Ireland are certainly of the view that they are the navigation authority. We are currently conducting further research to resolve this issue.

If you have any queries in relation to these matters, please let us know.

Regards.

Dr YVONNE SCANNELL/CAMERON HERBERT

Transcript of Committee on Finance proceedings into the Water Supplies Bill from Daily Reports

20 November 1941

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.

[987] 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. Apart altogether from the navigation which is undertaken by the company, and which is rather difficult at the present moment, during the summer—particularly during a period of drought—the company has to take smaller loads on their boats in the higher levels of the canal. The canal's highest level is between the 18th and the 19th lock, and then from the 18th lock it comes down to Dublin very steeply. In that 17 or 18 miles there is an average of a lock a mile. From the 19th lock, which is somewhere beyond Robertstown, it falls down to Shannon harbour. In addition to its ordinary navigation, the company sells water to the Dublin Corporation for brewers and distillers and to the railroads at four different points—Inchicore, Harcourt Street, Sallins and Portarlinton; to a factory at Kilmainham, to a factory at Dolphin's Barn, to the Alliance and Dublin Consumers' Gas Company, to builders in Grand Canal Street, to the Glass Bottle Company in Ringsend and five other bodies or factories of one kind or another. Whether a supply is going to constitute a drain on the resources of the company depends very much where the supply will be taken from. The Dublin Corporation takes, I think, over 3,000,000 gallons annually and considerable expense was incurred in putting up filter beds somewhere between the 4th lock and the 7th or 8th lock. I am not sure of the exact location but I have seen them.

ARTHUR COX

There is a feeling that while the amendment is designed to deal entirely with navigation, the fact of the existence of these supplies might be taken as a reason why they should be transferred to the local authority. I do not think the Minister intends that but at any rate, between now and the Report Stage, I should be very glad if the Parliamentary Secretary would look [1988] into that point and see whether or not they are covered with regard to those supplies. I think that they supply under statute to the Dublin Corporation. Possibly they are not under statute with regard to the other supplies. As I say, I make no case whatever here—and I think the company would not make a case either—for refusing to supply water if it were there. The objection is that in recent times, by reason of drought, they have not got a sufficiency of water for navigation purposes. I think that we should hesitate before imposing any greater handicaps on a company which is performing a useful function, giving employment, and which is a source of very great convenience to traders, turf producers and industrialists generally. It would be a pity if, in a case of this sort, by reason of legislation we passed here, we were to make it difficult or impossible for the company to fulfil functions they had fulfilled in the commercial life of the country up to date. I shall be quite satisfied if the Minister would undertake between now and the Report Stage to look into this matter and ensure that they will remain unhampered in their normal sources of supply to those concerns I have mentioned. I think that would be as important to them as their navigation.

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. At the same time, I want to say that the Canal Company to which Deputy Cosgrave has referred, is clearly deriving a considerable source of its income and [1989] revenue from the sale of water. It has become a commercial business with the company, which is getting the water for nothing. It has been very useful to have that water supply available, and it may be very desirable that it should continue, but what we have to bear in mind in relation to these matters is that we have to endeavour to try to strike a balance between the commercial rights of such concerns and the rights of the community as a whole, who may require a pure and wholesome water supply. I felt that if I secured that the navigation rights would not be curtailed or interfered with, or that the navigation would not be made more difficult, that would be meeting all that the Canal Company could reasonably ask me to meet.

I feel now from what Deputy Cosgrave said that I am asked to go a considerable distance further. If Deputy Brennan had not left the House, he would not like, I am sure, to make this type of speech, but if Deputy Cosgrave were not here possibly he would—that we were quite prepared to interfere with the riparian rights of a farmer or, as Deputy MacEoin said, with the rights of the mill owner, and the only redress he had was compensation. In logic and reason, it is hard to see why compensation should not be the only redress for the company, a commercial concern. There is a difference inasmuch as the canal company has certain statutory rights, but it has only statutory rights, as far as I understand the position, in relation to navigation. I do not think it has any statutory rights in relation to taking water or holding water for the purposes of sale. The magnitude of the interests involved is a consideration that

ARTHUR COX

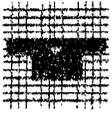
one would have to bear in mind. I gather from Deputy Cosgrave that the commercial interests involved in the disposal of water by the Grand Canal Company are very extensive, much more extensive than I was aware of, and one would have to bear that in mind in coming to a decision.

Mr. Cosgrave: The question is perhaps more important for the firms who get this water supply than it is for the canal company.

[990] **Dr. Ward:** 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. Other considerations, however, may be sufficient to weigh the balance on their side.

Amendment agreed to.

Sections 19 to 22, inclusive, agreed to



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ATTENTION:	Mr. John Murphy	FROM:	Jim Oliver
SUBJECT:	River Barrow Water Abstraction Order	PROJECT NO.:	20205
		REFERENCE NO.	
DATE:	27 th November 2002	COPY TO:	Tadhg McDonnell John Harrison
NO. OF PAGES:	2	TICK IF ALSO SENT BY POST	<input type="checkbox"/>

Dear John,

Please find attached a copy of correspondence from Dr Yvonne Scannell of Arthur Cox regarding notification of Navigation Authorities under the 1942 Water Supplies Act for your information.

Should you have any queries please do not hesitate to contact us.

Yours faithfully,



Jim Oliver
for Nicholas O'Dwyer Limited

NOD407/2

No. 0032 P. 1/2

NICHOLAS O'DWYER

27. Nov. 2002 11:22

Jo 14/11
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OUR REFERENCE
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YOUR REFERENCE

8th November, 2002

Jim Oliver
Nicholas O'Dwyer & Partners
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Dundrum
Dublin 14

Re: Notices to Navigation Authorities

Dear Jim,

The WSA does not state that notices to Navigation authorities are to be sent at any particular time and indeed they can be sent much later. Since I now understand that you propose to send notices to navigation authorities on the same date you send the notices to individuals, you must give the navigation authorities a separate type of notice more appropriate to their interests under section 20 of the WSA. The notices given under section 4 will not suffice for navigation authorities. I suggest something on the lines of the attached draft be sent separately to any navigation authority. I understand that there is only one in this instance i.e. Waterways Ireland.

It may be a very good idea to serve this notice at the same time as the other notices because a navigation authority which does not make a valid objection within 21 days of receiving the notice under section 20 cannot ever again allege that the taking of the water will make navigation impossible or unreasonably difficult. See section 21(9) of the WSA. Please note that I consider that the notice should be served by hand.

I understand that there may be some persons who consider that they are navigation authorities I would suggest to Kildare County Council that if they receive an interference notice from someone which they consider is not a navigation authority, they should write to them saying that while they are considering their objections, this is without prejudice to the Council's view that the person concerned is not a navigation authority. I would then ask them to establish the basis on which they claim to be navigation authorities as defined in the Act as the burden of proof should be on them. However, Kildare County Council may choose to deal with the matter differently in the light of their internal legal advice.

Yours sincerely,

Angela Mitchell
Dr Yvonne Scannell

JAMES O'DWYER PAUL McLAUGHLIN JANA SCOTT DANIEL A. O'CONNOR PETER McLAUGHLIN ROBERT BRIDON JOHN V. O'DWYER RONAN WALSH DONOCH CROWLEY JOHN S. WALSH
MICHAEL MECHEN JOSEPH LYDDEN WILLIAM JOHNSON EDENE MCCUSKE NICHOLAS G. MOORE DEOLAN BAIRN DAVID O'DONOHUE COLM DUGGAN CARL O'LEAHAN ISABEL POLY
JOHN HEADE CONOR McDONNELL BERNIE McGOVERN GRADINE DENNEHY BRANCO GUYE COLIN BYRNE CAROLINE DEVLIN CLARA BOLGER GEORGE O'NEIL DAVID POLY
SHEEN HEGARTY DENLAN DEVLIN SARAH CONNOR KATHLEEN GARRETT FADRAO O'RIORDAIN ELIZABETH BOTWELL WILLIAM DAY ANDREW LEMMY JOHN MENTON
PATRICK O'BRIEN ORLA O'CONNOR BRIAN O'DONNELL MARK SAUNDERS MARK BARR JOHN NATION DEBORAH FINCH MARGARET McDOWNNEY

27-Nov-2002 11:22:11 AM FAX: 00353 1 618 0618 FROM: NICHOLAS G. MOORE TO: DR YVONNE SCANNELL



**NICHOLAS O'DWYER
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TO:	Waterways Ireland	TELEFAX NO.:	8383647
ATTENTION:	Mr. John McKeown	FROM:	Jim Oliver
SUBJECT:	Barrow Abstraction Order	PROJECT NO.:	20205
		REFERENCE NO.	
DATE:	28 th February 2003	COPY TO:	Tadgli McDonnell (045) 873878
NO. OF PAGES:	6	TICK IF ALSO SENT BY POST	<input type="checkbox"/>

Dear John,

We refer to a submission made by Canalways Ireland (Mr. Michael Hoey and Karin Klinkenbergh) during the first notification procedure for the proposed abstraction from the River Barrow. A copy of the submissions is attached and was included with all the objections forwarded to you on 19th November 2002.

The submission was an Interference Notice made under Section 21 of the 1942 Water Supplies Act (copy attached).

We would appreciate if you could confirm that Waterways Ireland is the Navigation Authority in relation to the Barrow Navigation and that Canalways Ireland is not a 'navigation authority'.

If you need to discuss the above please contact the undersigned. We would welcome any assistance you could give in relation to this matter.

Regards,

Jim Oliver

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 Waters 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.

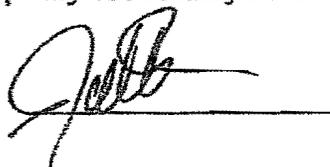
Any navigation authority, as defined in section 21 of the Water Supplies Act 1942, of the opinion that the taking of the water, in accordance with the proposal, makes or will make the navigation of such navigable water impossible or unreasonably difficult may make an objection to the proposal by giving 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