

ARTHUR COX

EARLSFORT CENTRE, EARLSFORT TERRACE, DUBLIN 2
 TEL. +353 1 618 0000 FAX +353 1 618 0618 DX 27 DUBLIN
 mail@arthurcox.com www.arthurcox.com

BELFAST
 CAPITAL HOUSE, 3 UPPER QUEEN STREET
 BELFAST BT1 6PU
 TELEPHONE +44 28 9023 0007
 FAX +44 28 9023 3464

LONDON
 29 LUDGATE Hill,
 LONDON EC4M 7JE
 TELEPHONE +44 20 7213 0450
 FAX +44 20 7213 0455

NEW YORK
 570 LEWINGTON AVENUE, 28TH FLOOR
 NEW YORK, NY 10022
 TELEPHONE +1 212 759 0808
 FAX +1 212 688 3237

BNS/576/CO15906.2
Direct Dial : 618 0422

10th February 2005

BY REGISTERED POST, BY FAX & BY EMAIL

Mr. Michael Hoey
 Director
 Canalways Ireland Limited
 Spencer Bridge
 Rathangan
 County Kildare

**Re: Our Client - Kildare County Council
 Alleged Breach of Interference Notice**

Dear Mr. Hoey,

We are instructed by Kildare County Council in this matter and your letter to our client dated 1st February 2005 has been passed to us.

No proposal under the Water Supplies Act, 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. Quite simply, the purported interference notices to which you refer, and the correspondence that you attach, are not relevant to these projects.

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. Your reliance on correspondence that you attach is entirely misplaced. The conclusion of that correspondence clearly contradicts your claim. After further consideration of this matter, our client is satisfied that Canalways Ireland Limited is not a navigation authority and that your claim is without basis. Separately, please note that the correspondence that you attach is confidential legal advice between this firm and our client and that you cannot rely upon it.

JAMES O'DWYER DAVID E. O'CONNOR ROBERT BOZDY JOHN V. O'DWYER ROMAN WALSH DORIAN CHURLEY JOHN E. WALSH MICHAEL MCGHEE JOSEPH LEYBEN
 WILLIAM KENNEDY FLYNN McCARRE NICHOLAS G. MORRIS DECLAN HAYES DAVID O'DONOHUE CONN DONAGAN CAROL O'SULLIVAN ISABELLE FOLEY JOHN MCLAREN CONNOR McDONNELL
 PATRICK MCGLOTHLIN CHARLISSE HENNESSY SHANNON GIVEN COLIN BYRNE CAROLINE DEVLIN CLARÁN BOLGER GREGORY QUINN DAVID FOLEY STEPHEN HIGGARTY
 DECLAN DRISDAKE SARAH CANNIFF KATHLEEN GARRETT PÁRRAIC Ó MURDÁN ELIZABETH BUTHWELL WILLIAM TRAY ANDREW LENOY JOHN MENTON PATRICK O'BRIEN
 CHRIS O'CONNOR HILARY O'CONNOR MARK SAINSBURY MARK BARR JOHN MATELON DEBORAH SPENCE MARGARET MURPHYNIY NIAH CAFFREY KEVIN MURPHY
 CONRAC KISSANE LIAM CARNEY RAYMOND HURLEY KEVIN LANGFORD EVE MULLONEY SIÓNA RAFFERTY PHILIP SMITH KORNITH EVAN JOHN CLACKEN BRIAN STRAHAN
 HUGH O'DONNELL CLAUD HURLEY THOMAS WILLIAMS ALEX MCLAREN GLENN BRITT NAOI O'HIGGINS

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Page 2

Our client rejects any suggestion that the works at Hybla, Rathangan and the Red Hills have not been, and are not being, carried out in full compliance with the law. You are reminded that:

1. Each of these projects has been the subject of assessment and determination by An Bord Pleanála, which directed that no environmental impact statement was required. The relevant decisions were made on or about 4th June 2003 (Refs.: 09.ED.2019 and 09.ED.2021). No attempt was ever made to question the validity of these decisions.
2. The development at Hybla was the subject of approval on or about 10th June 2002 under Part X of the Local Government (Planning & Development) Regulations, 1994. The development at Rathangan and the Red Hills was the subject of approval on or about 30th September 2002 under Part 8 of the Planning & Development Regulations, 2001.
3. Lands for purposes of these projects were the subject of the Kildare County Council Compulsory Purchase (Kildare Wellfield Development Scheme – Monasterevin & Rathangan) Order (No. 1) 2003 (Ref.: 09.CH.2094), to which no objections were made. This Order was therefore confirmed on or about 18th November 2003.

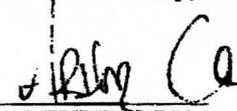
All of the necessary consents and approvals have been obtained for the purposes of these projects.

Your claim to have been denied fair procedures is also without basis. You have been afforded an opportunity to participate in the relevant statutory processes, by which consent for these projects has been obtained. You took the opportunity to articulate these concerns at an oral hearing held by An Bord Pleanála into the proposed abstraction of water from the river Barrow during July 2003 and pursued these same complaints on appeal to the Circuit Court. That matter is now the subject of your further appeal to the High Court. As far as practicable, our client has accommodated each and every request for information that you have made to it and, indeed, did not to pursue you for the costs incurred by successfully defending your Circuit Court appeal.

In the circumstances, our client strenuously rejects each of your requests made at paragraphs (A) to (D) of your letter. Please be advised that any application for an injunction in these matters will be vigorously opposed and that our client will seek to recover the costs of defending any such proceedings from you. Please take notice that we have authority to accept service of any such proceedings.

Please direct any further correspondence in this matter to this office.

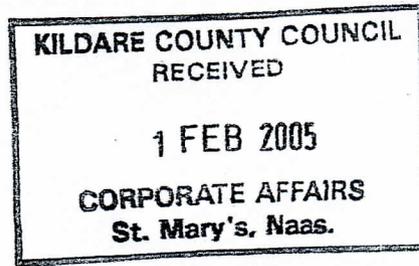
Yours faithfully,



ARTHUR COX

February 1st 2005

County Secretary
Kildare County Council
Saint Mary's
Naas
Co. Kildare



Re-. WARNING RE: BREACH OF INTERFERENCE NOTICE

Dear Sir/Madam,

Take Action, that, the Interference Notice's issued to you since 2001 in relation to your implementation of the Kildare Water Strategy culminating with the issuing of the Interference Notice of 10th March 2003, are live and active.

In particular, the fact that development's at Athy, Robertstown, Johnstown Bridge, Hybla, Rathangan and at the red hills are all connected for "the purpose of increasing, extending, or providing a supply of water", points to a relationship between component projects, is a relevant factor for implementation of the EIA Directive in relation to those projects, especially as the individual projects are serving the same strategic needs and drawing from the same or inter-connected water resources. Coupled with these facts which will be used against you is that you were advised by your Solicitor 22nd September 2002... **"(suggesting that it may indeed be open to contend that a barge operator might be a navigation authority),"** ...

Since then you and agent's has denied Canalways Ireland Ltd. fair procedure continued to take water without making a legitimate Proposal under Section 2 of the Water Supplies Act of 1942. (See attached.)

The fact that works has started at :

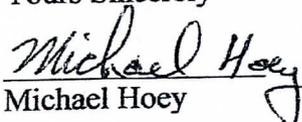
1. Hybla, 2. Rathangan, 3. The Red Hills

Without being made subject to an EIS or a Proposal under Section 2. of the Water Supplies Act, are clear grounds for Injunction.

NOW Canalways Ireland Ltd. a Navigation Authority for the purposes of the Water Supplies Act of 1942 pursuant to Section 21.(8) requires you take Action that you are required, upon receipt of this notice, to :

- A) Halt all development work at the three sites referred to above
- B) Not recommence any work
- C) Not to commence or complete any work associated with the Kildare Water Strategy
- D) Confirm in writing to Canalways Ireland Ltd. within 3 Days of the date of this notice your willingness to comply with Section 21. (8) of the Water Supplies Act, No 1 of 1942 and the requirements of this notice.

Yours Sincerely


Michael Hoey

@ 10-40 AM

ARTHUR COX

EARLSFORT CENTRE, EARLSFORT TERRACE, DUBLIN 2
TEL +353 1 618 0000 FAX +353 1 618 0618 DX 27 DUBLIN
mail@arthurcox.com http://www.arthurcox.com

BELFAST
STORE HOUSE, 17-25 COLLEGE SQUARE EAST
BELFAST BT1 6HD
TELEPHONE +44 28 9023 0057
FAX +44 28 9023 2464

LONDON
29 LINCOLN HILL
LONDON EC4M 7JE
TELEPHONE +44 20 7715 0450
FAX +44 20 7715 0455

NEW YORK
570 LEICESTON AVENUE, 28TH FLOOR
NEW YORK, NY 10023
TELEPHONE +1 212 759 0808
FAX +1 212 688 3237

CITE REFERENCE

YOUR REFERENCE

YS/bs
65/OD056/005

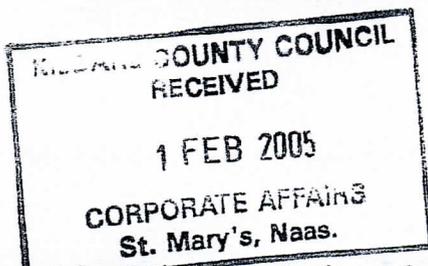
O.O
24/9

20th September, 2002

SSS3

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

RECEIVED 24 SEP 2002



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. P. J. Scannell
YVONNE SCANNELL

JAMES O'DWYER PAUL McLAUGHLIN IAN A. EDDY DANIEL E. O'CONNOR PETER McLAUGHLIN ROBERT BOYTON JOHN V. O'DWYER EUGEN WALSH DONOGH CHURLEY JOHN S WALSH
MICHAEL MOOREY JOSEPH LYTLEN WILLIAM JOHNSON EDWARD McCAGUE NICHOLAS G. MOORE DECLAN HANES DAVID O'DONOGH CELIA DUGGAN CALE O'SULLIVAN IRISH POLY
JOHN NEASE CONOR McDONNELL FRANCES MCGOWEN GRABBE HENNING SEANUS GIVIN COLIN BYRNE CAROLINE DEVILS CARMEN BOURKE GRACIE O'LEARY DAVID POEY
STEPHEN MCDERMID DEOLAN DEBRIDGE SARAH GARDNER KATHLEEN CONNOR PATTIE O'NEILL ELIZABETH BOTTHERN WILLIAM BAY ANDREW LEAHY JOHN MERTON
PATRICK O'BRIEN CELIA O'CONNOR DEAN O'CONNOR MAE KENNEDY MARY DUNN JOHN KILLEN DUBOISE SPENCE MARGARET McLOONEY

CONSULTANTS: VIRGINIA WALSH DENIS J. DEBOTH CHRISTOPHER HANLON DR. YVONNE SCANNELL DR. RENEWY CLARE JOHN G. PIER DR. MARY REDDING