

WIDE BAY BURNETT CONSERVATION COUNCIL INC

Applicant

FEDERAL COURT OF AUSTRALIA
QUEENSLAND DISTRICT REGISTRY

BURNETT WATER PTY LTD (ACN 097 206 614)

- 3 AUG 2009

Respondent

FILED / RECEIVED

AMENDED APPLICATION
(Order 4, rule 1)

Amended on 3 August 2009 pursuant to leave granted by Logan J on 31 July 2009.

The applicant applies for a declaration under section 21 of the *Federal Court of Australia Act 1976* and an injunction under section 475 of the *Environment Protection and Biodiversity Conservation Act 1999* in relation to conduct of the respondent constituting an offence or other contravention of the *Environment Protection and Biodiversity Conservation Act 1999*.

A. DETAILS OF CLAIM

On the grounds stated in the accompanying Further Amended Statement of Claim, the applicant claims:

1. A declaration that Burnett Water Pty Ltd has contravened condition 3 of the approval for the Paradise Dam granted under the *Environment Protection and Biodiversity Conservation Act 1999* by failing to install and operate a fish transfer device that is suitable for lungfish. ~~requires Burnett Water Pty Ltd to install and operate continuously until 1 January 2052, a fish transfer device that is likely to allow any normal sized Australian lungfish (*Neoceratodus forsteri*) to move upstream and downstream of the dam without injury irrespective of the water level in the dam.~~
2. A mandatory injunction that, within 6 months of the date of this order, Burnett Water Pty Ltd comply with condition 3 of the approval for the Paradise Dam granted under the *Environment Protection and Biodiversity Conservation Act 1999* by installing and operating a fish transfer device that is suitable for lungfish until further order and, in the absence of any such further order, until 1 January 2052. ~~continuously until 1 January 2052 a fish transfer device that is likely to allow any normal sized Australian lungfish (*Neoceratodus forsteri*) to move upstream and downstream of the dam without injury irrespective of the water level in the dam.~~

AMENDED APPLICATION
Filed on behalf of the applicant
Form 5, Order 4, rule 1

Environmental Defenders Office (Qld) Inc
30 Hardgrave Road
West End Qld 4101
Tel: (07) 3211 4466
Fax: (07) 3211 4655
Email: edoqld@edo.org.au

3. A mandatory injunction that:

- (a) During any time that Burnett Water Pty Ltd, either by itself or its agents, operates the Paradise Dam and the water levels in the dam reservoir are above Elevation (EL) 44.44 m, it shall operate the upstream fishway installed on the dam, continuously, or with only minor interruptions for repairs, maintenance and environmental flows, such that any such interruptions to the operation of the upstream fishway shall not in total constitute more than 5% of total time during any year in which the dam is operated and the water levels in the dam reservoir are above EL 44.44 m;
- (b) During any time that Burnett Water Pty Ltd, either by itself or its agents, operates the Paradise Dam and the water levels in the dam reservoir are between EL 62.0 m and EL 67.9 m, it shall operate the downstream fishway installed on the dam, continuously or with only minor interruptions for repairs, maintenance and environmental flows, such that any such interruptions to the operation of the downstream fishway shall not in total constitute more than 5% of total time during any year in which the dam is operated and the water levels in the dam reservoir are between EL 62.0 m and EL 67.9 m;
- (c) During any time that Burnett Water Pty Ltd, either by itself or its agents, operates the Paradise Dam, it shall publish or cause to be published on a publicly accessible internet site a continuous log, updated daily or monthly, stating the daily operating hours of the upstream fishway and the downstream fishway;
- (d) During any time that Burnett Water Pty Ltd, either by itself or its agents, operates the Paradise Dam, it shall publish or cause to be published on a publicly accessible internet site all final reports prepared by or on behalf of it concerning operation of the fish transfer device at the Paradise Dam within 30 days of finalisation or receipt of any such report;
- (e) During any time that Burnett Water Pty Ltd, either by itself or its agents, operates the Paradise Dam, it shall publish or cause to be published on a publicly accessible internet site all final reports prepared by or on behalf of it concerning monitoring of lungfish in the vicinity of the dam within 30 days of finalisation or receipt of any such report;

4. Such other relief as the Court deems necessary; and

~~3.~~ 5. Costs.

B. CLAIM FOR INTERLOCUTORY RELIEF

The applicant does not claim any interlocutory relief.

Date: 31 July 2009

.....*Jo-A Bragg*.....
Jo Bragg (Principal Solicitor)

C. NOTICE TO RESPONDENT

~~TO the respondent, Burnett Water Pty Ltd of Level 9, 120 Edward Street, Brisbane:~~

~~This application has been set down for the time and place stated below. If you or your legal representatives do not attend the Court at that time, the application may be dealt with and judgement may be given, or an order made, in your absence. As soon after the time mentioned as the business of the Court will allow, any of the following may happen:~~

- ~~(a) the application may be heard;~~
- ~~(b) directions may be given for the further conduct of the proceeding;~~
- ~~(c) any application for interlocutory relief may be heard.~~

~~Before attendance at Court, you must file an appearance in the Registry.~~

~~Time and date for hearing: 9.30am 2008~~

~~Place: Queensland District Registry
Level 6, Harry Gibbs Commonwealth Law Courts Building
119 North Quay
Brisbane QLD 4000~~

~~Date: 7 October 2008
Registrar~~

D. ABRIDGEMENT OF SERVICE

~~The time by which this application is to be served has been abridged by order made on to~~

~~Date:
Registrar~~

E. FILING AND SERVICE

This application is filed by Jo Bragg (Principal Solicitor) for the applicant, whose address for service is c/- Environmental Defenders Office (Qld) Inc, 30 Hardgrave Road, West End, in the State of Queensland.

The applicant's address is 25 Ellena Street, Maryborough, in the State of Queensland.

It is intended to serve this application on Burnett Water Pty Ltd of Level 9, 120 Edward Street, Brisbane, c/- Allens Arthur Robinson of Level 31, Riverside Centre, 123 Eagle Street, Brisbane.

Date: 31 July 2009

Jo A Bragg
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Jo Bragg (Principal Solicitor)