

REPEALED: See Act, 196 No.



ANALYSIS

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1960, No. 20

An Act to validate an agreement between Her Majesty the Queen and Consolidated Zinc Proprietary Limited in respect of the utilisation of the water resources of Lakes Manapouri and Te Anau and of the Waiau and Mararoa Rivers for the generation of electrical energy for the development of industry [7 October 1960

WHEREAS Her Majesty the Queen, acting by and through the Minister of Works, and Consolidated Zinc Proprietary Limited, the registered office of which is in North Melbourne in the State of Victoria in the Commonwealth of Australia, have executed an agreement, a copy whereof is set out in the Schedule to this Act, whereby the Company has agreed (among other things) to make an investigation and an economic appraisal of the potential for the development of electrical or mechanical energy of the water resources of Lakes Manapouri and Te Anau and of the Waiau and Mararoa Rivers, and the Minister has agreed, subject to the Company (among other things) continuing the investigations, to grant the Company certain rights in respect of the said water resources, and to acquire, and grant on lease or licence to the Company, such land, rights, and easements as may be necessary to give effect to the agreement: And whereas it is

necessary to validate the agreement and to authorise and empower the Minister to carry out and perform the terms of the agreement:

BE IT THEREFORE ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title—This Act may be cited as the Manapouri - Te Anau Development Act 1960.

2. Interpretation—In this Act, unless the context otherwise requires,—

“Agreement” means the agreement between the Minister and the Company, a copy of which is set out in the Schedule to this Act:

“The Company” means the Consolidated Zinc Proprietary Limited, a company duly incorporated in Victoria, Australia:

“Minister” means the Minister of Works.

3. Validating agreement—(1) The agreement is hereby declared to be valid and binding in all respects and to have full force and effect according to its tenor.

(2) The Minister on behalf of Her Majesty the Queen shall be deemed to have been duly empowered to enter into and execute the agreement and to confer on the Company the rights specified therein. The Minister shall have, and shall be deemed since the making of the agreement to have had power to carry out, perform, exercise, and grant all acts, functions, rights, duties, and obligations prescribed in the agreement, notwithstanding anything to the contrary in any other enactment.

4. Acquisition of land and grants of rights, etc.—(1) The Governor-General may take or set apart under the Public Works Act 1928, or the Minister may purchase under that Act, any land or any estate or interest in land, whether for the time being subsisting separately or not, that may be required in terms of the agreement; and the provisions of that Act, save as they may require modification to give effect to the tenor of the agreement, shall apply to the land or estate or interest in land as though it were taken or purchased or set apart, or were being taken or purchased or set apart, for a public work:

Provided that nothing in this subsection shall apply to land comprised in a National Park or permanent State forest land.

(2) Notwithstanding anything to the contrary in the National Parks Act 1952, the Minister of Works, after consultation with the Minister of Lands, may grant to the Company, over any land that forms part of the Fiordland National Park constituted under the National Parks Act 1952, such rights, easements, leases, and licences as may be necessary, and upon such terms and conditions as may be necessary, to give effect to the agreement.

5. Act a special Act—This Act shall be deemed to be a special Act within the meaning of section 18 of the Public Works Act 1928.

6. Restriction of mining rights—As from the commencement of this Act, no rights shall be granted under the Mining Act 1926 or under the Coal Mines Act 1925 to any person, authority, or body over the said lakes or over the portions of the said rivers and all tributaries thereof from their respective sources to a point five miles below the confluence of those rivers or over any land within half a mile of the said lakes or portions of rivers or their tributaries or over any land taken, purchased, or set apart by the Governor-General or the Minister pursuant to this Act without the consent of the Minister of Works and the Minister of Mines.

SCHEDULE

AN AGREEMENT made the 19th day of January 1960 BETWEEN HER MAJESTY THE QUEEN in respect of the Government of New Zealand acting by and through the Minister of Works of the one part and CONSOLIDATED ZINC PROPRIETARY LIMITED the registered office of which is at 53 Flemington Road, North Melbourne, in the State of Victoria in the Commonwealth of Australia of the other part.

WHEREAS the Company desires to investigate and make an economic appraisal of the power potential of the water resources of Lakes Manapouri and Te Anau and of the Waiau and Mararoa Rivers with a view to utilising such power for the production of metals or other products for sale within New Zealand and in world markets AND WHEREAS the Crown in consideration of the Company entering into the undertakings on its behalf hereinafter contained and with a view to assisting the establishment of large scale industry in New Zealand is agreeable to granting the rights titles and privileges hereinafter mentioned NOW THEREFORE it is hereby agreed as follows:—

1. In this agreement unless the context otherwise requires the terms following shall have the meanings respectively assigned to them:—

“associated company” means any company approved in writing by the Minister for the purposes of this Agreement which is associated directly or indirectly with the company in its business or operations and includes any company so approved of which the Company is a subsidiary company.

“the Company” means Consolidated Zinc Proprietary Limited and its permitted assigns.

“the Crown” means the party of the first part hereto.

“the Minister” means the Minister of Works for New Zealand.

“subsidiary company” means a Company which is a subsidiary of the Company within the meaning of that term in Section 158 of the Companies Act 1955.

2. The Company will proceed immediately with the investigation and economic appraisal of the power potential of the water resources of Lakes Manapouri and Te Anau and of the Waiau and Mararoa Rivers from their respective sources to a point in the vicinity of the confluence of those two rivers.

3. The Company shall be entitled to make such investigations enquiries and tests (including the carrying out of drilling operations and the taking of samples) as it may deem necessary for the purpose of assessing the power potential of the said water resources and the economic appraisal of any scheme to use such power potential for the Company's purposes.

4. The Crown will not grant to any other person firm or company the same or any similar rights to those set out in Clause 3 hereof unless and until the Company has notified the Minister that it has completed its preliminary investigations and does not intend to proceed any further in connection therewith or until the Company ceases to have any further rights under this agreement whichever is the earlier.

SCHEDULE—*continued*

5. If the Company has before 31st March 1961 incurred expenditure to an amount of not less than £25,000 on or in connection with the aforesaid investigation and economic appraisal and if the Company on or before 30th June 1961 notifies the Minister that it intends to proceed with further investigations it shall have the rights and obligations hereinafter set out provided that this agreement shall not after 31st December 1962 have any further force or effect if by then the Company has not spent a total of £100,000 on or in connection with the aforesaid investigation and economic appraisal. All expenditure incurred by the Company in this respect subsequent to 1st August 1959 shall be taken into account for the purposes of this clause.

6. The Company shall have the following exclusive rights, namely:—

- (a) to the use of the waters of the said lakes and of the said rivers and all tributaries thereof from their respective sources to a dam site or dam sites to be selected by the Company upstream of a point five miles below the confluence of the said rivers. Subject always to paragraph (d) of this clause such right shall not affect the rights of any other person firm or company to the use of water from such lakes or rivers and tributaries thereof for domestic purposes, for the purpose of watering stock within the watershed, and for the usual water requirements of any township, house or farm situate on the shores of the said lakes or rivers or adjacent thereto, and the public rights of boating, fishing or recreation in connection therewith will continue in existence.
- (b) to discharge any of such waters into any sound or arm of the sea in the Fiordland area.
- (c) to construct a dam or dams anywhere on the said lakes or rivers above the point aforesaid and by such means to increase the area of those rivers and lakes and to raise the level thereof to a datum level fixed with a view to ensuring that there shall not under any circumstances be any danger of flooding to the township of Te Anau. The datum level shall be determined by a survey which the Minister shall cause to be made forthwith and shall be advised to the Company as soon as it has been so determined and in any event not later than 31st March 1961.
- (d) to stop completely the flow of the said rivers immediately below the site of any such dam or dams, to divert the Mararoa River into Lakes Manapouri and Te Anau and to lower the levels of the said lakes but not below their respective lowest natural levels such levels to be determined by a survey which the Minister shall cause to be made forthwith and which shall be advised to the Company as soon as it has been so determined and in any event not later than 31st March 1961. Provided however that in order to meet an emergency created by exceptionally dry conditions and in order to prevent a serious reduction in power production affecting industry, the Company may at any time with the prior consent in writing of the Minister and subject to such terms and conditions as the Minister on each occasion may thereby specify, temporarily lower the said levels below the levels so determined.

SCHEDULE—*continued*

- (e) to construct maintain and operate the dam or dams aforesaid and such power houses, tunnels, flumes, channels, weirs, aqueducts, pipe lines, transmission lines, roads, tracks, landing grounds and other works (hereinafter together with such dam or dams as aforesaid called "the Works") as it may consider necessary in order to convert the resources aforesaid into electrical or mechanical energy and to deliver such electrical energy to such point as the Company may determine at or in the vicinity of Invercargill and Bluff, or elsewhere at or in the vicinity of the south or south-west coast of the South Island of New Zealand.
- (f) to erect maintain and operate such buildings and facilities (hereinafter called "the Facilities") as it may consider necessary including offices, workshops, stores, accommodation and amenities for employees (including contractors' employees) and for such other purposes as may be necessary or desirable to enable the Company to construct maintain and operate the Works.
- (g) to cut from places approved by the Minister such timber as may be required by the Company for the Works or for the Facilities and likewise from places approved by the Minister to take rock aggregates sand and the like, subject to payment of such (if any) royalties at standard or usual rates as may from time to time be agreed by the parties or failing agreement determined by arbitration as hereinafter provided.
- (h) all rights necessarily incidental to the exercise of any of the rights hereinbefore in this clause set out.

7. The lands rights and easements necessary to enable the Company to construct maintain and operate the Works and the Facilities (including all land which as a result thereof will or may be inundated) shall as necessary be acquired by the Crown and shall be either leased or licensed to the Company for the term of this agreement and the Company shall pay in respect of each such lease or licence a lump sum or an annual amount as the Company may elect. The amount of any such lump sum shall be equal to the cost incurred by the Crown in acquiring the land right or easement concerned plus the amount which at the date hereof has been paid by or charged to Land Settlement Account in respect of the area of Crown Land which will or may be inundated as aforesaid (estimated to be 8,500 acres) and the amount of any such annual rental shall be such as will over the period of the lease or licence fairly reimburse the Crown in respect of the said cost and amount together with reasonable interest thereon.

8. The Crown will take all such action as may be necessary to validate this agreement and the Company's operations hereunder and to protect the Company and its works from interference or damage caused by drilling mining or bush felling operations or otherwise by the Crown or third parties.

9. The Company shall have freedom of choice in the design and construction of the Works and Facilities but in relation thereto shall adopt sound engineering practices. Subject to Clause 15 the Company shall in stages suitable for its purposes develop the continuous power potential of the aforesaid water resources but shall in no way prejudice the full economic development of such resources. The amount of such

SCHEDULE—*continued*

continuous power potential shall be such amount as is agreed upon by the Minister and the Company within four years from the date hereof or failing agreement such amount as is determined by arbitration as hereinafter provided.

10. The Company shall at all times and at its own expense keep the Works in good safe working order and condition and shall at all times observe all relevant laws, bylaws and regulations.

11. The Company shall at all times take all necessary measures to control the release of water downstream from any dam constructed by it so that the flow at the point of release will not be greater at any time than the maximum flow at that point under natural conditions, and shall before taking any action which would result in a substantially increased flow in the river below its dams notify the public including farmers downstream by advertisement to be broadcast from any radio station then operating in Invercargill. The amount of maximum flow under natural conditions at the point of release as aforesaid shall be such amount as is agreed upon by the Minister and the Company within four years from the date hereof or failing agreement such amount as is determined by arbitration as hereinafter provided.

12. The Company shall pay to the Crown in respect of power generated by it from the resources aforesaid in each year a licence fee calculated at the rate of two shillings (New Zealand currency) per kilowatt year and such fee shall be payable at the expiration of three months from the end of each year in respect of power generated during that year. Unless otherwise agreed, such rate shall be adjusted up or down, as the case may be, at intervals of five years from the beginning of the year in which the Company first becomes liable to pay the licence fee, proportionately to the variation of the average in New Zealand currency equivalent of the prices for Canadian primary aluminium of 99½% purity f.o.b. Toronto published in the London Metal Bulletin nearest the dates of 31st March, 30th June, 30th September, 31st December immediately preceding the due date of the adjustment from the price of £180 (New Zealand currency) per long ton. For the purposes of this clause "year" means the Company's financial year.

13. The Company shall not sell or otherwise dispose of any power produced from the said water resources except:—

- (a) for or in connection with the construction maintenance or operation of the Works or the Facilities or
- (b) to any subsidiary company or to any associated company or
- (c) to the Crown.

14. This agreement will not after 30th June 1971 have any further force or effect if by then the Company has not constructed works having a designed installed capacity of at least 100 megawatts of power.

15. (a) If at any time the Company has not carried out the development of the Works at a rate which would be needed

- (i) to permit the construction by 30th June 1971 of works having a designed installed capacity of at least 100 megawatts of power or
- (ii) having regard always to the provisions of Clause 9 hereof to develop by 30th June 1991 the amount of continuous power potential agreed or determined pursuant to those provisions

SCHEDULE—*continued*

then the Minister shall thereupon be at liberty to give to the Company two months notice that the provisions of this agreement shall cease to operate except always however in respect of and in relation to such of the Works and the Facilities as are by then capable of being used for or in connection with the production of power and all facilities rights powers and easements which are necessary for the purpose of fully operating and maintaining such of the Works and the Facilities as aforesaid and unless within the said two months the notice is withdrawn by the Minister or the Company takes legal proceedings pursuant to the next succeeding sub-paragraph then the provisions of this agreement shall cease to operate except as aforesaid.

(b) The Company may within the said two months take legal proceedings to require the justification for the said notice to be reviewed and determined by the Courts.

(c) If the Court holds that in all the circumstances there was not adequate justification within the terms of this agreement for the giving of the notice by the Minister the notice shall thereupon cease to have any effect but otherwise the said notice shall take effect and this agreement shall cease to operate except as provided in sub-paragraph (a).

16. If after the giving of notice in writing with regard thereto from the Minister to the Company and the expiration of a reasonable time (not being less than two months) to be stated in such notice the licence fee referred to in Clause 12 hereof shall be in arrear or unpaid or any non-performance or non-observance by the Company of any of the agreements on the part of the Company herein expressed or implied other than those in respect of which notice may or can be given by the Minister pursuant to Clause 15 hereof shall continue or in the event of the Company going into liquidation or being wound up or compounding with, or assigning its assets or a substantial part thereof for the benefit of its creditors or any number of them then and in any such case the Crown may forthwith without suit and without notice or further notice as the case may be cancel this agreement and thereupon all the rights and interests of the Company under this agreement shall absolutely cease and determine but no such cesser or determination shall release or discharge the Company from liability for any such licence fee due or accruing due at the time of such cancellation or from liability for any prior non-performance or non-observance as aforesaid.

17. For the purpose of production in any undertaking for which the power produced pursuant to this agreement may be used by them, the Company and any subsidiary company and any associated company shall have the right to import free of sales tax and free of all duties including primage duty (save that where such freedom from all duties would conflict with New Zealand's international obligations existing at the date of this agreement the minimum duties consistent with those obligations shall apply if and so far as those obligations shall exist under any existing or substituted arrangement) alumina, cryolite, fluorspar, aluminium fluoride, petroleum coke, pitch, sodium carbonate and such other materials of whatsoever kind (including electrode materials) as may be agreed. It is further agreed that such licences as may from time to time be required for the importation of the foregoing materials will be freely granted. The Company and any subsidiary company and any associated company shall also have the right to export free of all duties and sales tax the following products manufactured by them or

SCHEDULE—*continued*

any of them, viz: aluminium, aluminium alloys, and other products of aluminium, and such other products as may be agreed. It is further agreed that subject to any requirements of defence or national security such licences as may from time to time be required for the export of any of the foregoing products will be freely granted.

18. The dates of 31st March 1961 and 31st December 1962 mentioned in Clause 5 hereof and the dates of 30th June 1971 and 30th June 1991 mentioned in Clause 15 hereof may be extended by the Minister for any reason deemed by him to be sufficient but shall be extended by him at the request of the Company for such a period or until such time or times as is reasonably required to compensate the Company for the delay caused by the relevant factor if the Company's operations have been prevented or hindered by:—

(i) War or the apprehension of war;

(ii) failure or delay on the part of the Crown or the Minister in fulfilling obligations or in granting rights under this agreement; or

(iii) any other cause beyond the control of the Company.

Any dispute as to the granting of any such extension of time shall be determined by arbitration as hereinafter provided.

19. The Company will assume full responsibility in respect of any valid claims arising out of its tortious acts or out of its breach of contract or its breach of quasi contract in connection with its operations in the construction maintenance and operation of the Works and Facilities by whomsoever such claims may be brought or made and shall indemnify the Crown in respect thereof.

20. Subject to Clause 5 hereof the provisions of this agreement shall continue in operation for a period of 99 years from the time the Company notifies the Minister pursuant to that clause that it intends to proceed with further investigations and such period may be extended or renewed from time to time by the Crown on such terms and conditions as the Crown may from time to time deem expedient.

21. On the expiration or sooner determination of this agreement all rights of the Company thereunder shall cease and the Works and Facilities shall thereafter belong to the Crown. Provided always that the Company shall have the right within six months of such expiration or sooner determination to take down and carry away any parts of the Works and Facilities which during the term of this Agreement have been renewed within a period of 40 years preceding such expiration or determination and which can be carried away except to the extent (if any) to which the Crown has undertaken to pay to the Company the residual value thereof as agreed between the parties or failing agreement as determined by arbitration such value to be fixed after taking into account the appropriate reduction in respect of the costs of removal.

22. The intentions of the parties in relation to the preservation of the scenic qualities of the aforesaid lakes and rivers are as set out in the letter from Mr M. Mawby, Vice-Chairman of the Company, to the Right Hon. W. Nash, Prime Minister, dated 8th September 1959 and the letter from the Right Hon. the Prime Minister to Mr M. Mawby dated 7th October 1959 relevant extracts of which are set out in the Schedule hereto. To ensure the carrying out of such intentions the

SCHEDULE—*continued*

Minister shall by not later than 31st March 1961 cause a survey of the aforesaid lakes and rivers to be made and shall by that date advise the Company of his requirements in relation to those parts of the areas to be inundated in which it is desirable to arrange for the felling and removal of timber before or during inundation.

23. Except in respect of the matters as to which the parties are left to their legal remedies under Clause 15 all differences and disputes between the parties touching or concerning the rights duties or obligations of the respective parties or any act or thing done suffered or omitted in pursuance of this agreement or of or touching the construction thereof shall be referred to arbitration in accordance with the provisions of the Arbitration Act 1908 or any amendment thereto or re-enactment thereof for the time being in force.

24. The Company shall be free at any time to discontinue its investigations enquiries and tests without further liability to the Crown in respect thereof but in the event of its doing so or in the event of this agreement ceasing to operate or being cancelled the Company will furnish to the Minister full details of the work done and of the results obtained in relation to the said water and the power potential thereof including its plans and all available information in respect of the undeveloped water resources.

25. This agreement may be varied pursuant to agreement between the Minister and the Company with the approval by the Governor-General in Council by Order in Council and no provision of the agreement shall be varied nor shall the powers and rights of the Company hereunder be derogated from except in such manner.

26. Any notice consent requirement or writing authorised or required by this agreement to be given or sent shall be deemed to have been duly given or sent by the Crown or the Minister (as the case may be) if signed by the Minister and forwarded by prepaid post to the Company at its registered office and by the Company if signed on behalf of the Company by the managing director, a director, general manager, secretary, or attorney of the Company and forwarded by prepaid post to the Minister at his office at Wellington and any such notice consent requirement or writing shall be deemed to have been duly given or sent on the day on which it would be delivered in the ordinary course of post.

27. The rights of the Company hereunder shall not be transferable except with the written consent of the Minister.

28. This agreement shall be governed by New Zealand law.

IN WITNESS whereof this Agreement has been executed the day and year first hereinbefore written.

THE SCHEDULE HEREINBEFORE REFERRED TO

Extract from letter from Mr M. Mawby, Vice-Chairman, Consolidated Zinc Pty. Ltd., to the Rt. Hon. W. Nash, M.P., Prime Minister, dated 8 September 1959:—

“Preservation of Scenic Qualities:

I whole-heartedly endorse your sentiment that engineering works can be executed in such a way that they add to scenic attractions rather than detract from them, and assure you that such will be our

SCHEDULE—*continued*

aim in any works which we undertake. We are fully conscious of the scenic attractions of the Te Anau - Manapouri area and of the pride which your people take in these.”

Extract from letter from the Rt. Hon. the Prime Minister to Mr M. Mawby, Vice-Chairman, Consolidated Zinc Pty. Ltd., dated 7 October:—

“Preservation of Scenic Qualities:

This factor has caused some agitation because certain other engineering works in a scenic locality have been the subject of public controversy and I am glad to have your views. Although there will almost certainly be agitation and pressure about the establishment of a major engineering project in one of New Zealand’s most attractive scenic resorts, I am satisfied that by conscientious attention to objectives and mutual regard for the undertaking you put forward, we can demonstrate that the industry will not have any serious repercussions on our tourist trade or scenic resorts.”

SIGNED for and on behalf of HER
MAJESTY THE QUEEN in respect of
the Government of New Zealand by
HUGH WATT the Minister of Works in
the presence of:— } (Sgd) H. Watt

(Sgd) H. R. C. Wild
Solicitor-General
Wellington.

The COMMON SEAL of CONSOLIDATED
ZINC PROPRIETARY LIMITED was here-
unto affixed by the authority of a
resolution of the Board of Directors
in the presence of:— } [L.S.]

(Sgd) M. Mawby
Director

(Sgd) D. J. Hibberd
Director and
Approved Signatory