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'Public Access'

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The 'final solution' for public access?

Labour MP Jim Sutton has raised the glittering concept of a legislatively-backed code of public access to all of the New Zealand countryside, irrespective of land ownership. This has the makings of a 'final solution' for public access, sweeping aside what he describes as "the muddle of public access emotions" on issues such as the tenure of pastoral leases, overseas investment, and the Queen's Chain.

Mr. Sutton envisages a new order of codified rights and responsibilities for recreationists applying over all lands. He proposes that there be initiated a major public inquiry and consultation to that end.

Unfortunately all that glitters is not gold!

Inevitably, the price of obtaining this new order will be restrictions on public access. The public cannot expect the same rights of access and use over private lands as they currently enjoy over public lands such as our national parks. The unspoken consequence of obtaining access over private land will be a reduction in public rights elsewhere. It could also result in the sale of public lands on the mistaken assumption that public management and control over natural and recreational resources is unnecessary; that all the public needs is 'access.'

> Mr Sutton's proposals are founded on false premises that there are few legal rights of access in New Zealand, and that land ownership and management are incidental to public recreational needs. On both counts his proposals are gravely flawed.

Mr. Sutton claims for instance, in a manner similar to arguments by the present Government, that the Queen's Chain and other forms of public access are "constructed on legal foundations of sand." And he goes further by erroneously stating that the Queen's Chain "is nowhere to be found in our law." Such argument plays on the lack of appearance of the words 'Queen's Chain' in the statutes. This overlooks the long-standing legal entities of marginal strips (and their predecessors), esplanade reserves, and public roads, all componets of the 'Queen's Chain.' These public reserves date back to the commencement of British settlement. The rights of public passage enjoyed over roads are inherited from centuries of custom in England and are well established in our Common law.

If real progress is to be made in improving public access then a firm foundation must be first laid. This must entail recognition of the full extent and different forms of legal public access that exist now, and acceptance that recreation entails much more than just the provision of 'access.'

It has long been recognised that the settings for recreational activities, and the management of those resources, determines the experience obtained by the visitor. For instance a recent study of a 'wilderness' fishery in the Greenstone Valley reaffirmed that for most anglers the experience they seek is much more than just catching trout and 'access'. It extends to experiencing the whole of the environment, including bush, mountains, and low encounters with other visitors. Management of the fish, and of the physical and social setting, requires direct Crown management. Otherwise under private control this highly valued area could become the exclusive preserve of the privileged and wealthy. Incompatible developments may occur, or the increasingly rare wilderness experience lost through overuse.

Wider, unspoken implications of Mr. Sutton's proposals are that existing rights of access to and over public lands and waters be swept aside, existing public lands disposed of, and few, if any new public lands created. However that, for instance, would fall well short of the expectation of most recreationalists in regard to the South Island high country—they don't want to see fish, scenery, and recreational opportunities privatised. They certainly won't accept mass freeholding of mountain lands with only a remote prospect that some form of public access may be provided in the future. Public reserves and legally defined rights of public access are needed as the quid pro quo for freeholding of the better farmland. If Government does not insist on this as part of current tenure reviews there will never be a future opportunity to do so.

Mr. Sutton raises the non-statutory concept of Allemansrätt or 'Every Man's Right' in Sweden as a possible model for New Zealand.

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Allemansrätt

In principle the Swedish 'Right of Common Access' includes the passage on foot over all types of land. However, growing crops or the right to privacy of a house owner are by no means unprotected. The rights of passage on foot are similar to Scottish ones, also of Norse origin, that make much of the countryside accessible, in contrast to a more restricted situation in England.

The Right of Public Access ('Allemansrätt', meaning 'every man's right') is unique and provides the possibility for each and everyone visiting somebody else's land, to take a bath in and to travel by boat on somebody else's waters, and to pick wild flowers, mushrooms and berries.

The Right of Common Access is so firmly rooted in Sweden, that so far there has been no necessity to draft legislation to protect it. Only reference to the Right has been put into legislation, without defining it. This contrasts with Norway where pressures on customary rights of access resulted in statutory definitions and protections being enacted.

The reality that rights of access alone are insufficient to ensure continuing availability and suitability of land for public recreation, is reflected by extensive acquisition of lands by the State to counteract the loss of recreational opportunities through urbanisation. 'Nature reserves' now compliment a national park system in less populated regions. In addition Domän, the state forestry entity, supervises a fifth of the country's forests, with 2.9 million hectares of protected lands as public reserves and nature conservancies. Approximately 40 places of special natural value have arranged recreational activities in order to make areas of land more accessible.

Clearly there is not a total reliance on 'Allemansrätt' for outdoor recreation within Sweden, as Mr. Sutton's proposals imply.

The Scandinavian scene

Unlike most of Europe, Scandinavia is generally well-endowed with natural or non-settled lands suitable for outdoor recreation. However since the turn of the century areas regarded as 'wilderness', being more than 5-6 km from roads, railways, power lines and other major man-made changes or installations, have reduced dramatically under increasing pressure through urbanisation and closer settlement. In response to such pressures most governments have embarked on the acquisition of land for public parks so as to actively maintain the amenity values and opportunities for recreation.

Common law or customary rights of access were not designed to protect the land resource. These long-cherished rights of access have value for recreation for so long as the land is maintained as pleasant rural or natural open spaces. Public ownership has become necessary over areas of natural amenity value to maintain that value. A differing approach has been possible and acceptable over cultural landscapes where there is continuing settlement. Planning controls and public rights of way, rather than public ownership, have been the prevailing means of maintaining amenity values.

In Norway the total area of wilderness territory has greatly reduced over the past 100 years. The largest change has occurred in the lowlands of southern Norway, where larger areas of wilderness are now virtually non-existent. The reduction and fragmentation of wilderness territory characterises most mountainous areas as well. Wilderness areas represents 12% of Norway's total land area.

As more and more wilderness is lost to human expansion and development, the need to preserve representative areas for future generations has become increasingly important. National Parks have been established in both Norway and Sweden to protect such areas.

Allemansrätt

In Sweden everyone has the right:

- to take a walk, a bicycle, go horse riding, or to go skiing on all land not cultivated, and on such land that can not be damaged by your visit, this is provided you do not cause any damage to crops, forest plantations or fences. However, you are not entitled to cross or stay on a private plot without permission. The plot, which is not always hedged or fenced in, is the area closest to a dwelling house.
- to take a walk, a bicycle, go horse riding, or to go skiing on private roads. Motor vehicles may be used if the owner has not forbidden such traffic.
- to pick wild flowers (excluding those protected by law), berries, mushrooms, fallen cones, acorns and beechnuts on land that is not a building site, a garden or a plantation, to bathe or go by boat on most natural watercourses.
- to take water from lakes and springs.
- to put up a tent, or park your caravan, or trailer, for twenty-four hours. For a longer stay you have to have the permission of the owner.
- You may make a fire, as long as you do not cause any damage, however there are restrictions during periods of drought when there is immediate liability for a forest fire. You may use fallen branches and or twigs as fire wood. Never light a fire on bare rocks as they will crack and split, resulting in ugly irreparable scars.
- to bring your dog and let it loose as long as you have full control. Restrictions are listed in local statutes and regulations.

You are prohibited:

- to cause damage to, and/or pollute the land.
- to ride on a motor vehicle on private property, so that damage may be caused, or on a private road, when the owner has forbidden such a state. Restricted areas are also gardens, cultivated sites, or constructions made by the owner.
- to break branches and twigs, to take the birch, bark, leaves, bass, acorns, nuts or resin from growing trees and bushes.
- to pick wild flowers protected by law.
- to park a caravan or trailer in such a place where the land could be damaged.
- to make fire so that the environment could be damaged or endangered.
- to let dogs run freely on private hunting-grounds.

The 'final solution?' continued...

Indigenous solutions needed

New Zealand has much to learn from overseas experience, but a danger is that the grass always looks greener elsewhere. What New Zealand needs is a stock-taking of what we have now, and what is likely to be needed in the future, before hiving off in quest of a glittering 'final solution'.

There are also huge implications for private property rights in Mr Sutton's proposals that have the potential to block any progress, or to gravely weaken public property rights, as the trade off for obtaining access over private lands. PANZ believes that there is plenty to do to improve the protection and management of public lands and access such as public roads and the Queen's Chain, before embarking in a bold new direction.

The New Zealand settlement/land tenure culture is quite different from that of Scandinavia and Britain, where centuries-old customs of public passage over private land have developed into traditions inseparable from the societies in which they arose. Particularly in Scandinavia, rights of access are matched by reciprocal social responsibilities which have become well-ingrained in those societies. In New Zealand we do not have anything like the well-developed traditions of Europe.

What we have, to the envy of many countries, is a major estate of lands specially reserved for public purposes. Unlike our European cousins we had the luxury of determining which lands were privatised and which retained in Crown ownership from the outset of British colonisation. That was the essence of Queen Victoria's instructions to Governor Hobson in December 1840. Those instructions gave rise the unique New Zealand concept of the Queen's Chain—reserved lands beside waterways that were supposed to forever remain free of private occupation.

Mr. Sutton observes that "access rights are most secure where they have long been embraced in legislation—once lost, they are difficult to reclaim."

> The irony in his proposals is that most of New Zealand's access rights are already secured by statute, rather than by custom. His advocacy of a European solution would reverse that situation, substantially weakening the security we currently enjoy.

Surely it is more befitting our culture and traditions to reinforce our public open spaces law than to try to supplant it with foreign mechanisms. A very different culture has arisen in New Zealand, such as the Crown guaranteeing the title and boundaries to private land. This has given rise to strong territorial instincts and a well-entrenched private property rights ethos that is highly defensive of private ownership. As the South Island high country debate illustrates, the (tenant) runholder culture is actively promoting *greater* private property rights which threaten to overwhelm the community interest in Crown pastoral leasehold lands.

New Zealand Walkways

The Walkways Act was enacted in 1975 with much the same objects as espoused by Mr Sutton, but has failed to make a significant improvement to public access over private lands. There are only a handful of Walkways over private lands despite much initial goodwill from Federated Farmers and concerted effort by all concerned. The reality is that there are very few landowners prepared to formally accommodate public use on their land, even when there are exhaustive statutory remedies against abuse of the privilege by the public. Twenty years of experience trying to achieve, by voluntary means, greater walking access to the private countryside has achieved very little. Most progress was achieved on public lands, which did not, for the most part, require Walkways to provide rights of access for the public—these already existed. The alternative approach for private land is to compulsorily impose public rights of use through legislation. PANZ believes however that this would be counter-productive and politically unobtainable.

Inquiry unneccessary

PANZ does not support an inquiry with the narrow, predetermined outcome suggested by Mr. Sutton. We would support a *future* inquiry into improving legal rights of public access to public lands, waters, and the countryside in general, with no predetermination of outcomes.

Why in the future? Because most Government actions over the last decade have been access-hostile. There would have to be clean sweep, under a new access-friendly Government, before we could have any faith that New Zealand's outdoor heritage would be given the respect its users deserve.

Mr. Sutton's proposal is however a welcome recognition that 'access issues' are worthy of political attention. A large constituency of voters are watching what parties are doing and offering. As a result of their attacks on the Queen's Chain the last Labour Government, followed by the present government, can be thanked for politicising outdoor recreation. Public access to the outdoors was an election issue in 1993—so too will it be in 1996!

The New Politics

by Carl Pope

The following speech on the property rights movement in the USA was presented to the Commonwealth Club, San Francisco, California, on June 30, 1995. Carl Pope is the Executive Director of the Sierra Club. It has been slightly edited, with our emphasis added.

Although the cultural setting differs from New Zealand there are strong similarities in ideologies currently being advanced here within Government, its agencies such as The Treasury, and by free market/private property advocates like the Business Round table. The speech is reproduced, unedited, as a timely insight to arguments for privatisation and individual sovereignty which have some international currency, and of the anti-community outcomes that could result .

This speech may be reproduced freely. It can be located on the Internet at— http://www.sierraclub.org/chapters/wa/takings/popespch.html.

We have a new politics. In the name of conservatism it is radical. In the name of traditional values it rejects both American traditions and values. In the name of private property it

destroys the public trust. It is the politics of the frontier, not of the neighborhood. It confuses a community with a sack of tomatoes.

If I buy a sack of tomatoes, I own them. I can take them home and cook them with spaghetti. I can chop them up with parsley in a salad. I can let them attract fruit flies on my counter. Letting them rot is wasteful. My friends, my children, and my church may urge on me that I should put them to good, not poor, use. I doubt that anyone here would propose a law telling me that I must eat them, or that I may not.

Land is not a sack of tomatoes.

In America, land has never been a sack of tomatoes. No American court has ever ruled that a landowner could do anything he wanted with his land. No one in America has ever received a real estate title bearing that promise. But now we have a new politics. This politics speaks of property rights. It means by property rights something radical, not something conservative. It means by property rights something new, not something traditional. It means the end of both human and natural communities. It would abandon the entire web of public obligations undertaken by those who own land which we call the public trust. It substitutes for that traditional idea the concept that each landowner is a sovereign state, immune from regulation and obligation to his neighbors. This new politics would allow every landowner virtually to secede from the union.

Land as Real Estate

Land is real estate. "Real", in this case, does not mean solid or substantial. It means "royal", as in the Camino Real, the royal way. Land came from the king. In England, kings gave out lands to their feudal retainers. In the 13 colonies, land was held by virtue of royal charters. In the new states the federal government either purchased or conquered new lands, and then sold or gave it away to settlers. This culminated in the Homestead Act. It remains in force only in the vestigial if extremely profitable form of the Mining Law of 1872.

When the kings, or the federal government, conveyed land to settlers, they also conveyed restrictions. Until the adoption of the Constitution, land could be taken for public purpose without compensation. Indeed, until after the Civil War many states retained the right to do, and even once the 5th and 14th amendments established the right of compensation when land is actually taken, land carried with it numerous restrictions. Land was, and always has been, infused with a public trust. Kings and Congress, when they awarded ownership of land, retained the right to protect the surrounding community by regulating the use of that land in the public interest.

What restricted a landowner? Among other things, he owned the land, though not the wildlife on the land, which was the king's, or the public's. Nor does he own either surrounding public land or the right of access to such land. He couldn't deny the public access to tidelands which were publicly owned, to the beds of rivers or the shore of lakes. He couldn't impede navigation. His right to utilize the surface and underground water flowing over and under his property were subject to elaborate, highly variable, and changeable, state doctrines of water rights. His right to develop the land was subject to zoning and land use planning. His use of land could not constitute a nuisance for his neighbors, and was subject to a wide range of restrictions by the state and local governments—indeed, the only right he clearly and unequivocally enjoyed was the right to occupy his property and to keep others from occupying it—so long as it did not impinge on access to waterways, traditional rights of way, trails and roads, wetlands and beaches, and on and on.

In recent years, the Courts have clarified two related issues. One is that if government regulation so limits use of land as to deny the owner of any economic use, this constitutes a taking and must be compensated. The other is that if an owner makes an investment in his land with reasonable assurance from government that he will be allowed to utilize the investment in a particular way, and government then denies him the right to complete or carry out the project, he may have lost a "reasonable investment based expectation" and may be entitled to compensation. Different state constitutions and courts allowed greater or more limited rights to property owners. In California access to the beaches is guaranteed by the State Constitution—in Connecticut it is not. In California the existence of zoning for a use does not create an investment based expectation, so government may down-zone without compensating. In Virginia it may not.

But no state has historically treated land like a sack of tomatoes. Kings, Congress and states have all understood that the public was not well served by making each property owner a sovereign; that the public welfare required the protection of the public trust. No state, indeed, has allowed all of its land to enter private ownership. Government, state and federal, has retained ownership of land where the public trust values seemed to be higher than the benefits of private ownership. Land is owned for highway rights of way, for schools and post offices—but also to ensure open space, and preserve scenic corridors, to provide parks and recreation areas, to preserve wildlife habitat and watersheds, to guarantee forests for future generations and to allow the military ample room to train its troops and test its weapons. Government owns land to provide sites for publicly owned housing, and maintenance yards for public transit systems.

Government owns land, and restricts the use of privately owned land, for a simple reason. Land is the skeleton, and the circulatory system of a community. It is the blood and bones of our society. Land lies next to other land. Its use, or abuse, effects everyone. My back yard is the view out your window. The traffic that flows to Tanforan Mall clogs the streets of its neighbors. If I destroy a bald eagle nesting site on my wood lot, I am destroying everyone's eagles. If I erect a fast food restaurant next to your house, your property values go down. The music from my late night cabaret does not stop at your bedroom window. That is law. It is common sense. It is the American tradition.

A fundamental challenge

Five states—Washington, Florida, Texas, Mississippi and Louisiana—have now enacted "takings" bills which relieve landowners of the obligation to respect the public trust. Virtually every state, including California, faces such legislative proposals. The leading Republican candidate for President, Senator Dole, has introduced legislation to nullify the authority of the federal government to act to preserve the public trust. Members of Congress call for the disposal of all public lands, even the national park system. They say the federal government has no right to own or limit the use of land.

The New Politics continued...

This movement would vest in landowners rights worth trillions of dollars— rights they do not own—rights they never paid for. It would force the general public to buy them back if we wished to ensure that blight does not invade our neighborhoods; development wall off our beaches; filled wetlands flood our streets; or clearcutting clog our streams and eliminate our wildlife. This new politics is not concerned about logic, tradition, or common sense. Let us look at some of its contradictions.

Under this radical takings doctrine, if two of us own parcels across a creek, and every winter the creek rises and floods half of our yards, I have a right to fill my parcel so that all of yours floods next winter. This is my right. You have no right to prevent me. But if you go the Board of Supervisors, and ask them to enact a wetlands ordinance, one that prevents me from filling all of my yard, in order to protect half of yours, I have suffered a taking, and must be compensated. Under their rules government would have to pay to the regulated far more than the regulations cost.

Imagine that there is a market for a fast food restaurant on my block but zoning does not permit it. Imagine under these proposals that I am denied my right to build a drive through burger joint outside your living room. Imagine that the franchiser would have paid me $50,000 for easier preying on the teenage wallets of our block. I am turned down and emerge $50,000 richer. The franchiser then offers his proposal to the couple across the street. The city rejects their variance as well. The taxpayers fork up another $50 K.

You see the logic.

The same "loss" can be suffered time and time again although the market would have supported only one such drive through window. The only end to this hemorrhage of public dollars? Build one neon restaurant on every block with the profits flowing to the greediest neighbor or the one who most dislikes his neighbors.

The property rights radicals would dispose of the national parks because government owns too much land already. But they would require government to purchase any land which was infused with the public trust, any land which served the needs of community. Because that is a public good which must be purchased by the public. Even if the same public has never sold this public trust in the first place...

...But while the advocates of the new politics find property rights almost everywhere (particularly on public land), they simultaneously assert that private property and community collide only rarely. This week the Supreme Court ruled that the Endangered Species Act protects a bald eagle's nest before the egg is laid as well as after it hatches. Habitat is protected, said the Justices. There were three dissenters, who lamented that under the decision property could be "conscripted for a national zoological purpose."

Implicit in the dissent in the entire rhythm of this new politics is the idea that most land serves private purposes only, that only an occasional landowner is called upon to redeem the public trust, and that this summons thus constitutes an arbitrary and unjust appropriation. This might have been true when several million native Americans lived upon this continent as hunter gatherers limited by numbers and technique, unable to go beyond the early extinction of the mammoth and saber tooth, to destroy the land itself. But 300 million Americans driving Ford Broncos eating at McDonalds and aspiring to a modest approximation of OJ Simpson's house, must pay the price of their wealth and their numbers. They cannot live as unconstrained as the First Americans. Power has its price, affluence its responsibilities. We cannot live alone. We are part of communities even if we do not much like them.

And land is the blood and bone of community. In different ways every owner must expect restrictions if that blood and bone is not to be severed and drained and splintered way. Every parcel is imbued with some part of the public trust. Every land owner must at some moment acknowledge that no man, and no lot, is an island.

At this moment you may wonder whether I exaggerate. Is this new politics real? Is it serious? Does it sit upon the tattered edges of our society or in the seats of power?

Here are some quotations:

> "The federal government doesn't have a right to own any lands, except for post offices and armed forces bases." Representative Barbara Cubin, R-Wyoming.
>
> "When Lincoln freed the slaves, he did not pay for them, and that was a taking," comes from Marshall Kuykendall, head of the takings group, "Take Back Texas."
>
> "The land-owning programs of the federal government fit very well into the ongoing building of socialism in the United States" says the John Birch Society.
>
> "When a person owns property, he or she has a piece of "sovereignty" because he or she controls that property. Just as the freedom of speech prevents government from dictating what can be said, freedom to own property prevents government from dictating what can be done with property, with the important exception of "compensated" interference for the public good. Without the requirement of compensation, there would be no true property rights." Floridians for Property Rights

This new politics does not come from the Constitution or our legal traditions. Let me quote from the Supreme Court decision in the Lucas Case, written by Justice Scalia and signed by Justice Rehnquist, *the two most conservative members* of the Court. "The property owner necessarily expects the use of his property to be restricted, from time to time, by various measures newly enacted by the State in legitimate exercise of its police powers...Government could hardly go on if to some extent values incident to property could not be diminished without paying for every such change in the general law..."

The new politics does not come from the traditions of either of our political parties. While many of the advocates of radical property rights are Republicans, this new politics is profoundly hostile to the very concept of the Res publica, the public realm. While many advocates of this new politics are Democrats, it is profoundly hostile to democracy itself, which rests on the concept that "We the people ...provide for the common welfare." There is no republic, and no common welfare, in this vision. Only the sovereign landowner, on his sovereign parcel. If it does not come from the Constitution or the courts, from the traditional values of the Republican or Democratic parties, where does this radical vision of property as a sack of tomatoes come? From the frontier. What was the cry of Daniel Boone? Elbow room. Land enough that it could be used without worrying about the neighbors. Because it had no neighbors. Not

land as the blood and bones of a community, but land to escape from community. Land to exploit and then to move on. Elbow room. Government ownership of land was rejected by frontiersmen who saw no community, no owners, and who to establish that vision decided that the native Americans who had stewarded the land before them were not human. Government regulation of land in the interest of community was rejected for the same reason. Treaties with the Indians were violated at the point of a gun. Land, to a frontiersman, was a commodity, a source of food, a sack of tomatoes, and a passport out of society. It is not accidental that the property rights movement overlaps so heavily with the members of the militia and other advocates of establishing public order on the basis of an armed populace, with justice flowing to the fastest draw, and Dodge City next year's winner of the All American City award. Self-defense as the basis for law and order; land as a commodity to be used up; neighbors as a blight to be escaped; this was the frontier promise. It is now offered to us as a nightmare, and as the basis for our new politics.

But we can awaken from this nightmare

We can. If we wake up from the politics of indifference and cynicism; if we pay attention to what those who govern us do as well as what they proclaim, if we do not turn the dial from the democratic debate to the OJ Simpson trial, if we commit ourselves to the values of the Republic, as well as of the shopping mall.

When we talk of values, we should listen to Aldo Leopold's raspy, conservative Midwestern voice, speaking to us from the Sand Country of Wisconsin: "All ethics so far evolved rest upon a single premise: that the individual is a member of a community of interdependent parts. His instincts prompt him to compete for his place in the community, but his ethics prompt him also to cooperate (perhaps in order that there may be a place to compete for). The land ethic simply enlarges the boundary of the community to include soils, water, plants and animals, or collectively, the land. A land ethic changes the role of Homo Sapiens from a conqueror of the land community to plain member and citizen of it. It implies respect for his fellow members, and also respect for the community as such."

As we look out at both our human and our natural communities, and as we listen to the voices of a new politics which would destroy both, we may finally be ready to recognize the truth that Leopold preached: We cannot maintain human communities without respect for natural ones.

The Queen's Chain

Marshall's mission accomplished!

"The intent of the reforms is to remove inconsistencies (in legislation that) reduce the ability of the department (DOC) to respond efficiently to (concession) applicants and generate revenue for the Crown".
Conservation Minister Denis Marshall in 1993 Cabinet Minute on Conservation Amendment Bill.

In March this year Government, with the help of its United partners, passed into law provisions allowing leases over marginal strips. For the first time private individuals and bodies will be able to lawfully occupy these water margins to the exclusion of the public. Lessees will be able to invoke the Trespass Act against members of the public who have the impertinence to recreate on these supposedly publicly-owned lands. Adding insult to injury, trespass is a criminal offence. PANZ believes that with the passage of Conservation Amendment Act 1996, recreationalists have suffered a grave setback to their interests.

PANZ stated from the outset of the debate that marginal strips enjoy a special status in our public estate. Queen Victoria decreed in 1840 that such lands along shall forever remain free of private occupation for private purposes. That sentiment has long been recognised in our law, with an express prohibition applying to marginal strips in the phrase "reserved from sale or other disposition."

The Minister of Conservation is now, *without restraint*, able to offer exclusive rights of occupation to illegal squatters on marginal strips. This is a discretion he does not enjoy on other conservation areas. *This is a complete reversal of the special status of marginal strips relative to other public lands.* Other conservation areas now enjoy *greater* protection from discretionary leasing than the fabled Queen's Chain!

He can also grant leases for new occupations and activities on marginal strips with some restraint—that the activity requires the use of the strip *and* the adjacent water, and that it is essential to enable the activity to be carried on. However, if a commercial interpretation is put on these 'safeguards', *the authorisation of exclusive facilities, including fishing lodges, is possible under the new law.*

Contrary to Ministerial statements, the Bill was not an improvement on the existing legislation; it is a complete departure from the (former) statutory prohibition on 'disposition', including leasing. That prohibition has been negated by the new express provisions for leasing.

Constitutional lawyer and former Prime Minister Sir Geoffrey Palmer stated in a legal opinion last year that leasing would be in breach of the fundamental purpose of marginal strips (that they forever remain free of sale or other disposition). In contradiction to Sir Geoffrey's opinion, the Minister and officials have restated that there was already an ability to issue new leases over marginal strips.

PANZ has recently obtained copies of two official legal opinions prepared in July and August last year that provide confused, contradictory views on the question of 'disposition'. The opinions do not provide categorical support for Mr. Marshall's statements on alleged existing leasing powers. They also contradict the Minister's public assurances that he cannot

dispose of marginal strips by way of sale. PANZ believes that the Minister's statements dismissing the existence of powers allowing sale of marginal strips to be correct, however he cannot have it both ways—either there is a prohibition on all 'dispositions' (both sale and leasing) to be found in the phrase "reserved from sale or other disposition", or none at all. In PANZ's view the Ministerial and official statements have been designed to avoid acknowledgment of the fundamental nature of the changes they were seeking and to portray them as an 'improvement.'

> The passage of the leasing provisions was also in complete violation of Government's promises made to the electorate during the 1993 election campaign. Denis Marshall promised to drop all marginal strip leasing provisions.

PANZ had been heartened throughout this lengthy campaign by the strong support for our stance from many groups and individuals. Public opinion was instrumental in beating back successive Government moves to push through the leasing provisions. However we were ambushed in March when Government finally rushed the Bill through the House. There was insufficient time to alert the public and so generate another flood of protests to Wellington.

Disappointingly our position was greatly undermined by Forest and Bird and the New Zealand Fish and Game Council who were reported to support the legislation. PANZ believes that such support was ill-conceived and unnecessary. United leader Clive Matthewson stated in the House that he got a "great deal of comfort" from this "independent support." It also provided a welcome excuse for Government to disregard its election promises and the huge body of public opposition to leases. PANZ believes that those organisations do not realise what they have given away. The suspicion must remain that the scanctity of marginal strips was 'traded off' for the passage of other, unrelated, matters in the Bill.

United voted with the government on the Bill, defeating alternative proposals developed by Labour. Labour had the support of NZ First and the Alliance. Without United's support Government would have lost the vote. Credit is due to Labour MP and conservation spokesman John Blincoe for his considerable efforts during the final stages of the Bill.

Parliament's planning and development committee, chaired by Government MP Chris Fletcher, made considerable improvements to the Bill. However in the most critical area, leasing of marginal strips, Government did not waiver from its determination to give effect to its primary intent as expressed in the Cabinet minute.

While some claim that there are adequate protections in the law against abuse of the new leasing powers, a 'thin end of a wedge' has been created. The previous decade of Government attacks on the Queen's Chain suggest that further 'liberalisations' and broader powers of alienation are likely to follow. PANZ predicts that, unless there is a shift away from the privatisation direction of Government, we will see further moves towards alienation of what was supposed to be 'inalienable', now that marginal strips are no longer sacrosanct.

PANZ will be watching closely for any curtailment of access and will be advocating repeal of the marginal strip leasing provisions during this year's election campaign.

Conservation estate

Mansfield counters The Treasury

The following is (slightly edited) correspondence between the Director-General of DOC (Bill Mansfield) and the Secretary to The Treasury (Dr Murray Horn) which was originally leaked to the news media in March this year. Our emphasis has been added. The exchange between the two gives a direct insight into the privatisation mentality of the Government's chief economic advisor. To the credit of the hard-pressed head of DOC, Mr Mansfield stands up well and presents a timely exposition on why we have public lands. He reminds Government that it has obligations to us, the owners of these lands, that cannot be properly discharged by private interests.

The forore in response to the Treasury push to fund DOC through land sales coincided with the Business Roundtable's publication 'Moving into the fast lane' which proffered: "the size of the (conservation) estate is excessive and should be significantly reduced. Most scenic and recreational activities should be privately provided and funded". Coincidence?

PANZ has sent to Dr Horn our 1994 paper 'Private management of the 'public interest'?', being a review of mechanisms for conservation, public recreation and access over private land compared to public ownership and control. This is our answer to his statement "it is not clear to me why conservation lands could not be managed under private ownership provided there are appropriate covenants to preserve the essential conservation values." Covenants are toothless, insecure excuses for protecting the public interest. This probably explains privateers' enthusiasm for them.

Bill Mansfield to Dr. Murray Horn

8 March 1996

"...The Department of Conservation administers a large portfolio of lands, which are held in public ownership and management in order to provide a range of public benefits. Those benefits include biodiversity protection, water and soil management, recreation, scenic and amenity values, and historic heritage protection. Incidental to those core benefits, the estate also provides significant economic benefits (e.g., from tourism, sphagnum harvesting, honey production, grazing, fishing, water and soil protection).

Any one piece of estate is likely to be providing a multitude of different benefits. Even if some of those benefits cease because of management deficiencies (e.g., some species disappear because of the forests become impoverished because of possum damage), the piece of estate will continue to provide the other benefits (e.g., public recreation, scenery, water and soil). In fact many of the public won't even be aware of the loss. Taking the land out of the estate means that all the benefits are lost or no longer guaranteed, and it is unlikely that the new owner of the land will be any better placed to deal with the problem.

In addition to losing the immediate benefits, once land leaves the estate the public lose the potential to regain conservation values as techniques change. For example, the Department is now carrying out rodent and predator eradication programmes on many islands which only a few years ago were seen as having few or no wildlife benefits. These islands will become some of our most valuable pieces of estate. If your

proposal had been adopted five years ago, islands such as Tiritiri Matangi and forests such as Trounson kauri forest which are now key elements in new programmes and are seen by most of the public as core parts of the estate would have been abandoned and sold because they had management problems which could not at that stage been tackled.

Nor is it cost effective to make frequent movements of land in and out of the estate in response to changing management circumstances. The opportunities to purchase the types of land which are good additions to the estate are not necessarily frequent, and land prices are rising all the time, and may also rise further to reflect the changed situation in relation to management problems. The situation with islands illustrates this very well. The market price has changed dramatically over the last few decades as technology has reduced the problems of living on an island and the type of people wishing to own islands has changed, and few islands come onto the market because turnover is relatively low.

In addition, as we have previously discussed, the costs of conservation work are not related to the size of the estate. In some areas, a larger estate area can in fact result in reduced management costs (e.g., with some species work and with some visitor services work where spreading the visitors can reduce the costs). Costs tend to be related not to size but to the nature of the land. Small isolated reserves tend to have higher weed control costs than beech forest, while beech forests have higher wasp problems. In addition, the areas with a high priority for expenditure and which have high management costs are frequently the areas with the highest value. If the estate were to be reduced in size, and that reduction was done on a value basis the Government's likely expenditure would probably be only minimally affected..."

Horn to Mansfield

15 March 1996

"...I think that it is important to recall the basis of the issues we are currently discussing. Judge Noble, in his report on the Cave Creek tragedy, noted that while the responsibilities of the Department of Conservation had increased over the years, it was his understanding that the funding for the Department had decreased over time (in fact total funding levels have remained roughly constant in real terms over the Department's life, but similar concerns have been expressed by stakeholders nonetheless). This has given rise to a general perception that the Department is under-funded. Ministers have asked us jointly to consider this question and to identity options for managing the risks to the Government.

I have not said that the Department is under-funded. Rather, I have accepted your views on this as a starting point and asked; if this is true, what are the options? and what will make a significant difference in managing the pressures faced by the Department in the medium to long term? As you noted at our meetings, running down investment in training and deferring maintenance is not sustainable.

At our meetings, we have discussed management responses ranging from re-prioritisation within baselines and seeking internal efficiency gains through to increasing third party revenues. In these discussions you have indicated that you think there is little value in pursuing these management options...In these circumstances, it seems to me that we need to think laterally for our solutions.

One possible solution might be to reduce the extent of the conservation estate, by dropping areas of low conservation value. This would allow the Department to focus its available resources to maximise conservation values over the remainder of the estate and deliver its services in a professional manner. I note that your Minister discussed this approach with the Conservation Authority yesterday.

I do not share your pessimism that taking land out of the DoC-managed conservation estate "means that all the benefits are lost or no longer guaranteed". First, shedding responsibility for lands with low conservation value may free up resources that deliver higher conservation benefits elsewhere in the estate. Second, there seems to be an increasing interest in privately-managed conservation lands, and the voluntary/non-Government sector has always been an important contributor to conservation goals. It's not clear to me why conservation lands could not be managed under private ownership provided there were appropriate covenants to preserve the essential conservation values. This seems worth exploring.

Your point regarding the relationship between the size of the estate and management costs is largely an empirical question. In any rationalisation of the estate, It is not so much a matter of reducing the size of the estate "on a value basis" but determining the required size and so of the Crown conservation estate in the first instance by identifying assets that must be kept in public ownership (because of contracting problems, or other factors). Of those assets, the Government should hold only those of the highest net level of conservation value. In doing so, we would clearly rely on DoC's advice on what parts of the estate should not be alienated.

We should evaluate these Ideas in some depth and possibly test them in practice. There may be other ideas that we should explore jointly, but your earlier advice to me was that the more traditional management approaches are unlikely to generate the outcomes that Ministers are seeking within approved baselines. We need to cast the net wider for solutions..."

Mansfield to Horn

25 March 1996

"...Notwithstanding that the Department's funding may or may not have remained roughly constant in real terms over the last 9 years, it is clear that the tasks expected of it has increased considerably over that time. This is not because of extensions to the conservation estate, but rather new responsibilities under the Resource Management, Forests Amendment, and Health and Safety in Employment Acts which create extra work and impose higher standards on the department. What is becoming even more clear, though is the fundamental task in conservation required in New Zealand is even larger than we have fully realised. This arises from a better appreciation of the irreversible effects of pests and weeds in some ecosystems, further analysis of the status of wildlife at risk, and the burgeoning numbers of visitors to the estate.

I think we are in agreement that, faced with this knowledge, we must review the options and that running down investment in training and deferring maintenance are not sustainable.

I want to make it clear that I am committed to pursuing the kinds of efficiency gains which we have discussed... The department's record in pursuing efficiencies and third party revenue over its 9 years of existence speaks for itself. The point which we have been trying to make (and which has been accepted previously by the Treasury in dealing with base funding) is that remaining efficiency gains, reprioritisation, and likely increases in third party revenue by themselves cannot be considered sufficient to approach the levels of additional

Conservation estate continued...

funding required to carry out the department's responsibilities. We have, I believe, made it clear in supporting material in this year's Budget round that, if we are to avoid canopy collapse in the natural forests in our care, restore the regenerative capacity of natural areas menaced by other pests and weeds, take considered recovery action for native species threatened with extinction, and provide assurance of visitor safety, then funding increases significantly beyond any ability to reprioritise are needed.

It is a matter of concern to this department that you and your staff have a view that conservation values can be readily protected despite loss of public ownership. Experience dictates that, where there are some magnificent examples of "private" conservation by dedicated individuals on their own lands, these are the exception and may well not be inter-generational or survive change of ownership. *Covenanting of conservation values on private land is often the only recourse when owners are unwilling to sell, but it is not the preferred option where values on large areas may well be subject over a period of time to conflicting management objectives.* Once compromised conservation values prove difficult, if not impossible to restore.

Fragmenting land ownership does not facilitate considered management action against pest and weed species, as any regional council will attest. *Any large scale use of covenants to preserve conservation values on lands alienated from Crown ownership will necessitate concerted monitoring to ensure values are not lost, but by the time loss of value is detected it may well be irreversible.* There is also no evidence that the private sector is likely to be prepared to pay the management costs associated with pest and weed control to maintain and restore values where management effort is most needed. The park lands most attractive, for example, to the tourism sector, are not generally the sites of highest unit cost in management, other than in dealing with visitor impacts.

These are the realities of our business. I would not want you to conclude that I am opposed to disposal of areas of low conservation value...Equally, I would not want you to be left with the view that any divesting of conservation lands is a serious candidate as a source of savings. In reality, the upfront administrative costs of disposing of conservation land are high. Cost drivers include public notification process, section 40 investigation (offer back), protection mechanism for Maori interests, plus normal administrative disposal costs (i.e. surveys, local authority fees, legal, valuations, District Land Registration fees, estate agents, marketing and site clearances). For the funding needs already tabled this year, the shedding of conservation lands to provide savings would have to go way beyond any level that the public or the Government would be likely to support.

> "The bottom line is that if the Government wants to seriously discharge its obligations in conservation to the public owners of the estate, and meet its international obligations as custodians of important elements of world biodiversity then adequate funding needs to be provided from the public purse. Conservation spending is a minor element of the expenditure of Government and always likely to remain so, but can be said to be a core obligation which is important to the long-term well-being of the people."

Access News

Please send clippings (with date and source) to PANZ

Waikopou Bay—Waiheke Island

Gulf News, April 12, 1996

In October this year, the dispute between multi-millionaire John Spencer and Auckland City Council over ownership of a section of road is due to be finally heard in the High Court. The court, we are told, has determined there should be no further delays. Unfortunately, more than a decade after the dispute began, and four years after Mr Spencer blocked the road, such assurances tend to lose their meaning as far as any public perception of justice being served is concerned. In October, or thereafter, a complicated raft of legal issues will be resolved by highly paid lawyers and the public may or may not get its road back.

Meanwhile, another not dissimilar issue his resurfaced with the recent demolition of a jetty at Waikopou Bay by a group of local residents. As part of an illegal reclamation undertaken by Auckland businessman Melvin Lindsay Jones in 1986, this, too, has a 10-year history of wealthy private interest versus public access. The Auckland City Council inherited from its Waiheke County predecessor, an undertaking by Mr Jones to go through the relevant processes necessity to have the reclamation — a massive earthworks which redefined the bay — vested as reserve land. This agreement was to preserve public use of the jetty and foreshore, and access around the coast.

Six years later that hadn't happened. But the lawyers were still writing to one another*: "Further to our correspondence last year and .... despite repeated assurances from Mr. Jones, no resource consents have been instigated to complete the terms of the agreement between our respective clients..."* By the time council solicitors mailed this piece of correspondence off into the legal ether, Mr. Jones was negotiating the sale of his property to the present owner, Sir Gordon Tait, chairman of Lion Nathan Ltd. The council agreed to lift a caveat on the title (otherwise preventing the sale) and Mr Jones paid $100,000 into a trust to be monitored by Sir Gordon's lawyers — ostensibly to cover the costs of legitimising the reclamation according to the original agreement

Another three years on, it appears that rather than any attempt to honour these agreements, the property's respective owners have applied — so far unsuccessfully — to have the reclamation amalgamated with the rest of their property.

Whether or not one agrees with such direct action, the demolition of the Waikopou Bay jetty is a reminder: of unresolved conflicts of interest between wealthy individuals and the public at large; of the perennial importance of protecting our coastal access, and that these are important issues of which we need constant reminding.

Simon Johnston

The Auckland Regional Council have now received notice from the solicitors for Sir Gordon Tait that he wishes to withdraw applications for resource consents "in view of the destruction of the jetty".

Access to land in danger?

High Country Herald, May 22, 1996

TEMUKA - Extending the freeholding of high country land is unnecessary and could endanger public access, according to Central South Island Fish and Game Officer Frank Scarf.

If passed into law, land users will be able to employ provisions m the Crown Pastoral Land Bill to gain freehold tenure over land for other than pastoral use. The Lands Act currently allows leaseholders to freehold land by establishing that grazing is sustainable. But a freehold tenure under the new bill could be for any productive use, like skiing or tourist safaris.

Mr Scarf said that while the long process involved in gaining freehold over land under the Lands Act did need streamlining the Fish and Game Council supported the existing limitations under the act. The council did not welcome the prospect of land becoming freehold and being used for safaris.

The Crown Pastoral Land Bill allows any land deemed productive to be turned over to freehold. That represented a considerable extension to provisions, Mr Scarf said.

Once land users had freehold tenure of the land they could then sit on it for years before opening the area for skiing or fishing.

Mr Scarf said access to areas in the Central South like the Ahuriri River, and Lakes Tekapo and Ohau had to be guaranteed as they were fisheries of national and international significance.

Government plans for high country could lose United backing

Otago Daily Times, June 10, 1996

The Government could lose the support of its United coalition partner to enact its contentious land tenure proposals for the South Island high country.

United leader Clive Matthewson hinted strongly to an environmental forum in Dunedin yesterday that he favoured deferring the Crown Pastoral Land Bill until after the election so unanimity could be achieved.

Crown leasehold lands comprise 2.7 million ha of the South Island.

The Government's objective is to facilitate a free-holding process for runholders, claiming this would provide greater diversity of land use and better land management.

It also claims that around one million ha of leasehold land could be transferred over time to the conservation estate.

High country farmers are divided in their attitude and strong opposition has been expressed by conservation and recreation groups.

The Bill was introduced in Parliament more than a year ago, and is expected to be reported back to the house shortly by the select committee on primary production.

In acknowledging the opposing perspectives, Mr Matthewson told yesterday's forum: "There must be a 'best' way to ensure those very important values, fragile lands are preserved and I find it hard to believe that agreement cannot be reached."

He said that while his statement on deferment was not yet "definite", it was something he was talking over with the United caucus and might well be its best position to adopt.

"I just can't believe that, at the end of the day, there is not enough common ground. I'd like to see us try to get there and that certainly means not pushing it through."

Deferment of the legislation was supported last night by Public Access New Zealand spokesman Bruce Mason.

He told the *Otago Daily Times* he agreed with Mr Matthewson that there was not enough common ground.

"The ambiguous way the Bill is worded has meant wildly different interpretations as to its meaning.

"Conservation and recreation groups recently submitted to Government a list of 20 essential changes which they believe must be addressed.

"These matters will take time to resolve and there is little hope of doing so within the tight legislative timetable before the election."

Mr Mason hoped common sense would prevail and said PANZ endorsed Mr Matthewson's view that the Bill be deferred for further consideration.

Ahuriri 'staked out'

Anglers claim river being reserved for exclusive tour access

High Country Herald, June 5, 1996

OAMARU - Recreational anglers claim that sections of the Ahuriri River are being staked out for tour parties, in a forerunner to the common practice in some North Island areas of exclusive access to waterways.

Oamaru Anglers club president Jack Kinzett said tour guides in some areas in the North Island were buying exclusive access rights to waterways running through private land. He said it was important to act early to prevent the practice moving south.

Recreational anglers Gordon Brown and Barry O'Neill both claim to have seen sections of the Ahuriri River staked out with coloured markers. Mr Brown said the stakes were there to mark off sections of the river for people on fishing tours. Mr O'Neill said he usually just kicked the markers over.

The relationship between tour parties and recreational anglers has become stretched with recreational users saying some of the tour parties are getting too big, creating the need for the stakes.

Tour guides and Fish and Game Council rangers say they are unaware of the practice.

Tour guide and honorary Fish and Game Council ranger Doug Andrews said he had not come across the practice. "If I heard of any thing I would be on to it straight away," he said.

Mr Andrews said he restricted tour par ties to two or three people and always gave way to recreational anglers. But he acknowledged that some big tour operators were less interested in the sport and just out for the money. "I thought further along the line, some big guides would like to get into territory," he said.

Guide Frank Schlosser said he had been approached about buying exclusive fishing rights but that would have been contrary to both his own and the New Zealand Professional (Fishing) Guides Association rules. He said land owners that accepted money for access across their land to fishing spots made themselves liable under the Health and Safety in Employment Act—a situation that recently closed the Dingleburn Station to recreational users. Selling exclusive fishing rights could have the same consequence.

Mr Brown said the annual meeting of the New Zealand Federation of Freshwater Anglers had raised the issue of buying exclusive access to water ways in the North Island with Conservation Minis Denis Marshall but he did not accept it was going on.

Mr Kinzett said business lobby groups were pushing for the privatisation of water through the introduction of tradable water rights, as had happened in Britain and the United States.

Whose waters?

NZ Herald, Editorial, February 7, 1996

The annexation of the Kaituna River by the Rotoiti Scenic Reserves Board is another of those disturbing developments, aided and abetted by the Department of Conservation, that threatens public access to, and use of, rivers, lakes and sea. The board and the department deny as much but they quite readily regulate on the basis of an untested legal opinion that the river bed and water are part of the Okere reserve.

The assumption is disturbing because it accepts an effective corporate ownership of the river and could quite clearly be used to regulate other uses of the river besides commercial rafting. The concern, which the Rotorua District Council considers "grave", should not be confused with controls over commercial activities.

In fact, safety issues aside, the case for licensing such use of a waterway that is public is the more convincing. The council and the raft companies agree and up to now have used heritage protection orders made under the Resource Management Act as controls.

For reasons that likely put farmers and Maori land claimants into an odd alliance, a proposed amendment to the act will render these orders no longer applicable to rivers. Yet the provision of the act, as applied by the council with its production of a Kaituna River management plan, are used as the basis for the licensing rules prepared by the Rotoiti board. That board is administered by the department but has connections to the Ngati-pikiao.

The Kaituna is not the only river where the ownership of the riverbed, and the water, has too easily been compromised. The bed of Lake Taupo, which the Maori Land Court vested in the Ngatituwharetoa in 1993, is managed as a reserve, under an agreement between the department and the Tuwharetoa Maori Trust Board.

There may be nothing to fear from such an imminent partnership but in the same area there are rivers that have been effectively privatised. Maintaining the sanctity of the so-called Queen's Chain on the margins of rivers and lakes becomes farcical if the public cannot be guaranteed free and unfettered access to the water or to dare to touch the bottom of river or lake without permission.

There is a naivete in the way the department so readily moves from guardian to partner without acknowledging the precedents created. With corporate riverbed and water ownership now established, it is a very short move for some river somewhere to be closed to all but those prepared to pay. And that, for the vast majority of New Zealanders, would be culturally, spiritually and historically offensive.

PANZ asked DOC what the legal basis is for the Reserves Board issuing licences with conditions for rafting the Kaituna River that allow the Board to suspend the licences to observe rahui for spiritual reasons, and to protect the spiritual and cultural aspects of the river. DOC's Regional Conservator Dave Field replied that the licences are prepared under section 56 Reserves Act (leasing powers over scenic reserves), but also observing section 4 Conservation Act (giving effect to the principles of the Treaty of Waitangi). "At an operational, rather than academic level, this means applying both law and lore to an issue".

PANZ believes that the Board has exceeded its authority under the Reserves Act by breaching the statutory principle of freedom of public entry and access to the reserve, and by accommodating Maori cultural wishes well beyond that envisaged by the Treaty and its principles.

Roading suggestion criticised

Otago Daily Times, February 17, 1996

Wellington (PA). - New Zealanders would become "prisoners in their homes" if roads were privatised, according to lobby group Public Access New Zealand.

"Privatised roads would remove the ability for individuals without the financial wherewithal to mix with their communities or to access the rest of the country for cultural, outdoor or any other activity," Public Access spokesman Bruce Mason said in a statement this week.

Mr Mason was responding to a speech Business Roundtable executive director Roger Kerr gave recently in which he advocated privatising the $25 billion road network.

The private sector could transform the roading network, now controlled by Transit New Zealand and local authorities, and gain more information on consumer preferences through direct road user charges, Mr Kerr said.

Mr Mason said Mr Kerr's comments were "extravagantly ignorant".

"If the Roundtable's latest nonsense were ever implemented it would bring about the end of civilisation as we know it", he said.

The PANZ news release explained that public roads are "immeasurably much more than dollar assets and conduits for big business profit."

"Our whole society is dependent on public roads. Centuries of common law, inherited from England, guarantee freedom of passage for everyone. Every allotment of land must have frontage on to a public road, whether that be formed or unformed. Half the Queen's Chain along water margins consists of public roads. Every public reserve and community facility is dependent on roading access and freedom of movement."

"The Roundtable's plans would undo the settlement of New Zealand and remove freedom of movement guaranteed to everyone. The latter is enshrined in the New Zealand Bill of Rights."

A dozen tenure reviews completed already

The Mirror, June 12, 1996

TO DATE, tenure reviews have been completed on 12 pastoral leases in Southland and Otago.

From these, 44,555ha of productive land has been freeholded by the leaseholders, 10,676ha of which has been covenanted for conservation or other purposes.

A further 27,555ha has been transferred to the Department of Conservation. Public access rights to this land has been guaranteed in nine of the 12 cases.

A further four proposals have reached the approval stage and if these are signed up then a total of 52,607ha will have been freeholded with 30,509ha acquired for the Department of Conservation.

lain MacLean, press secretary for Lands Minister Denis Marshall, said the legal status of these tenure reviews did not depend on he success of the Crown Pastoral Land Bill.

These voluntary reviews had been completed under the 1948 Land Act "and cannot be undone."

Access to farm barred

Timaru Herald, May 29, 1996

High country farmers Guy and Davida Mead have closed access to their 22,000ha Lake Hawea farm to recreational and adventure tourist users. The Meads said they feared prosecution under the Health and Safety in Employment Act if anyone is killed or hurt on the property.

But the Occupational Safety and Health department said the Act was aimed at work place accidents and that private landowners would not be targeted if people were injured.

Support for withdrawing land access

Otago Daily Times, June 21, 1996

Otago Federated Farmers supports the actions of high country runholders closing their properties to recreational users in response to concerns over liability under the Health and Safety in Employment Act.

Otago president David Shepherd told delegates at the executive meeting in Balclutha this month that assurances from the occupational safety and health service (OSH) were not convincing enough.

Until the Act was changed it was likely more farmers would be withdrawing access to recreational users.

While OSH gave all the assurances in the world, it was the service's actions farmers watched.

There was sympathy for those landowners OSH had taken to court as these actions were at odds with the assurances...

Health & Safety

Otago Daily Times, June 20, 1996

...I wish to confirm that Occupational Safety and Health Service (OSH) does not hold farmers liable when outdoor recreationalists harm themselves on farms. If farmers want more reassurance I can only remind them that OSH has never prosecuted a farmer for a recreational accident. The Government currently has before it a suggested amendment to the Health and Safety in Employment Act 1992 to make it even more clear. What farmers are responsible for is the health and safety effects of their own work activities. Every manager and employee in the country has the same responsibility.

Even now, by definition, the Act cannot be seen to get farmers to do anything unreasonable. The Act says owners or employers must take "all practicable steps" to protect people from work related hazards. This means farmers are not expected to control a hazard if it cannot be identified, it is out of their power to control (e.g. they do not have the financial resources), or has nothing to do with work activities.

I think the statistics speak for themselves. Since April, 1993, OSH has prosecuted 1200 individuals and companies for failing to control workplace hazards. Of these, only 12 were farmers. The real issue being clouded in the debate is that the farming sector is one of the most dangerous to work in. Last year alone, ACC recorded 46 work-related deaths and 45,000 claims from the farming sector which cost the taxpayer over $85 million. OSH staff are doing their best to support farmers in reducing this accident toll. But at the end of the day it is farmers who have the responsibility for making their work activities more safe.

Andrew Reddie
Branch Manager, OSH, Dunedin

Latest proposals on Queen's Chain law provoke angry reactions

Marlborough Express, March 7, 1996

Renewed intention by the Government to allow the public's Queen's Chain to be leased by private interests has aroused the anger of outdoor recreation and conservation groups.

Criticism has been immediate and strong, with the Government's move variously described as a charade, deliberate deception, a sellout of public land and cosmetic fiddling with law...

...John Henderson, a Marlborough conservationist, outdoor sportsman and chairman of the New Zealand Federation of Rifle, Rod and Gun Sports, said the withdrawal of the "obnoxious clause" 14 and rewriting it into another section of the bill was a devious political ploy.

"It will not hoodwink the knowing outdoor public, who know over the decades the tricks and deceit the politicians can get up to," he said.

Mr Henderson said the outdoor public might well make the Government pay dearly over the issue at the election late in the year.

Dr Hugh Barr, president of the Federated Mountain Clubs, said the net result of the amendments to the bill was "no change."

"Granting trespass rights by leases over the Queen's Chain is still allowed," he said.

Strato Cotsilinis, spokesman for a national trout angling organisation, the New Zealand Federation of Freshwater Anglers, said a lease would give a lessee exclusive right of occupation.

"This means the public become trespassers because of the lessee's exclusive rights under the proposed law," he said.

Any person or company needing to use part of the Queen's Chain for a practical, justifiable, purpose could be granted that right by a permit or easement, without endangering public ownership or access, he said...

...Lloyd Hanson, a Marlborough outdoor sportsman and conservationist, said the leasing of marginal strips along rivers was tantamount to selling public land.

"Its just a game like shuffling a pack of cards, with the Minister of Conservation as the joker of the pack," he said. "It is simply cosmetic fiddling designed to deceive the public concern"...

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