



NORSKE
LAKSEELVER



Norges
Naturvernforbund
Friends of the Earth Norway

EFTA Surveillance Authority

Re. Case No: 69544

Oslo, 14th of January 2013

THE SCREENING PROCESS

We hereby refer to Case No. 69544. The complainants would like to submit some more information about the “screening process” described in the letter of 31st of May, 2012, from the Norwegian Ministry of the Environment to the ESA.

We also refer to the letter of 29th of June, 2012, to ESA from the complainants, and the letter of 5th of October, 2012, from The Norwegian Association of Municipalities Hosting Hydropower Plants (LVK), where critical comments to the screening process were given an account. In the complainants’ view, this screening project is not integrated with the processes and the procedures foreseen by the Water Framework Directive (WFD).

As part of the screening and prioritisation process, the river basin districts were invited to provide input on which watercourses ought to be prioritised in each region. The river basin districts have given various responses to this invitation, and several have refused to give any prioritisation. We would like to report some of the responses given by the authorities for the river basin districts.

In its letter of 26th of October, 2012, to the Norwegian Water Resources and Energy Directorate, the Authority for the River Basin District Rogaland writes:

“The Authority for the River Basin District of Rogaland has not prepared a professional basis for prioritising watercourses at this time. The main reason being that the quality assurance of the characterisation has not been completed yet and that the other processes in the river basin district have not yet got to the stage when a qualitatively good list can be prepared in accordance with the Water Regulation’s requirement to give reasons. (...)

We believe it to be wrong in principle for the River Basin District Authority to come up with suggestions before the professional basis is in place. It is a good thing that

the sector authorities are working on professional prioritisations and cooperation within the field of auditing watercourse licences, both in relation to the Water Regulation and in relation to many other interests. In fact, the revision of licences is a subject in which considerable regional and local interest should be expected by way of contributions to the management plan for watercourses. The sector authorities for water are welcome to make their prioritisations and give their recommendations to the River Basin District Authority in order for those recommendations to be incorporated into the planning process. However, contributions from the River Basin District Authority should be postponed until a later stage of the planning process. We are therefore turning down the invitation to participate at this stage. (...)

When it comes to coming revision cases, practical problems might easily arise if one is to allow for up to 340 watercourse licences for the period leading up to 2022. We therefore understand full well that attempts will be made on a national basis to tentatively screen them and that after that, work is started in accordance with a separate regulatory framework for the sector. It is very important, however, that this screening, which we understand to be tentative, does not suggest restrictions that downgrade any well-founded measures in the water management plans.

Moreover, we see it as being somewhat unclear how the final list of coming revisions is intended to be used. If it is intended as a list of priorities suggesting which water-course licences should be revised, then the list should be submitted for broad public consultation.”

In its letter of 1st of November, 2012, to the Norwegian Water Resources and Energy Directorate, the Authority for the River Basin District Vest-Viken writes:

“We cannot see that there is sufficient knowledge for us as a river basin district authority to prioritise between regulated watercourses where minimum water flows/reservoir limitations are relevant and downgrade watercourses where as a rule only standard terms and conditions are relevant.

Our reasons for this are the following:

- Regulation of hydropower is a significant issue in a number of our water districts and in several of them hydropower is among the sectors with the greatest impact on the water environment. Many of the regulations in the water basin district are old and lacking terms and conditions for the environment.*
- We are still following the set schedule for the work on the water management plan. Environmental objectives and environment-improving measures are suggested in the local measures analyses forming the basis for any prioritisation in the management plan with an accompanying programme of measures when it is submitted for consultation on 1 July 2014.*
- The River Basin District Authority received a number of critical arguments from the municipalities, the sub-districts and the county administrations to the effect that the project is being carried out with a national perspective. There is a need both*

locally and regionally to look at matters related to the watercourses' significance in terms of attraction and adventure for both locals and tourists (wanting to live there, regarding public health, the outdoors, recreational facilities, the aesthetic experience, experiencing nature, biodiversity), community development (e.g. the fact that the watercourses have sufficient capacity to sustain increased housing and business development) and industrial development, including in particular the watercourses' significance for tourism in the water district.

- *It is important that the players concerned such as the municipalities, sector authorities, the public, and licensees are given a real opportunity to participate. It has not been possible to have adequate participatory processes by the deadline the River Basin District Authority has had to make suggestions for this national review*

We would also like to refer to our letter of 1 November 2012 to the Ministry of Petroleum and Energy and the Ministry of the Environment in respect of this national review."

In the letter mentioned to the Ministries, the Authority for the River Basin District Vest-Viken writes:

"The result of such a national prioritisation will be of great significance to the watercourses, the communities and the interested parties. The River Basin District Authority is critical to the fact that this review does not allow for thorough and competent assessments. (..)

The prioritisations in such a national review must be based on the weighing-up of interests through professional and democratic processes in the management planning work. This national review is perceived more as a sector project and questions are therefore asked as to whether it contributes to creating common understanding and expectations. (..)

The Authority for the River Basin District Vest-Viken considers it unfortunate that this national review is rendered independent of the planning processes. We want to carry out the management planning work in line with the set schedule and within the framework of the Water Regulation. We therefore do not consider this national review to be conveying the prioritisations that the River Basin District wishes to make as part of the planning work. The River Basin District Authority will promote any prioritisations in the management plan in cooperation with the players concerned when the plan is submitted for processing in 2015."

The Authority for the River Basin District Sogn og Fjordane writes in their letter of 2nd of November, 2012, to the Norwegian Water Resources and Energy Directorate:

"In our view, as a river basin district authority we do not have sufficient knowledge to be able to prioritise between which watercourses should have minimum water flows introduced and which watercourses should have a lower priority when as a

rule it is only relevant to have standard terms and conditions for improving the environmental status.

The grounds for our view are as follows:

- *There has not been sufficient time in the water districts for an adequate process to be introduced locally. It has not been possible to come up with adequate participatory processes by the deadline set.*
- *We are still following the schedule for the work on the management plans. Environmental targets and presentation of measures will be included in the measures analyses for the various water districts. Work on the measures analyses is starting now and is to be completed by the end of 2013. Any prioritisation of relevant measures will be carried out in the management plan with an accompanying programme of measures.*
- *The River Basin District Authority has received a number of critical addresses from municipalities and the water districts regarding the process. They refer to the fact that the national process initiated by the Ministry of Petroleum and Energy (OED) and the Ministry of the Environment (MD) ought to have been coordinated on the work forward on the management plans with the programme of measures and the Water Regulation.*
- *There is a need to take a more holistic view of the watercourses, e.g. to look at all the influences in a watercourse context. (...)*

It is not clear to us how the national review and the list of priorities for coming revisions of watercourse licences are to be used further on. As far as we understand, the national list of priorities is to be completed in 2013. If the idea is that this list is to set the trend for which watercourses it is relevant to let more water into, the list should be sent out for broad public consultation.

The situation between the management plan and such a list of priorities should also be discussed further. The mandate specifies that "if a management plan indicates a prioritisation that differs from that which follows from the national review, it must be stressed when adopting the plan by way of a royal decree that the plan is not in compliance with the national prioritisation. It is not clear what the consequences of this wording are.

We kindly ask for a clarification of the situation between the management plan and the national list of priorities. The Norwegian Water Resources and Energy Directorate (NVE) have stressed that both the national review and the prioritisation of future watercourse licences and the management plan are to be incorporated into the basis for decisions in the revision case. We believe there should be better correlation between the Water Regulation/the management plan and future watercourse revisions."

The Authority for the River Basin District Møre og Romsdal writes in their letter of 18th of October 2012 to the Norwegian Water Resources and Energy Directorate:

“The River Basin District Authority for Møre og Romsdal believes that sufficient time, has not been reserved for true participation and collection of knowledge from regional and local commissions in this process. At the experience seminar at Klif’s on 12 September it was stressed by the Ministry of the Environment’s representative that the management plan with the programme of measures which is now being processed was the most important input in the process with prioritisation of revisions of terms and conditions. The River Basin District Authority of Møre og Romsdal is leaning on this specification and we will come up with our prioritisation in the management plan to be adopted in 2015. Then we will have a better opportunity to facilitate an open process with a high degree of participation, based on the best possible knowledge and with political participation.”

The Authority for the River Basin District Nordland writes in their letter of 18th of October, 2012, to the Norwegian Water Resources and Energy Directorate:

“After an overall assessment VRM (Authority for the River Basin District) have reached the conclusion that we do not want to come up with suggestions for this work now. Our reply this time around is that the final prioritisations and frameworks for future licences in Nordland will be contained in the management plan adopted for the River Basin District.

During the period up to the end of 2013, local analyses of measures are to be carried out in the water districts. During those processes decisions are to be reached as to which measures are necessary to implement in order to improve the water environment in the river basin district. To make suggestions now would be to anticipate this work and provide unnecessary guidelines for the local work. Decisions as to which concessions should be revised, and at what time, belong in these local processes, where overall assessments are made in line with the Water Regulation.”

Several of the River Basin District Authorities agree with the complainants that it is not appropriate to prepare such a list of prioritised watercourses based on existing knowledge, not integrated to the planning process or the procedure foreseen by the WFD.

The undersigned organisations look forward to the further processing of the case by ESA.

For any questions regarding this letter, please contact Tine Larsen (e-mail tl@lundogco.no, phone +47 99 11 99 31) or Stein Erik Stinessen (e-mail ses@lundogco.no, phone +47 99 11 99 12).

Best regards

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Arnodd Håpnes, manager of the Liaison Committee of Nature Conservation (SRN)

Lasse Heimdal, manager of The Union of Outdoor Recreation Organizations (FRIFO)

Christian Steel, manager of the Norwegian Biodiversity Network (SABIMA)

Torfinn Evensen, manager of Norwegian Salmon Rivers (Norske Lakseelver)