

WIDE BAY BURNETT CONSERVATION COUNCIL INC

Applicant

BURNETT WATER PTY LTD (ACN 097 206 614)

Respondent

FEDERAL COURT OF AUSTRALIA
QUEENSLAND DISTRICT REGISTRY

- 7 OCT 2008

FILED / RECEIVED

APPLICATION
(Order 4, rule 1)

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

A. DETAILS OF CLAIM

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

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

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

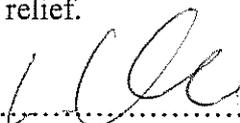


Environmental Defenders Office (Qld) Inc
30 Hardgrave Road
West End Qld 4101
Tel: (07) 3211 4466
Fax: (07) 3211 4655
Email: edoqld@edo.org.au

B. CLAIM FOR INTERLOCUTORY RELIEF

The applicant does not claim any interlocutory relief.

Date: 7 October 2008


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Larissa Waters (Acting Principal Solicitor)

C. NOTICE TO RESPONDENT

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

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

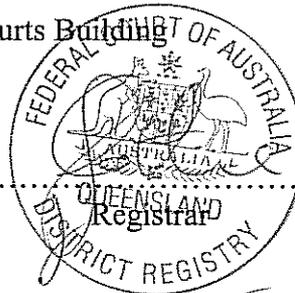
- (a) the application may be heard;
- (b) directions may be given for the further conduct of the proceeding;
- (c) any application for interlocutory relief may be heard.

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

Time and date for hearing: 9.30am **FRIDAY 07 NOV 2008** 2008

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

Date: 7 October 2008



D. ABRIDGEMENT OF SERVICE

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

Date:
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Registrar

E. FILING AND SERVICE

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

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

It is intended to serve this application on Burnett Water Pty Ltd of Level 9, 120 Edward Street, Brisbane.

Date: 7 October 2008

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Larissa Waters (Acting Principal Solicitor)

