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Possible violation of the Water Framework Directive by the Norwegian government

Our address and information

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The purpose of this letter

We request EFTA Surveillance Agency's (ESA's) assessment on whether Norway has violated the Water Framework Directive (WFD) by allowing the removal of *Furumokjela*, an important part of the estuary of the river Orkla in Orkdal¹.

Furumokjela is to be filled with gravel/ soil, and our question is whether the removal of Furumokjela represents a violation of principles and targets set by the WFD.

The Water Framework Directive of EU is accepted as Norwegian law, normally referred to as Vannforskriften (The Norwegian Water Regulation), and entered into force in 2007. This means that it is highly probable that a violation of the Norwegian Water Regulation represents a violation of WFD as well.

The river Basin Management Plan covering the Orkla estuary was adopted by the Norwegian government in July 2016.

¹ Orkdal is a municipality of Sør Trøndelag, mid-Norway.

The river Orkla is 182 km long from Orkelsjøen to Orkdalsfjorden, has a mean water flow of 67 m³/second at the estuary, and is especially important for salmon and sea trout. Until late 1960s the Orkla estuary was one of the largest in northern Europe. Then a large part of the estuary was changed into an industry area. Until today, Furumokjela has been maintained as an important part of the old estuary, but is now planned to be removed. The illustrations at the end of this letter show Furumokjela as an integrated part of the Orkla estuary, both historically and today.

The characteristics of Furumokjela

Furumokjela is a part of a water body of side streams, physically connected to Orkla. The definition of the water body is “*Orkla bekkefelt vest, Fannrem - Orkdalsfjorden*” (EU-ID:NO121-558-R). (Orkla side streams west, Fannrem - Orkdalsfjorden). (Our translation).

Furumokjela is an integrated part of the estuary of the river Orkla, and is an important nutritious area for fishes, birds, insects etc. The water body of which Furumokjela is a part, is a natural water body with moderate ecological status. Furumokjela is Orkla’s only side stream with brackish water, and is therefore especially important as a nursery area for the Orkla sea trout. The number of sea trout in Orkla has been significantly reduced during the last years, and it is very important to take care of the nursery areas left for the sea trout along Orkla.

The environmental goal of the water body, is expressed in the regional river basin management plan:²

“Standard miljømål innen 2021 settes for vannet i vannregion Trøndelag med mindre annet er angitt i regional vannforvaltningsplan”. (Chapter 4.1)

“Standard environmental goals before 2021 are applied to all waters in the river basin district Trøndelag, unless otherwise stated in the regional water management plan.” (Our translation)

The Norwegian red list of endangered habitats³ states that Furumokjela is of a habitat type listed as endangered (EN). It is therefore important to manage such habitat types with great care.

National salmon conservation rivers (Nasjonale laksevassdrag) is a status given to some important salmon rivers in Norway. The river Orkla has status as a National salmon conservation river, which includes Furumokjela.

The industry project concerning Furumokjela

In order to establish a large and flat industrial area, it is decided to fill Furumokjela with gravel/ soil and combine it with the flat farmland around. (See illustrations). The project is expected to give about 150,000 m² flat industry area.

² Regional plan for vannforvaltning i vannregion Trøndelag 2016 – 2021, Vedtatt av fylkestinget i Sør-Trøndelag fylkeskommune 16.12.2015.

³ <http://www.biodiversity.no/Pages/135568> Red List of Ecosystems and Habitat Types.

There are alternative locations for establishing large industry areas, both in Orkdal and in other communities in Sør Trøndelag that can be used instead of the area around Furumokjela. These alternative locations have far less negative environmental consequences and have about the same size.

The regional state authority of Sør Trøndelag, Fylkesmannen i Sør Trøndelag, has accepted the decision to remove Furumokjela, which means that the Norwegian government has accepted this decision as well.

The water authority of Orkla and “fylkesrådmannen i Sør Trøndelag” say that the decision to remove Furumokjela violates WFD

The local water authority of Orkla has stated that the project violates the Norwegian Water Regulation (and thereby also the WFD): ⁴

Original Norwegian text

“Gjennfylling av Furumokjela vil være et brudd på § 4 i vannforskriften som sier at «overflatevann skal beskyttes mot forringelse, forbedres og gjenopprettes med sikte på at vannforekomstene skal ha minst god økologisk og god kjemiske tilstand». I følge regional plan for vannforvaltning skal vannforekomsten som Furumokjela er en del av nå dette målet innen 2021. Igjenfylling av Furumokjela vil føre til at miljømålet ikke vil bli nådd.”

English

“The filling of Furumokjela is a violation of § 4 of the Norwegian Water Regulation, stating that “surface waters shall be protected against deterioration, shall be improved and recovered so that the water body should at least reach good ecological and good chemical condition.” According to the regional river basin management plan, including Furumokjela, these measures should be reached by 2021. The filling of Furumokjela makes it impossible to achieve the environmental measures.” (Our translation)

Rådmannen of Sør Trøndelag has expressed a similar view, that the project violates the Norwegian Water Regulation (and thereby also the WFD). We cite in detail from rådmannen’s assessmen: ⁵

Original Norwegian text

“Materialet bekrefter at miljømålene etter vannforskriften etter all sannsynlighet ikke oppnås, og at det sannsynligvis vil skje en forringelse i den berørte vannforekomsten. Dette er i strid med vannforskriftens §4 og vedtatte miljømål i regional plan for vannforvaltning.

Vannforskriften reflekterer konvensjonen om biologisk mangfold, CBD, som Norge har signert. CBD forplikter Norge til å ta vare på naturmangfoldet gjennom de såkalte

⁴ Meeting Vannområdeutvalget for Orkla, 6. November 2017.

⁵ Papers from the meeting of fylkesutvalget in Sør Trøndelag 17. October 2017

Aichimålene. Målene skal være sikret i 2020. Alle delmålene berøres negativt av den foreliggende planen, og den bryter både med visjonen og hovedmålet med konvensjonen.

Norge har også ratifisert Ramsarkonvensjonen som gjelder bevaring og fornuftig bruk av våtmarker gjennom lokale og nasjonale tiltak. Konvensjonen gjelder for alle økosystemer der vann inngår, med særlig vekt på forvaltning, bruk og samarbeid. Medlemslandene er forpliktet til å oppfylle målsetningene.»

«En slik kroksjø som er foreslått fjernet, opprettholder ikke bare økologiske funksjoner og innehar ikke bare et biologisk mangfold, men den kan også motvirke og dempe flom. Kroksjøen bidrar også til naturlig rensing av vann.»

Konsekvensutredning:

«Kompensere for den tapte kroksjøen i Furumokjela ved å etablere et lignende miljø på andre steder ved Orkla. Konsekvensutredningen anbefaler å se nærmere på dette, men peker også på at det er svært vanskelig å erstatte slike habitater, blant annet på grunn av ulikt saltinnhold. Det er ikke i tråd med vannforskriften å akseptere en usikker kompensasjon som høyst sannsynlig vil medføre en forringelse av dagens situasjon.» (Vår understreking)

English:

“The reports confirm that the environmental objectives, according to the Norwegian Water Regulation, will probably not be reached, and will probably lead to a deterioration of the water body. This is contrary to § 4 of the Norwegian Water Regulation and the established environmental goals of the regional river basin management plan (of Orkla).

The Norwegian Water Regulation reflects the Convention of Biological Diversity, CBD, that Norway has signed. CBD commits Norway to take care of the biological diversity expressed by the so called Aichi goals. These goals are to be reached by 2020. All goals are negatively influenced by the project plan, that violates both the vision and the main goal of the convention.

Norway has signed the Ramsar convention on conservation and reasonable use of wetlands through local and national measures. The convention applies to all ecosystems with water, and puts special weight on management, fair use and cooperation. The member countries are committed to fulfil the objectives.”

“The type of side stream (Furumokjela), that is planned to be removed, maintains ecological functions and biological diversity. It also counteracts and reduces flooding and maintains natural rinsing of water.”

Impact assessment:

«Compensate for the loss of the side stream Furumokjela by establishing a similar environment other places along Orkla. The impact assessment (IA) recommends that this should be looked into, but at the same time the IA concludes that it is very difficult to substitute such habitats, due to differences in salt content and other differences. The Norwegian Water regulation does not accept an uncertain compensation that probably will imply a worsening of the existing situation. » (Our underlining and translation)

Our comment

Fylkesrådmannen i Sør Trøndelag has assessed whether the removal of Furumokjela is acceptable by the Norwegian Water regulation, and has found several reasons to conclude that this is not acceptable. As the Norwegian water regulation is the Norwegian version of the EU Water Framework Directive, this means that the removal of Furumokjela most probably is a violation of WFD as well.

Although Fylkesrådmannen assessed the removal of Furumokjela to be a violation of the Norwegian Water Regulation, the majority of the political assembly of Sør Trøndelag county, Fylkesutvalget, accepted the application to establish Furumokjela and Furumoen as a large industry area.

Our previous actions concerning this case

In several previous letters to Orkdal municipality, with copies to Fylkesmannen i Sør Trøndelag, we have expressed our view that it would be a violation of WFD to remove Furumokjela.

Confidentiality

We authorise the EFTA Surveillance Authority to disclose our identities in its contacts with the authorities of Norway.

Yours



Mads Lokeland

Head of Naturvernforbundet i Orklaregionen

Attachment:

Illustrations of Furumokjela

Illustrations of Furumokjela



Furumokjela is a part of the water body “Orkla side streams west, Fannrem – Orkdalsfjorden”

Historic change of the estuary of the river Orkla 1965 - 2014



Furumokjela 1965



Furumokjela 2014