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## Decision opens door for legal action on river

Ben Cubby

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A LANDMARK court decision yesterday cleared the way for an environment group to pursue a power company for allegedly allowing toxic water to spill into the Sydney Water catchment near Lithgow.

The Blue Mountains Conservation Society was granted the right to have its court costs capped, allowing it to go ahead with a case against Delta Electricity, the operator of Wallerawang coal-fired power station. Delta Electricity obtained a two-week adjournment to consider whether to appeal the judgment.

Heavy metals and contaminants such as arsenic, copper, boron and very high levels of salt are thought to have been leaching out into a section of the Coxs River and killing aquatic life, based on a series of independent tests and regular monitoring by the company.

Delta Electricity and the NSW Department of Environment and Climate Change have known about the discharges for at least two years. But the company has been operating within the boundaries of its environmental protection licence, which requires that Delta monitors its discharges but does not require that some of the pollution levels be reduced.

The NSW Land and Environment Court decision, delivered by Justice Nicola Pain, marks the first time an environment group in NSW has been able to guard itself against escalating costs. Justice Pain ordered that any costs incurred at the end of the case be limited to \$20,000, the maximum the conservation society says it can pay in the event that it loses the case.

"This is a precedent which hopefully will be very encouraging for other environment groups," said a society spokeswoman, Tara Cameron. "Now we are looking forward to pursuing the case and our main concern is back on stopping the pollution in the Coxs River. There are salts and heavy metals that we know don't belong there and the Coxs River is dying."

Delta Electricity has maintained it operates within its license conditions and has provided the government monitoring authority with regular updates on discharges from its power station.

The Department of Environment and Climate Change has recently reviewed Delta's environmental protection license and believes it is appropriate. It says its licensing system is stringent and many prosecutions have been carried out against companies that have breached licenses in the past two years.

A report compiled by a University of Western Sydney researcher, Dr Ian Wright, found that arsenic levels downstream from the plant were "large and unnatural", but were unlikely to pose a risk to human health. High levels of copper, boron, fluoride and salt "were likely to be toxic to aquatic ecosystems".

The Opposition spokesman on the Blue Mountains, Michael Richardson, said the case exposed flaws in the state's system of controlling toxic discharges.

"This case is not solely about the safety of Sydney's water," Mr Richardson said. "It's about the Government's environmental protection licenses not protecting the environment."

The Environmental Defenders of NSW, which is undertaking the case on behalf the society, said the decision was in the public interest.

*This story was found at: <http://www.smh.com.au/environment/decision-opens-door-for-legal-action-on-river-20090909-fhn8.html>*