
in the matter of: the Resource Management Act 1991

and

in the matter of: Applications by Central Plains Water Trust to:

Canterbury Regional Council for resource consents to take and use water from the Waimakariri and Rakaia Rivers and for all associated consents required for the construction and operation of the Central Plains Water Enhancement Scheme

Selwyn District Council for resource consents to construct and operate the Central Plains Water Enhancement Scheme

and

in the matter of: A notice of requirement by Central Plains Water Limited to:

Selwyn District Council for the designation of land for works associated with the construction and operation of the Central Plains Water Enhancement Scheme

Legal submissions on behalf of Ashburton Community Water Trust

Dated 11 May 2009

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**CHAPMAN
TRIPP** 

LEGAL SUBMISSIONS ON BEHALF OF ASHBURTON COMMUNITY WATER TRUST

Introduction

- 1 The Hearing Panel is in the process of considering legal submissions and comment in response to their minute dated 1 April 2009.
- 2 This has included extensive legal submissions by the applicant for resource consents and a notice of requirement in relation to the construction and operation of the Central Plains Water Enhancement Scheme.¹
- 3 These submissions are now presented on behalf of the Ashburton Community Water Trust (*ACWT*) who has been joint applicant with the Central Plains Water Trust (*CPWT*) to take water from the Rakaia River (CRC021091). Although given in support of *CPWT*, they have not been discussed with the Trust and the views contained within are, in simple terms, *ACWT*'s views of what *CPWT* *could* do across the other side of the Rakaia River.

Ashburton Community Water Trust

- 4 A similarly comprised Hearing Panel² has already indicated that it might be in position to grant consents in relation to the *ACWT* scheme and *ACWT* is expecting a final decision on the grant of its own consents shortly.
- 5 Through discussions with Council officers, we also understand that *ACWT*'s component of the joint take application will be assigned a new and separate consent number. *ACWT* therefore has a rather limited interest in its original joint-application.
- 6 However, *ACWT* does wish to see as much of the *CPWT* scheme proceed as is possible.
- 7 These submissions accordingly provide a practical-focused discussion to the extensive legal submissions already provided by *CPWT*. From *ACWT*'s perspective, although the actual evidence relating to any revised scheme will be presented in due course, it is also appropriate to address at this stage and at a more conceptual level, what that might be.
- 8 These submissions therefore focus on:
 - The nature of the *CPW* application and the ability to reduce the proposal sought through the current suite of *CPWT* applications;

¹ Being Central Plains Water Trust in relation to resource consents; and Central Plains Water Limited in relation to the notice of requirement (together *CPWT*).

² Commissioners Milne, Fenemor and O'Callaghan

- A conceptual description of some of the options that might be open for CPWT and the possibility of having a different, but within scope, irrigation scheme abstracting water from the Rakaia and Waimakariri Rivers;
 - The relationship between what has been sought and what could now be granted by the Commissioners – and whether it is within scope for the Commissioners to grant consents relating to a much reduced scheme; and
 - Issues around avoiding the unnecessary ‘grant of allocation’ and the need to provide a mechanism to potentially make water available to other aspirant applicants if allocation is not used.
- 9 At a higher level, ACWT also wishes ensure that the development of water resource across wider Canterbury is in line with the Canterbury Water Management Strategy (formerly the Canterbury Strategic Water Study) (CWMS). Although to an extent peripheral to the current hearing process, the CWMS does provide a wider context to the Canterbury water resource. It also gives some weight to the importance of carefully considering, and hopefully resolving the issues with the originally proposed CPWT application.

The Central Plains application

- 10 The Central Plains application is unusual in that the original joint application to take water was individually lodged in December 2001.
- 11 The joint take application then remained on hold until November 2005 when CPWT lodged the main balance of its applications that related to the use, discharge, diversion and other activities that related to the Central Plains Water Enhancement Scheme. These (along with subsequent applications by both CPWT and ACWT) have obviously all now been heard.
- 12 A major part of the CPWT case has been the construction and operation of a large storage dam in the Waianiwaniwa Valley and the importance to individual farmer-shareholders on certainty and irrigation reliability.
- 13 The storage dam would have accommodated CPWT as the sole source of irrigation water supply for all forms of intensive cropping and pastoral production. Accordingly, one of the key matters that the Hearing Panel will need to determine is whether a sustainable scheme can still be developed utilising more run-of-river based takes from both the Waimakariri and Rakaia Rivers.
- #### **The alternative operating framework (and scheme)**
- 14 In one sense, whether the Commissioners can decline the dam and reservoir, upper intake and tunnel is not dependent on the consents that are declined, but rather the consents and ‘scheme’ that would remain were the balance of the application accepted.

- 15 In this context a Central Plains Water Enhancement Scheme without storage would clearly be a different type of supply to that proposed in the original application. However, a run-of-river scheme could still provide a number of benefits, including:
- a suitable reliability to supply through to early January, which could support cropping operations and supplement other existing and future uses;
 - a more energy efficient water supply to the 30,000 ha of properties that currently irrigate from groundwater within the CPW command area:
 - (a) A dominantly gravity-based surface water supply is less expensive to operate than pumping from groundwater; and
 - (b) Consent compliance costs and management would also be significantly reduced through scheme (rather than individual) supply;
 - water to fill on-farm storage reservoirs (which are being constructed at an increasing rate across the Canterbury Plains);
 - the ability to supplement takes from both rivers with flows from the other – for example, when the Waimakariri was on restriction it might be possible to continue with an alternative take from the Rakaia;
 - a reduction in the annual volume of groundwater abstracted by existing groundwater consent holders (through the possibility of existing consent holders only relying on their own groundwater consents when the scheme is on restriction). This would be beneficial given the concerns expressed by ECan staff and the more recent classification of the CPW command area as a red zone.
- 16 In addition to this there might still be the possibility of accessing or developing alternative sources of storage in the future. The possibility of some other sites has already been presented to the Hearing Panel (for example Lees Valley and Lake Coleridge). It is also worth emphasising that it is not necessary for there to be a single large reservoir – another option would be medium sized reservoirs such as those that are now being proposed and developed (post the original grant of consent) by Barrhill Chertsey Irrigation Limited.
- 17 Reservoirs proposed in respect of the Rangitata South Irrigation Limited scheme (as a permitted activity alongside the scheme's take consents) are another example of a very useful approach.

- 18 Other options include better water utilisation between existing users on both the Waimakariri and Rakaia Rivers. The Waimakariri River Regional Plan (WRRP) already contemplates the possibility of Water Users Groups,³ and the additional possibility of a better regime on the Rakaia through the formation of a Water Allocation Plan gives further opportunities to CPWT.
- 19 The wider use of groundwater as an individual or scheme based resource (as it is for the Eiffelton Irrigation scheme) is yet another possibility for the CPWT scheme.
- 20 Adjacent to this are the more recent agreements on the Rakaia which have allowed the merger of existing bands 4 and 5. This will result in Glenroy Community Irrigation Company Limited (*Glenroy*) who already holds 1.96 m³/s of consents (and will integrate with CPWT) becoming more reliable – again to the benefit of CPWT upon integration.
- 21 Further discussions between other Rakaia abstractors are also ongoing.
- 22 Another one of the key areas that will determine the feasibility of any revised proposal is the allocation of water from the Waimakariri River. Whilst the total allocation of water from the Rakaia River is at least to a large extent specified by the NWCO, the allocation of water from the Waimakariri River has been left relatively open ended by the Waimakariri River Regional Plan (*WRRP*).
- 23 To date, Environment Canterbury has also 'left open' a block of water for CPW at flows above approximately 65 m³/s.
- 24 During the hearing (and perhaps based on CPWT's desire at that stage to maintain its existing allocation of 40 m³/s), there have been various discussions on a suitable minimum flow for the CPWT Waimakariri take. This has varied at different times between levels of 80 m³/s and, in terms of the submissions by some submitters, levels approaching 100 m³/s.
- 25 The minimum flow cut-offs for any consent granted are critical on the Waimakariri. By means of example, the unmodified median flow in the river for the months of the irrigation season were set out in Mr De Joux's evidence as:

September	116.7 m ³ /s
October	142 m ³ /s
November	130.9 m ³ /s
December	113.7 m ³ /s
January	85.5 m ³ /s
February	67.6 m ³ /s

³ Although the extent to which these might relate to *A permit* water and CPWT is unclear

March	67.7 m ³ /s
April	77.4 m ³ /s

- 26 Accordingly, a run-of-the-river scheme with the ability to only take flows at much higher levels would be extremely unreliable. In this context, CPWT may be able to develop an allocation regime that can cause only minor effects on the river through a reduced level of allocation but which would still provide good reliability of supply through to 31 December through being able to take at lower (~65 m³/s) levels (and a less frequent supplementary supply to irrigators using groundwater and storage reservoirs during the months of January-April).
- 27 An allocation of perhaps 25 cumecs or less (as was referred to in some contexts in CPWT's own evidence) might therefore be an appropriate starting point and the final allocation could be confirmed through a revised reliability assessment in due course.
- 28 The details of the actual peak abstraction rates and a feasible allocation regime for both Rivers will accordingly need to be worked through and presented in evidence at any resumed hearing. For present purposes I however submit that there are options available for CPWT – and that many of these will fall within the framework of the existing application.
- So how different would such a scheme be?**
- 29 As has been set out in the legal submission for CPWT, the scope of the Hearing Panel's jurisdiction is defined by the original application and any amendments that might be made up to the close of the hearing.⁴ Further, when assessing a change to an application is permissible it is appropriate to determine whether the change:⁵
- increases the scale or intensity of the activity.
 - exacerbate or mitigates the impacts of the activity, in terms of the adverse effects and the Plan; and
 - would result in parties who have not made submissions having done so if they had been aware of the change.
- 30 Obviously at this stage an amendment has not been proposed by CPWT – however, it is submitted that this matters little as the Commissioners have an equivalent discretion to grant only part of a proposal. There is nothing in the Act that directs a consent authority to grant all of the resource consent applications sought if, in granting only some of the consents, it is still possible to have a sustainable proposal.

⁴ *Darroch v Whangarei District Council* (Unreported Planning Tribunal, Auckland A018/93)

⁵ *Coull v Christchurch City Council* (Unreported Environment Court, Christchurch, C077/06)

No increase in the scale and intensity

31 As has been set out above, without the large storage reservoir, the magnitude of water abstraction from the Waimakariri and Rakaia Rivers (and particularly the Waimakariri) could be less than the 40 m³/s that was originally applied for.

32 In addition to this is the obvious reduction in effects through the decline (or withdrawal) of consents relating to the dam, reservoir, upper intake, tunnel and associated works. This would need to be balanced against any increase in adverse effects – however in the present instance it is submitted that there are, in the context of *Coull*, none that would weigh against the granting of consent.

33 In particular, there will be:

- a reduced peak rate of abstraction from the Waimakariri and, possibly, Rakaia Rivers;
- a reduced overall volume of abstraction from the Waimakariri and possibly the Rakaia Rivers;
- less water supplied within the command area resulting in smaller groundwater mounding effects (including continued pumping from upper-plains aquifers which will alleviate the increase in groundwater mounding that would have occurred under the original proposal);
- less nutrient effects through a reduction in irrigable area (in the context of a completely 'brown-fields' development v supplementing existing takes); and
- less impact due to the reduction in the infrastructure (e.g. dam, reservoir, upper intake and tunnel).

No exacerbation in effects

34 For the reasons noted above, it is also unlikely that there will be any exacerbated effects as result of any revised proposal.

35 In this context it is appropriate to emphasise that the discussion above around taking at much closer to a 65 m³/s minimum flow cut-off is in accordance with the original application.

36 The changes to groundwater mounding and nutrient effects will also mitigate (rather than exacerbate) any effects.

No more parties would have made submissions

37 In the present context this is perhaps the real issue. *Coull* was based on the general line of cases starting with *South British Auckland Property Company Limited v Auckland City Council*⁶ where the Planning Tribunal focused on the issue of whether anyone else

⁶ (1987) 12 NZTPA 94

would have submitted on the proposal. The principle was stated as being:

"...whether persons other than the parties to the proceedings might have intervened if the changed or amended plans had been the basis of the public notification"

- 38 In the Resource Management Act context, this has been developed further in *Haslam v Selwyn District Council*⁷ where the Planning Tribunal stated the principle as being:

"The test ... is whether the amendment is such that any person who did not lodge a submission would have done so if the application information available for examination had incorporated the amendment"

- 39 In the CPWT context, there have been at least 1492 submitters who have raised a large variety of issues with the Central Plains Water Enhancement proposal. Many of these have been focused on the upper intake and Waianiwaniwa Valley parts of the scheme. The take of water from the Waimakariri (which would still be a part of any reduced proposal) has also received a considerable number of submissions.
- 40 However, there have also been a considerable number of submissions (which include above) that were generally opposed to the CPWT proposal and to irrigation of the Central Plains area.
- 41 In this context, it is clear that the issue can only ever be sustained by reference to a potential class of people **outside** the process who could potentially complain that had they properly understood the application to be in the form it resembled by the time it got through the hearing they would have submitted in circumstances where they otherwise would have not.
- 42 It is submitted that there are no such people in the present context.
- 43 Although there are a large number of submitters who may have now made submissions, and in some instances appeared at the hearing when they would have not, the reverse is not true.

Making applications separately

- 44 There are two aspects to this discussion:
- the potential for CPWT to advance on the basis of its existing take and use (and perhaps some of the more immediately associated consents) without other parts of the *original* proposal; and

⁷ [1993] 2 NZRMA 628

- the ramifications of CPWT having to make applications in the future – these could, for example, be for dual use consents relating to the supplementary supply of existing groundwater takes, alterations or additional consent applications to accommodate a pure run-of-the-river scheme (although these seem to be limited, if any) and the possibility of future on-farm and scheme based storage.
- 45 In the context of the above it is accepted that as a starting point that:
- “Good resource management practice requires that **in general** all resource consents required should be carefully identified from the outset and that application is made so that they can be considered together jointly.”⁸
- 46 The above statement was made by the Court in the context of a decision shortly after the RMA had been enacted and was pitched as a general statement to applicants and Councils. Obviously therefore that statement needs to be read as a generalisation rather than an absolute requirement and at a time when practices under the RMA were first developing.
- 47 Accordingly, it is clear that the statement in *Affco* is not a formal requirement of the RMA. In short, there is no provision in the RMA which would preclude an applicant from making applications for resource consent at separate times, notwithstanding the fact that they may relate to the same overall project. Even in the direct context of storage, the Barrhill proposal is an excellent example of this approach.
- 48 Turning to the more immediate circumstances of this case, the Court of Appeal also seems to have acknowledged that it was not necessary for all applications to have been made and heard at the same time.⁹
- 49 And perhaps pre-empting the comments the Court of Appeal, in *Kett v Auckland RC*¹⁰ Judge Sheppard accepted that it is not always practicable to apply for all resource consent applications at once, especially for major projects on a large scale. This approach has been adopted in subsequent cases.¹¹
- 50 It has also approach that has been adopted by Environment Canterbury through Commissioner Peter Skelton and the staging of

⁸ *Affco New Zealand Ltd v Far North District Council (No 2)* (1994) NZRMA 224 (Planning Tribunal decision)

⁹ *Central Plains Water Trust v Ngai Tahu Property Limited* [2008] NZRMA 200

¹⁰ ENV C A 86/2000, Environment Court

¹¹ For example *Roman Catholic Diocese of Auckland v Franklin DC* (Environment Court W 28/2004)

the Meridian Hunter Downs Irrigation and North Bank Tunnel concepts in the Waitaki – Minute **attached**.

51 In the Meridian context it was suggested that:

- *"the proposal"* primarily related to the taking of water from the Waitaki River and what needed to be understood was the effects of that take. This largely emulates the sentiment of the Court of Appeal in the present matter and has already been comprehensively addressed in the application documents and in evidence.
- the effects of the taking of water would extend to ECan needing to understand matters such as:
 - (a) efficiency of the use of water taken;
 - (b) intensification of land use;
 - (c) groundwater quality and levels

and for this reason the Stage I applications included applications for the use of water for irrigation within a defined area. This is, and still is, how the CPWT application has been advanced; and that any reduction in the effects of the current suite of consents would still provide adequate detail on the above.

- in order to understand that proposal (the taking and use of water) it was not necessary to actually apply at the same time for the consents associated with the construction, development and operation of the irrigation scheme itself which, in simple terms, is the device by which the conveyance of water from the river to its intended destination.

52 On this basis there should be nothing to prevent the Commissioners declining part of the proposal in favour of a reduced, but sustainable run-of-the-river scheme. Secondly, in relation to any further applications (if any) there is nothing to prevent those applications being made at some later stage.

53 At a more basic level there is also nothing in the Act that would prevent a consent holder from making further applications to alter or extend the nature of their scheme – Barrhill and its recent discussions to use the Rangitata Diversion Race and to develop storage are examples of this approach.

Resource lock-up

54 Counsel for CPWT has already given considerable legal submissions on the concept of resource lock-up that do not need to be repeated here – however, within the detail of the CPWT submissions, I consider that the issue can be dealt with quite simply; that is through the imposition of appropriate consent conditions, it should be possible to avoid the resource being locked up to detriment of other ‘aspirant applicants’.

55 The Barrhill situation provides an example of this approach. Consent CRC990088 (the Barrhill take consent) was granted on the basis of a condition that simply provides:

16 The Canterbury Regional Council may, on any of the last five working days of June 2005, 2010, 2015, 2020, 2025 and 2030, serve notice of its intention to review the conditions of this consent for the purposes of:

- (a) **altering the rate of abstraction to correspond to the actual rate of water usage;** and/or
- (b) amending the minimum flow restrictions in condition (3) to reflect any changes in the abstraction rate of the other abstractors from the river.

[Emphasis added]

56 The imposition of such a condition in the CPWT context will need to balance providing financial certainty to the consent holder to develop the scheme with the possibility of preventing other applicants from accessing the resource.¹²

57 This may call upon a much more comprehensive condition to that provided for Barrhill. Matters that could be considered include:

- specific performance or development targets with the right to review if there is a much reduced level of uptake;
- a general right of review, but one that was only able to be exercised after an appreciably long time delay to allow CPWT to access the resource;
- the right to review specific parts of the scheme after a certain period – e.g. the Waimakariri take (which might, for example, be harder to develop given the lack of existing infrastructure on the south bank of the Waimakariri).

58 A wider level, the Courts also seem relatively clear that a consent can be granted in a similar manner to Ngai Tahu’s A and B permit application on the Waimakariri to allow the possibility of a first-in-

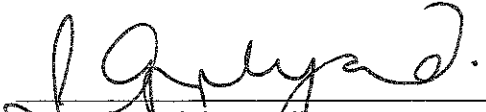
¹² See a similar provision under section 131 for discharge and coastal permits (relating to section 15)

time applicant (or consent holder) having access to the resource after the more recent consent holder.

Conclusion

- 59 ACWT considers that it is possible for Central Plains to show that it either has:
- sufficient reliability for a run-of-river scheme that could support cropping operations and supplement existing takes and/or
 - sufficient reliability with the addition of existing groundwater, better existing water use, and the possibility of smaller on-farm or scheme-based storage to support something up to the full extent of the previously proposed scheme.
- 60 It is also worthwhile to acknowledge that the Waimakariri River Regional Plan and the NWCO have both recognised the possibility of future abstraction. Allowing that water to be used by an organisation that can optimise the supply from both rivers via a combined head race and distribute it to a broad base of water users, including a large number of existing groundwater users, is likely to be the best use of this water.
- 61 And this leads to the higher level submission that was set out in my introduction – that is the desire for the Central Plains Water Enhancement Scheme to advance in some form given the outline area’s position in the CWMS.
- 62 The CWMS is now in its fourth stage which includes a public consultation phase to hopefully set the future framework of the development and management of the current and future Canterbury water resource. The previous 3 stages have all been of a more technical nature and all have identified the possibility of sustainable irrigation development (and storage options) for the Central Plains area.
- 63 In this context it is submitted that the Hearing Panel should be particularly reluctant to depart from any proposal that both accommodates irrigation within the existing CPWT outline area and that is within the scope of the original applications.

Dated: May 2009


 JM Appleyard / BG Williams
 Counsel for the Ashburton
 Community Water Trust

**Before The Canterbury
 Regional Council**

In the Matter
of

Applications by Meridian
Energy Limited and South
Canterbury Irrigation
Trust divert, take and use
water from Lake Waitaki
and the lower Waitaki
River

Minute of Commissioner Skelton

1. Meridian Energy Limited (MEL) has lodged applications for water permits in connection with its proposed North Bank Tunnel hydroelectric generation scheme in the lower Waitaki River. At the same time MEL and South Canterbury Irrigation Trust (SCIT) have lodged joint applications for water permits in connection with a proposed irrigation scheme known as the Hunter Downs scheme.
2. In respect of the North Bank Tunnel proposal there are four applications as follows:

An application to divert and take water from Lake Waitaki.
Appl.CRC071094.

An application to use water from Lake Waitaki for hydroelectricity generation. Appl. CRC071139

An application to discharge water into water from an outfall to the Waitaki River. Appl. CRC 071096

An application to discharge water to land in circumstances where it may enter water from an outfall to land namely Crown riverbed Appl. CRC071878

3. In respect of the Hunter Downs scheme there are three applications as follows:

An application to divert water from the Waitaki River.
Appl.CRC071033

An application to take and use water from the Waitaki River for irrigation. Appl.CRC071029

An application to discharge surplus water back into the Waitaki River
Appl.CRC071031

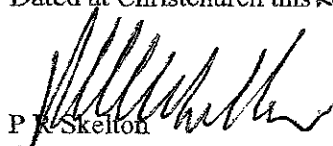
4. In connection with both sets of applications questions have arisen about whether further applications for consent are required pursuant to section 91 of the Resource Management Act 1991 (RMA).
5. By resolution dated 20 October 2006 I was appointed by the Canterbury Regional Council as a Commissioner to decide notification issue relating to the above applications and to deal with all preliminary matters (except matters related to charging) incidental to these notification issues including matters under sections 91 and 92 of the RMA.
6. I have received and considered a memorandum from Ms Jo Appleyard Counsel for MEL and SCIT on the matters raised by section 91. I have also received and considered reports on the same matters from Ms Jacqui Todd a consultant engaged by Environment Canterbury, which deals with the North Bank Tunnel proposal and a further report from Mr Warwick Pascoe also a consultant engaged by Environment Canterbury, which deals with the Hunter Downs irrigation proposal. I have also received and considered a report from Ms Patricia Harte a consultant engaged by the Waimate District Council which has an interest in these section 91 issues by reason of the fact that it is the territorial authority responsible for the control of land uses in the Waitaki River.
7. After considering the memorandum and the reports I convened a meeting at the offices of Environment Canterbury on 11 December 2006 to discuss the section 91 issues with counsel and the consultants. Others present at this meeting included Ms Sarah Dawson a planning consultant engaged by MEL and SCIT and Ms Bianca Sullivan and Mr Donald Fraser, staff members of Environment Canterbury.
8. MEL and SCIT wish to divide the necessary resource consent processes for both the hydroelectricity proposal and the irrigation proposal into two stages. The first stage (stage 1) is intended to cover the seven applications earlier referred. The second stage (stage 2) for each proposal would involve further applications for consents associated with the infrastructure for both proposals. These are likely to involve land use consents for which considerable detailed technical work is still to be done by the applicants.
9. The reason for seeking to stage the resource consent process is because both the North Bank Tunnel proposal and the Hunter Downs proposal involve changing the water allocation regime contained in the recently operative Waitaki Catchment Water Allocation Regional Plan. This means that consent to non-complying activities is required and both MEL and SCIT recognise that this is likely to be very contentious. Consequently, neither wishes to embark upon the detailed planning that would be required for the applications in stage 2 until it is known whether (in particular) the take and use permits referred to

in paragraphs (2) and (3) will be granted. In other words whether the water required for both proposals will be available.

10. While the reasons for staging set out above make good sense in terms of efficiency, particularly from the point of view of the applicants, my task is to make decisions based on the tests set out in section 91. In this case it is common ground that further applications are required and consequently the first test for deferral in section 91(1) (a) is satisfied. On the second test in section 91(1)(b) my main concern has been that to better understand the nature of the present applications to divert water, land use consent applications may also be required. This is because the diversions or at least the one in the Waitaki River will probably affect the in stream values as well as the river bank. The diversion in Lake Waitaki (if in fact there will be one at all) may not be so critical. In this regard I pointed out at the meeting that the judgment of the Court of Appeal in *Stewart v Kanieri Gold Dredging Ltd* might be helpful. There the Court of Appeal held that diversion within a water body could still occur where there was a change in the direction of flow.
11. At the meeting it was finally agreed that a section 91 deferral would be appropriate for the two applications for consent to divert and that these should be deferred until the necessary land use consent applications are lodged in terms of the applicants' proposed stage 2. It was also agreed that the current application for consent to discharge associated with the Hunter Downs proposal should be deferred on the same terms.
12. This will mean that the current applications for consent to take (minus the divert), use and discharge in connection with the North Bank Tunnel proposal and the current application to take and use in connection with the Hunter Downs proposal will proceed as stage 1 of a two stage resource consent process for both proposals. I record here that for the purposes of section 91 of the RMA I am satisfied that the current applications including the comprehensive Assessments of Environmental Effects contain sufficient material to enable a consent authority to understand the nature of both proposals and in particular the takings and uses of water associated with each of them.
13. I further record that both MEL and SCIT accept that both sets of applications that are now to proceed should be publicly notified and on the basis of the advice I have received from Ms Todd and Mr Pascoe both applications are now ready to be notified for the purposes of section 92 of the RMA.
14. In the result I make the following decisions:
 1. Application CRC 071094 is deferred pursuant to section 91 of the RMA until further applications for land use consents associate with the North Bank Tunnel proposal are lodged with Environment Canterbury.
 2. MEL is to lodge a new application to take water from Lake Waitaki to replace that part of Application CRC 071094 currently seeking consent to take.

3. Application CRC071033 is deferred pursuant to section 91 of the RMA until further applications for land use consents associated with the Hunter Downs irrigation proposal are lodged with Environment Canterbury.
4. Application CRC071031 is deferred pursuant to section 91 of the RMA until further applications for land use consents associated with the Hunter Downs irrigation proposal are lodged with Environment Canterbury.
5. The new application to be lodged pursuant to (1) above and Applications CRC071139, CRC071096, CRC071878 and CRC071029 are to be publicly notified pursuant to section 93 of the RMA. When the time for lodging submissions has expired these applications are to proceed to a joint hearing pursuant to section 103 of the RMA.

Dated at Christchurch this 21 day of December 2006



P. R. Skelton
Commissioner