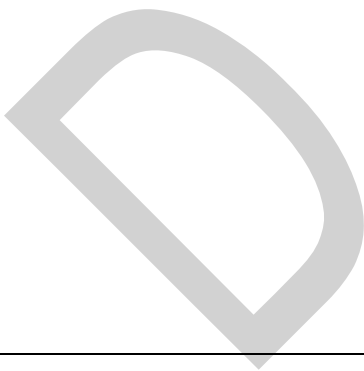


In the matter of: The Resource Management Act 1991

And

In the matter of: Resource Consent Applications to take and use water
downstream of Waitaki Dam, and ancillary activities



BRIEF OF EVIDENCE OF KERI JOY JOHNSTON

Dated: August 2008

Introduction

1. This is a supplementary Brief of Evidence prepared to provide an overview of information presented to the Waitaki Allocation board (WAB) to now, in relation to annual allocation. The purpose of this evidence is to review the effectiveness of Rule 6, Table 5 allocations at least as they apply to the lower Waitaki River in the catchment above Black Point.
2. The implementation of Rule 6, Table 5 of the operative plan is now uncertain because:
 - 2.1 The allocation of 150 million cubic metres was likely based on erroneous information;
 - 2.2 In 2006 the Canterbury Regional Council (CRC) re-issued mining privileges taking up surplus allocation; and
 - 2.3 The rules and policy are uncertain leading to differences in assessment.
3. There have been at least eight attempts between June 2005 and July 2008 to quantify exactly how much water is allocated in the Waitaki Catchment.
4. Of particular relevance to these applications is the annual allocation to activities for agricultural and horticultural use downstream of Waitaki Dam but upstream of Black Point.
5. I will address each matter in turn.

The annual allocation of 150 million cubic metres per year was likely based on erroneous information

6. Evidence presented to the WAB by Mr. Rob Potts in June 2005 indicated that there was 112 million cubic metres per year allocated for this use in the reach. The CRC produced a list of all resource consent applications to take and use water, including rate of take, but did not produce annual allocation figures.
7. In June 2007 the CRC recalculated annual allocation¹ their estimate being 194 million cubic metres per year, is a **substantial** increase from the 112 million cubic metres per year estimated by Mr. Potts to the WAB in June 2005.
8. During the course of 2007, six further analyses of annual allocation were made, ranging from 116.51 million cubic metres per year to 149.5 million cubic metres

¹ Sullivan et al, June 2007.

per year. In July 2008 the CRC revised downward its previous estimate of annual allocation to 144.4 million cubic metres. This is shown below in figure 1.

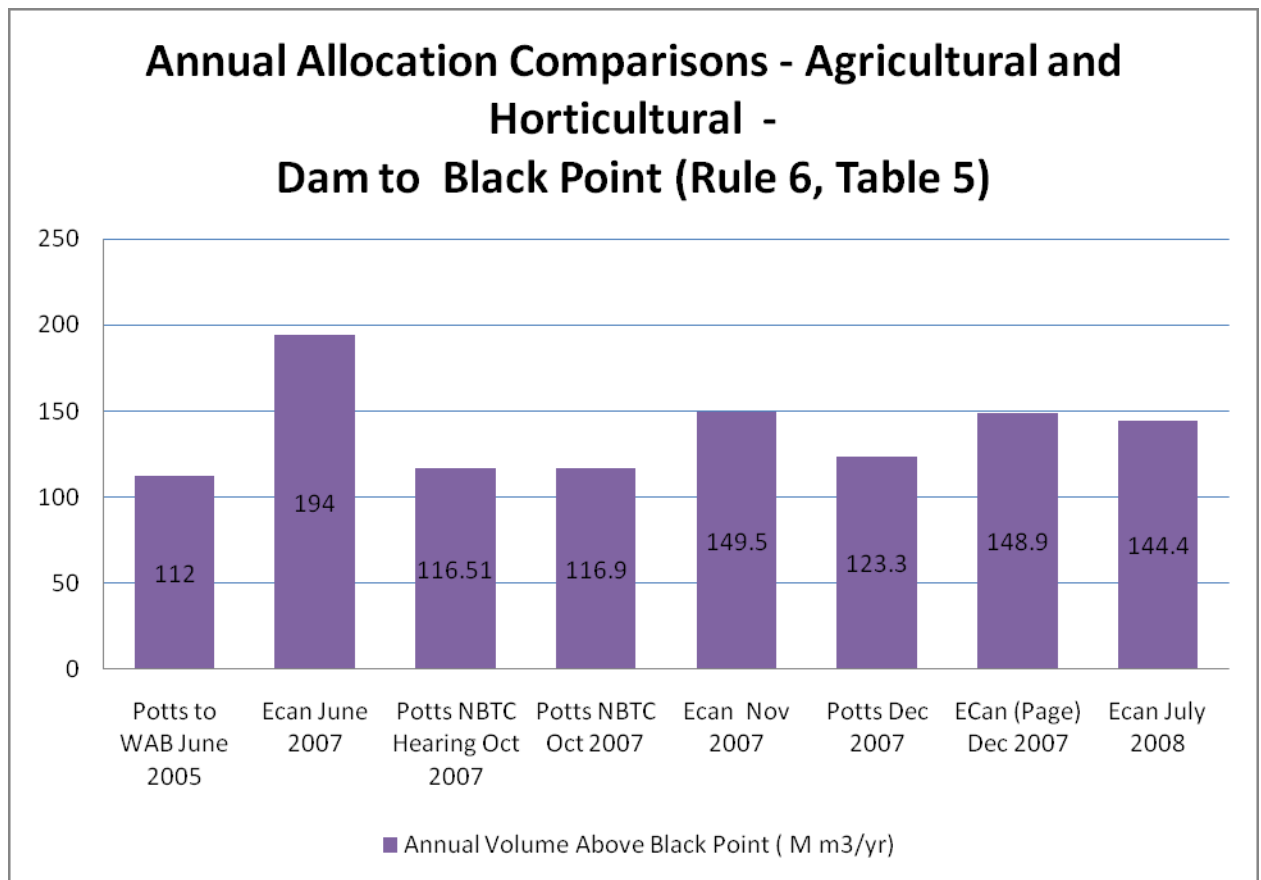


Figure 1

9. The reasons for the changes are varied. The primary reasons are as follows:

- a. Failure to identify all existing surface and groundwater permits;
- b. Failure to identify all applications for resource consent;
- c. Recording of existing permits in the wrong catchment
- d. Double counting of some existing consents;
- e. Double counting of applications to renew existing consents;
- f. Omission of mining privileges

Number of existing consents in the Catchment

10. Information concerning the total number of water permits included in the allocation has changed.

11. Mr. Potts and the CRC presented evidence to the WAB in June 2005 listing all the water permits issued in the catchment. In Mr. Potts list of water permits, there were 116 surface water takes and 35 groundwater takes (a total of 151 existing permits). The CRC list of the same had 135 surface water takes.

12. In July 2008 the CRC advised that there were 95 surface water takes and 27 groundwater takes (a total of 122 consents). This is shown in Figure 2 below.

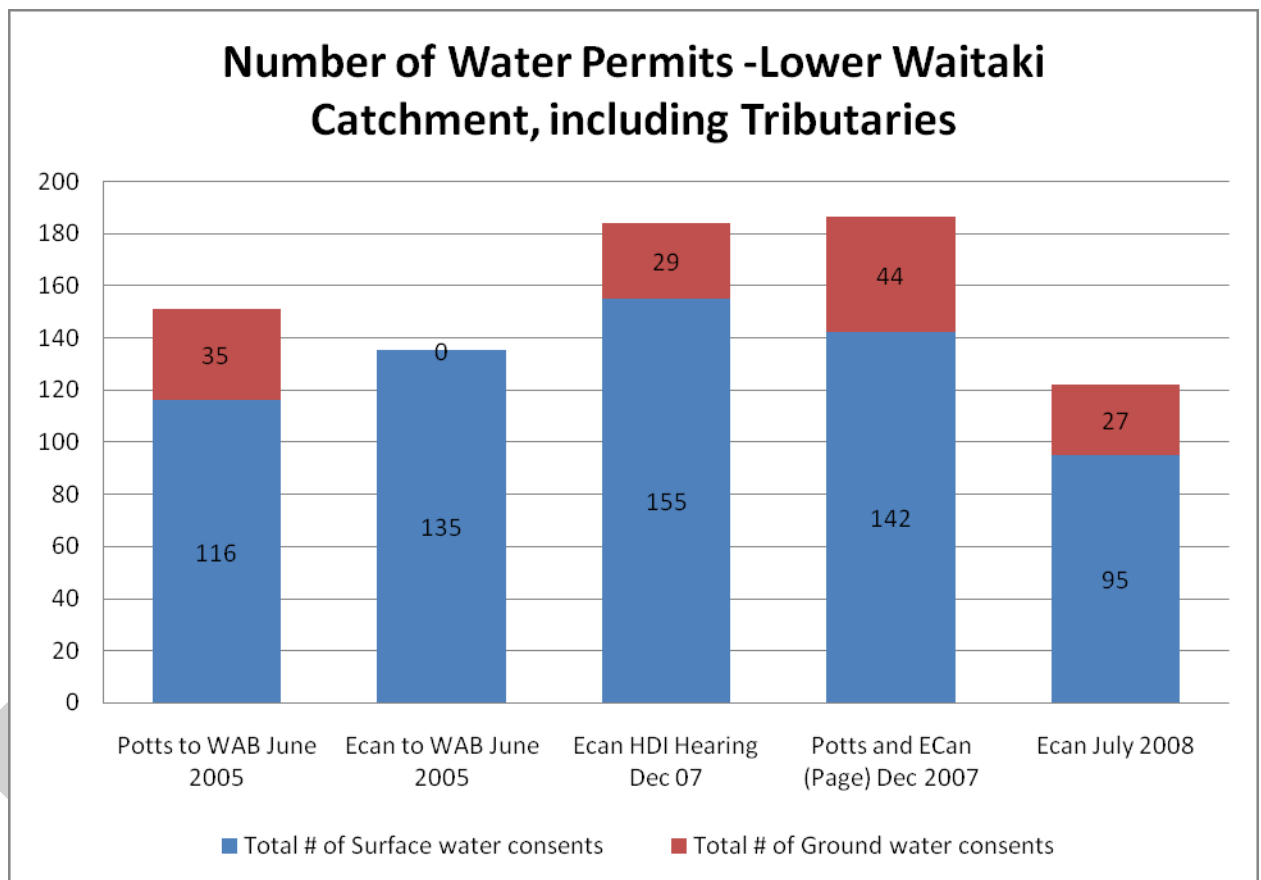


Figure 2

13. Figures 1 and 2 of this Brief of Evidence highlight that the information presented to the WAB was significantly different to the information to date. The WAB effectively made their decision on information that is now redundant and has been superseded at least seven times since then.

14. From Figures 1 and 2, depending on the assumptions used to determine annual allocation, and which resource consents are included in the analyses, affects the determination of how much water is allocated to agricultural and horticultural activities downstream of Waitaki Dam and upstream of Black Point. This is unsatisfactory for the purposes of managing water resources.
15. There are several areas which have resulted in the dramatic changes in the analyses that have been undertaken between those presented to the WAB in June 2005, and later analyses. These are as follows:

Uncertain application of rules and policy

16. The “divert versus take” debate. The CRC are including the diversion volume whereas Mr. Potts includes only the consumptive component of the activity (i.e. the take).
17. The omission of groundwater consents. In the information provided to the WAB by the CRC, **no** groundwater consents were included (Figure 2, ECan to WAB June 2005). Groundwater takes are a substantial proportion of the water permits issued in the catchment. By comparison, Mr. Potts to the WAB in June 2005 listed 35 groundwater consents of a total 151 consents, with an annual volume totaling approximately 19 million cubic metres per year. From the most recent July 2008 information the Council has now identified 27 groundwater consents.
18. The omission of mining privileges (deemed permits). In Mr. Potts to the WAB June 2005, six mining privileges were included, totaling approximately 9.3 million cubic metres per year. The CRC included **no** mining privileges.
19. In Potts/Page December 2007, there are a total of 22 mining privileges, totaling approximately 38.6 million cubic metres per year, using the annual volume specified on the deemed permits re-issued in January 2006, of 365 days per year. **All** mining privileges are issued downstream of Waitaki Dam but upstream of Black Point.
20. Another point to note in relation to mining privileges is that, although not all were accounted for in Mr. Potts evidence to the WAB June 2005, the annual allocation associated with the six that were included, was based on Mr. Potts methodology (158 days for spray irrigation and 206 days for border dyke irrigation).
21. In January 2006, following the Waitaki Allocation Plan (WAP) becoming operative, the CRC re-issued the 22 mining privileges now included in the annual allocation, with a figure based on use of 365 days of the year. All mining privileges are currently used in association with agricultural and horticultural

uses. This is clearly inconsistent with the approach adopted by the CRC for determining allocation within the catchment, being the Potts methodology, and has made a **significant** impact on the volume allocated.

Double counting of consents

22. All analyses that have been undertaken to date rely on the accuracy of records held by the CRC, and its database. Many records contain out of date information which did not accurately reflect the then current activities of consent holders and the communities that rely on the water source.
23. Figure 2 shows that in ECan July 2007, the number of resource consents currently being “counted” has reduced from previous analyses. Resource consents that have previously been counted twice, for example, resource consents currently operating under s124 of the Resource Management Act, have now been removed from the current annual allocation figures and included in the volume being applied for.
24. There have also been instances of taking the information in the CRC database at “face value” resulting in double counting. For example, the Table 3 allocation for the Hakataramea River. The CRC considered that, if all resource consents in process were granted, the allocation limit for the river would be exceeded. A check of the resource consents being included revealed that, what on “face value” looked like three separate resource consents, was actually only two. Identifying this mistake alone was sufficient to reduce the existing allocation of the river enough to allow all resource consents in process to fit within the Table 3 allocation limit for the Hakataramea River. A copy of the details relating to this example is attached to this report as “Appendix One”.

Summary

25. The constant changing of the figures has meant much confusion and frustration for all those involved in this process, and it is clear from Figures 1 and 2 that there has been considerable change from the information presented to the WAB in 2005, either by Mr. Potts or the CRC, to present. The information on which the WAB made its decision was erroneous. The WAB’s intention to provide water for existing consents, applicants and future irrigation development² has been undermined.
26. The CRC database should be subject to a thorough quality assurance check and other mistakes identified and corrected.

² See discussion as to reliability of supply in the S.32 report, Table 21 (Page 32) and Table 25 (Page 35).

APPENDIX ONE

31 July 2008

Jane Borthwick – Barrister
Canterbury Chambers,
Level 14, Clarendon Tower
78 Worcester Street

CHRISTCHURCH

Dear Ms Borthwick

RE: WAITAKI CATCHMENT WATER ALLOCATION REGIONAL PLAN – HAKATARAMEA RIVER ALLOCATIONS

Thank you for your letters dated 16 April and 8 May 2008 regarding the existing surface water allocation in the Hakataramea River.

I have reviewed the work undertaken by Ms Keri Johnson as outlined in her emails of 15 April (of which your letter of 16 April relates) and 18 April regarding the existing allocation in the Hakataramea River. Ms Johnson highlighted two errors that she has found regarding the inclusion (or omission) of the existing consents held by Davenport Holdings Limited (CRC931002.2 and CRC040309) and Mr & Mrs Clarke (CRC931003.4).

After reviewing our records, I agree with Ms Johnson that there is a mistake in the allocations. I have discussed this matter with Ms Johnson today and we are in agreement regarding what should or should not be included in the existing allocation. Below follows a summary of the consents in questions, and an outline of my findings.

CRC931002.2 is held by Davenport Holdings to divert up to 150 l/s for irrigation use.

CRC931003.4 is held by Clarke to take and use 110 l/s and 1550 m³/week for irrigation.

CRC040309 is held by Davenport Holdings to take and use 110 l/s and 2000 m³/week for irrigation.

In August 2003, both CRC931002.1 and CRC931003.2 were held by Otago Station Estates Limited. CRC931002.1 was to divert 150 l/s for irrigation and CRC931003.3 was to take and use 110 l/s and 17,500m³/week for irrigation. At that time, CRC931003.2 was partially transferred to Davenport Holdings

Limited as consent CRC040309 (which is the existing consent). The other part of the consent remained with Otago Station Estates limited and became CRC931003.3. This consent has since been transferred to Mr and Mrs Clarke and is now CRC931003.4. At the time of the transfer in August 2003, the weekly volume was divided between the two new consents, but the instantaneous rate of abstraction was not. As a result of this, condition 1 on both of these consents, allows each consent holder to take up to 110 l/s. The diversion consent (CRC931002.2) has a maximum rate of diversion of 150 l/s which is less than the maximum combined rate of take which is 220 l/s (CRC931003.4 plus CRC040309).

For reasons outlined above, I have amended our allocation table for the instantaneous rate of abstraction, and now include both consents to take water (CRC931003.4 and CRC040309), not the consent to divert water (CRC931002.2).

With regard to the questions you raised in your 16 April letter, the answers that I provide below take into consideration the findings of Ms Johnston's emails and discussions that I have had with her.

The existing surface water allocation for the Hakataramea River is 291 litres per second, and the allocation of water sought by applicants is 116 litres per second. This equates to a total allocation of water for the Hakataramea River (existing plus applications) of 407 litres per second. This is within the allocation limit stated in Table 3, row xix. of the Waitaki Catchment Water Allocation Regional Plan.

I attach a revised table, generated from Environment Canterbury's Consents Database which shows the existing consents and applications which have been included in this calculation.

I trust that this information satisfies your request. If you have any questions, please do not hesitate to contact me.

Yours faithfully

Gillian Ensor

AUTHOR'S TITLE CONSENTS INVESTIGATING OFFICER

