

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of applications for resource consent by the Central Plains Water Trust and a notice of requirement for the designation of land by Central Plains Water Limited associated with the construction and operation of the Central Plains Water Scheme

**LEGAL SUBMISSIONS ON BEHALF OF BULL FAMILY TRUST
IN RESPONSE TO COMMISSIONERS MINUTE DATED 1 APRIL AND
MEMORANDUM OF COUNSEL FOR APPLICANT DATED 2 MAY**

**ANDERSON LLOYD
LAWYERS
CHRISTCHURCH**

Counsel: J M Crawford

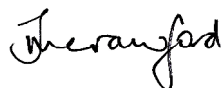
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1. This memorandum responds to matters raised in the Commissioners' Minute of 2 April 2009, along with relevant matters raised in the Memorandum of Counsel for the Applicant of 2 May 2009.
2. It is noted that a number of other submitters have provided legal submissions to the panel - including Fish & Game, Department of Conservation, Forest & Bird, Malvern Hills Protection Society and Te Runanga o Ngai Tahu. Bull Family Trust adopts those aspects of the legal submissions that are relevant to their concerns, as expressed during the course of the hearing in 2008 and as noted below.
3. Bull Family Trust submits that the panel should close the hearing and proceed to issue a final decision. It says this for a number of reasons.
4. First, and fundamentally, there is an issue of natural justice at stake in this case.
5. Landowners such as Bull Family Trust have been living under the shadow of the proposed CPW Scheme for most of this decade (since 2001). The sense of limbo was heightened further when CPW then sought a Notice of Requirement over their properties. Glenrowan Farm is one of the most significantly affected properties by the proposed Lower Waimakairi Intake and headrace canal.
6. It is unfair to leave the hearing open so as to receive further evidence from CPW later in the year that addresses a new, different proposal. The consequential delays that will follow from entertaining such a suggestion are an affront to natural justice, are unreasonable, and are inconsistent with the purpose and principles of the Resource Management Act 1991 (particularly the section 21 duty to avoid unreasonable delay).
7. The Applicant has, to date, been given the opportunity to patch up its proposal as it goes along. Lay submitters with limited resources have been forced to continually respond to new issues on an incremental basis. The Applicant is now seeking to provide further evidence to justify an entirely different scheme, in the face of likely rejection of the

dam which had previously been touted by the Applicant as a key component of its water harvesting scheme.

8. This raises two jurisdiction problems, that in my submission point to the conclusion that the Panel ought to now close the hearing and proceed to issue a final decision.
9. First, it is entirely plausible that there are other potential parties who may have submitted in respect of the proposal, had they known that an entirely different scheme was now being promoted. That points to the amendments being beyond scope, as noted in legal submissions for other parties that you will be hearing from.
10. Second, there is also a fundamental issue that will affect those submitters already participating in this consenting process. Submitters lodged their submissions in relation to a particular proposal as notified. As the panel will be aware, the scope of any appeal rights are constrained by the 'four corners' of an original submission. There will no doubt be instances where submitters wish to raise entirely different issues, in response to the new proposal if CPW is entitled to present evidence on this issue. However, as a matter of law, they will not have jurisdiction to appeal on issues that go beyond their original submission.
11. If CPW wish to now promote a different scheme, then they should take a responsible approach and follow due process, by withdrawing the applications and re-applying in accordance with normal practice. That would enable interested persons to submit and Council officers to properly assess and report on the new proposal.
12. The Applicant will no doubt resist this, presumably because it may affect their procedural claim to priority to some (but not all) of the river water, or perhaps has financial implications in terms of the loan agreement with the private interests that are propping up the scheme. That, in my submission, is not a reason to allow the Applicant to present a entirely different scheme under the auspices of its original application.

13. The panel has expressed a concern that the "all or nothing" approach would be potentially wasteful of the effort that all parties have put into this process so far.
14. The Bull family hold shares in the CPW Scheme. You heard evidence during the course of the hearing from members of the Bull family and a number of other shareholders who are in fact opposed to the CPW Scheme. It is therefore not correct to suggest that all those shareholders or other landowners within the command area will necessarily suffer financially, should the applications be declined and NOR withdrawn.
15. This submitter also questioned whether CPW has discharged its duty as requiring authority. It would appear that we now have the answer to that question. CPW has stated publicly that storage of water at Coleridge may be back on the table, an alternative that was previously and arbitrarily dismissed. On-farm storage has also been mooted as possible option. What other alternatives are likely to crop up, if the hearing is to resume to consider a new proposal later in the year?
16. With respect, it would be inherently more wasteful of resources to allow the hearing to continue on an incremental and potentially indefinite basis. And in the meantime, landowners affected by the scheme will continue to live under its ever-shifting shadow.
17. This hearing has become bigger than Ben Hur. The time has come to issue a decision based on the evidence you have received to date.



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J M Crawford
Counsel for Bull Family Trust
8 May 2009

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