

IN THE MATTER of the Resource Management
Act 1991

AND

IN THE MATTER of applications for resource
consent by various applicants
to divert, dam, take and use
water and land from the lower
Waitaki River Catchment.

**STATEMENT OF EVIDENCE OF DAVID MICHAEL NEWEY ON BEHALF OF THE
DIRECTOR GENERAL OF CONSERVATION**

Dated: 28 August 2008

**DIRECTOR GENERAL OF
CONSERVATION**
DEPARTMENT OF CONSERVATION

Counsel: P. N. Rutledge

Torrens House
Level 4, 195 Hereford Street
Private Bag 4715
CHRISTCHURCH 8140
Tel 03 371 3700
Fax 03 365 1388

INTRODUCTION

Qualifications and experience

- 1 My full name is David Michael Newey. I am the Community Relations Supervisor – RMA Planning for Canterbury Conservancy of the Department of Conservation.
- 2 I hold a Bachelor of Science (Zoology) from the University of Canterbury and Post Graduate Diploma in Resource Studies from Lincoln University. I have eleven years experience practicing in resource management planning and was admitted as an affiliate member of the New Zealand Planning Institute in 1997.
- 3 My work experience has included resource management positions with local, regional and central government, including Environment Canterbury where I was employed for 2 years as a Policy planner. My responsibilities in these positions has included a range of planning work in consents analysis, policy planning, strategic planning and community based planning.
- 4 I have been involved in several water and irrigation resource management issues including submitting and providing evidence on the Proposed Natural Resources Regional Plan and various irrigation proposals, including the Central Plains Water Irrigation Scheme. On that basis I am broadly familiar with the issues surrounding irrigation development and water takes.

Scope of evidence

- 5 My evidence provides a planning background against which Commissioners may consider evidence provided by the expert witness for the Department of Conservation (the Department). I also cite in my evidence where I have drawn upon evidence presented by expert witnesses for other parties to this hearing, expert evidence relied upon by the applicants to this hearing and Officers Reports.
- 6 In preparing this evidence I have relied on and referred to expert evidence prepared by Mr Ravenscroft in particular.
- 7 Specifically, my evidence is focussed on the requirements of the Waitaki Catchment Water Allocation Regional Plan (WRP) regarding minimum flow, annual allocation and water quality in the main stem lower Waitaki and tributaries, particularly the Hakataramea Catchment. I also address proposed consent conditions and mitigation. This evidence does not address each individual application in detail, apart from where there are some general consenting issues which relate to a particular waterbody. A list of the applications to which this evidence relates is set out in Appendix 1.
- 8 I am advised that the Commissioners directed that parties should not repeat evidence already given at earlier hearings or earlier in this hearing. On that basis I reference other experts and Officers reports where I either rely on their evidence or agree with their conclusions. To the extent I rely on and /or refer to evidence presented at the North Bank Tunnel Concept hearing and Hunter Downs Irrigation hearings I have used the evidence as presented in its original written form as publicly available from the Environment Canterbury (ECan) website.
- 9 I have read the Code of Conduct for Expert Witnesses and have prepared my evidence in accordance with the Code and agree to comply with it. This evidence is within my area of expertise, except where I state that I am relying on facts or information provided by another person.

- 10 My evidence will cover the following matters:
- Background to the Applications;
 - Activity Status of the applications under the WRP;
 - Evaluation of the proposed abstractions and uses in terms of relevant planning documents, including the WRP, PNRRP as incorporated by reference in the WRP, the Canterbury Regional Policy Statement (RPS), and other relevant strategies, Policy Documents and Plans;
 - A discussion and assessment of the proposed minimum flow and annual activity allocation in terms of section 104-108 and Part 2 of the Resource Management Act 1991 (the Act).
- 11 In relation to my overall evidence, I have not assessed whether all necessary applications have been applied for to construct and operate the proposed schemes. I rely on the ECan section 42A reports in this regard.

The Proposals

- 12 The applications have been grouped according to proposed takes from various waterbodies and locations linked to Rule 2 Table 3 and Rule 6 Table 5 in the WRP. Ms Penman sets this classification out in her s42A report – Appendix 3 to the Introductory Officers report and I rely on this report in terms of classifications and details of the applications.
- 13 The individual applicant details and description of the receiving environment are set out in the evidence of others and as such I will not repeat those details here.

The Planning Framework – Activity status

- 14 There has been much discussion around allocation and subsequent activity status. I am not in a position to discuss who is “correct” in terms of actual current allocation and applied for allocation as they relate to the plan, nor the merits or otherwise of how allocation is measured in

relation to flows, such as 1 hour rolling averages versus 24, 48 or 72 hour averages. That to one side, some analysis of annual allocation to activities and minimum flows is necessary, given that such allocation sets the basis for assessing activity status and assessment criteria – discretionary or non-complying.

Minimum flow and water allocation limits

- 15 Rule 2 Table 3 is the key tool for setting environmental flow and level regimes for water bodies in the Waitaki catchment.
- 16 The provisions of this table have been discussed in depth during the course of the hearing and as such I will limit my discussion to two points relevant to the department's submissions.

- a. Environmental flow regime in the lower Waitaki – this is outlined as being a minimum flow of 150m³/s with an allocation limit of 90m³/s (excluding non consumptive diversions above Black Point returned above Black Point) and no flow sharing regime.

The majority of applicants are now seeking to align their applications to be able to take water down to a minimum flow of 100m³/s. Such takes have the potential to have adverse effects on the environment. These effects have been assessed by experts in various hearings for takes on the lower Waitaki, including Mr Ravenscroft, and I will discuss those effects in some further detail in relation to the policy framework of the WRP.

Given however that applications for such lower flows contravene Rule 2 Table 3 xvii, Rule 16 applies and the applications are assessed by ECan as non complying activities.

- b. Environmental flow regime in all other rivers and streams – Table 3 xxii requires a minimum flow on waterways not

otherwise mentioned in Table 3 of the 5 year, 7 day low flow set at the downstream end of the catchment and a flow sharing regime at the mean flow.

This provision is relevant in relation to how flows are set within catchments and to which waterbodies within particular catchments flows appear to relate, either to the main stem of rivers or the catchment as a whole. Table 3 refers to flow regimes applying to particular waterways and tributaries primarily in the upper part of the Waitaki catchment, and single waterbodies, such as the Hakataramea River, in the lower catchment, with other rivers and streams treated separately.

Both ECan Officers and Ms Begley in her Planning evidence have interpreted the plan in this regard in a literal way, separating assessment of flows in the Hakataramea River from flows in its tributaries. However, given the evidence of Ms Johnston and Ms Anthony and Policies 1 and 43 of the WRP, an alternative interpretation could be taken, being that reference to the Hakataramea River covers the whole of that catchment.

The WRP is clear that in an over-arching sense a whole of catchment approach should be considered, as outlined in Policy 1. This is applied to some sub catchments through Rule 2 (Twizel River and tributaries etc) and also, in my opinion, through Policy 43 which sets a policy for flows in the Hakataramea Catchment. That Policy identifies the catchment has important values which should be the basis for setting flows. Rule 2 Table 3 xix is derived from Policy 43 and as such it is my opinion that “Hakataramea River” is actually referring to the same area that Policy 43 does, being the catchment.

Given the acknowledged values of the valley and the “whole of catchment” approach being proposed by the Mid Rivers New

Applicants Group (MRNAG) through the evidence of Ms Johnston and Ms Anthony in relation to proposed conditions linking minimum flows in tributaries to those in the main Hakataramea River, I believe there is merit in considering flows together combining the tributaries and main stem. This idea in relation to protection of ecological values has also been discussed by Mr Ravenscroft.

Annual Allocation to Activities

- 17 Rule 6 sets out that no person shall take, use, dam or divert water when the cumulative annual volume exceeds that set out in Table 5 of the WRP.
- 18 Table 5 outlines the varied allocation, in particular for agricultural activity above and below Black Point, being 150Mm³/year and 1100Mm³/year respectively. Therefore, with the exception of the application made by Mr & Mrs DD & VJ Chalmers, the applications considered in my evidence are subject to the 150Mm³/year allocation limit, with a subset of this being the 0.5m³/s allocation limit in the Hakataramea River (September to March).
- 19 Evidence has been presented by Ms Johnston as to her analysis of her client's application status, which differs from the assessments made by ECan officers as to the status of various applications either being discretionary or non complying. Mr Boyes has presented an alternative allocation regime for the lower Waitaki, suggesting that the 150Mm³/year should not be read as a "hard and fast" allocation limit between Waitaki Dam and Black Point, but rather there could be some cumulative allocation of 1250Mm³/year for the whole of the lower Waitaki.
- 20 While it is unclear if this type of allocation is possible, the WRP would certainly seem to anticipate applications above the 150Mm³/year allocation limits as non complying activities under Rule 16 and

subsequent consideration using the assessment framework of section 104D RMA.

- 21 As I have previously mentioned, there is also a difference of opinion as to the current actual allocation numbers and subsequent water available for allocation. I have assumed that at this point in time the consenting authority has notified applications as a particular status based on their assessment under the WRP and have notified applications according to that status. This is based on Mr Page's assessment of the existing flow and allocation regime in the lower Waitaki and availability of water for allocation as compared to Rule 6 Table 5. The majority of the applications of particular interest to the department in the lower Waitaki and Hakataramea have been assessed as non complying. Given the general nature of my evidence, I have applied section 104 tests to all relevant applications.

Policy and Plan analysis

- 22 In this section of my evidence I assess the proposed water takes, land use applications, reduced Lower Waitaki River minimum flow and increased annual allocation against the objectives and policies set out in the WRP relevant to the department's concerns.
- 23 Rather than focus on each individual application, my evidence takes a broader approach when considering the planning matters relevant to the Lower Waitaki main stem and Hakataramea catchment.
- 24 I will focus my evidence on what I consider to be the key matters being;
- whether the proposed 100m³/s minimum flow, increase in annual allocation above Black Point and proposed consent conditions and mitigation is sufficient to not be considered contrary to policies in the WRP,
 - adverse effects are adequately addressed and
 - matters of national importance are recognised and provided for.

WRP Objectives and Policies

- 25 The WRP sets out 5 objectives. In my view Objective 1 sets the overarching aim of the WRP *“to sustain the qualities of the environment of the Waitaki River and associated beds, banks, margins, tributaries, islands, lakes, wetlands and aquifers...”*.
- 26 Objectives 2 to 5 are the enabling Objectives, allowing use of water for peoples needs which is technically efficient and allocates water in a “fair” way while recognising effects and national and local costs and benefits.
- 27 Objectives 1 and 2 are both directly applicable to the annual activity allocation set out elsewhere in the WRP. In relation to the applications being considered here, which largely exceed the annual allocation for agricultural and horticultural activities set out in Rule 6/Table 5, these objectives and associated policies are key considerations in order to grant consents. The specific policies to give effect to these objectives are discussed in greater detail below.
- 28 I note that the applicants seeking a 100m³/s minimum flow on the main stem of the lower Waitaki rely on evidence presented by experts appearing for Meridian Energy Limited at the Hunter Downs Irrigation Scheme (HDIS) hearings. There is also conflicting evidence on the effects of such a minimum flow which the applicants have not referred to. The potential effects have therefore not been addressed and in my opinion calls into question the ability of the applicants to meet the criteria outlined in Objective 1.
- 29 I refer here to the s42A report of Dr Allibone who concludes that a minimum flow of 100m³/s will have significant effects on native fish during dry years and that effects on Canterbury Mudfish have not been adequately assessed or addressed, therefore concluding that the effects would not be minor.

- 30 I also refer to Dr Jessops s42A report and Ms Robertson's evidence regarding wetlands, riparian areas and effects of reduced minimum flows on bird habitat. Dr Jessop concludes that insufficient information had been provided to be able to assess whether the effects of the scheme, primarily a lowered minimum flow, would be no more than minor on those values he considered.
- 31 Given the assessments I have referred to, combined with the apparent lack of reference or adoption of any consent conditions to participate in the proposed mitigation schemes outlined in Meridians experts evidence, it is unclear in my opinion that the current applications are not contrary to Objective 1. I will discuss this further in relation to the relevant policies below.
- 32 Applicants in the Hakataramea Valley provide a mixture of ecological evidence ranging from none to some one off fish surveys, such as R Robertson, Star Holdings and Mr NJ Small having had assessments of the river and/or tributaries carried out.
- 33 Dr Donovan (for R Robertson) and Mr Ravenscroft have outlined the significance of the Hakataramea as a fish habitat and as a significant habitat for indigenous fauna, in particular lowland longjaw galaxias and longfin eel. I will discuss the relevance of these matters further under the relevant policies.

Policies

- 34 In order to reduce the extent of assessment and avoid repetition, my evidence only addresses those policies where a concern has been raised by the Department.

Environmental flow and levels regime – Policies 2-8

- 35 Policies 2-8 provide a framework for the consideration and setting of environmental flow and level regimes in water bodies in the catchment allowing water to be taken while taking into account the effects of flows on particular values, such as effects on water quality, fish passage and habitats.
- 36 These policies are relevant in different ways to the Waitaki main stem takes and the Hakataramea catchment takes.
- 37 Policies 2, 3 and 4 are of particular relevance to the proposed main stem takes given the applications being considered here are seeking lower minimum flows and increased allocation above that specified in Rule 2.
- 38 Policy 2 (d) recognises the need to provide a high level of protection for wetlands with a moderate or higher significance. Welcome Creek is recognised as such a wetland in changes made to the Regional Plan: Water for Otago under the Waitaki Catchment Amendment Act 2004. That change adds Welcome Creek to the schedule of Significant Wetlands under that plan.
- 39 Welcome Creek is one of the Canterbury Mudfish habitats I discussed under my consideration of Objective 1. Mr Ravenscroft has outlined the significance of this habitat and the potential loss of habitat and subsequent effects on an already threatened species. I therefore consider that in this instance the proposed lower flow regime will be contrary to Policy 2(d).
- 40 The issues Mr Ravenscroft raises are also relevant when considering Policy 4. He has identified, as did Dr Jellyman and Mr Jowett in their evidence to HDIS, a reduced minimum flow will result in loss of indigenous fish habitat. Mr Ravenscroft does not conclude however; as Dr Jellyman does, that if there is a dry year and habitat/fish are lost that

they will simply recover the following year. He suggests there are other factors to be taken into account, such as increased predation and the cumulative effect of loss of habitat.

- 41 I also refer to my earlier discussion on bird habitat and Dr Jessops s42A report and Ms Robertson's proposals in her evidence that mitigation would be required to offset increased predation and vegetation encroachment which could occur at lower flows. I note that the applicants, while relying on Ms Robertson evidence, have not made any commitment through consent conditions to engage in or contribute to the mitigation measures she has proposed.
- 42 That being the case, I consider that the applications seeking a minimum flow of 100m³/year have failed to adequately consider subsections c, d, e and f of Policy 4 and are therefore contrary to this policy.
- 43 While Policy 3 and 4 are also relevant to the Hakataramea catchment applications, Policy 7 also needs to be considered in relation to the smaller waterways in that catchment.
- 44 Mr Ravenscroft has outlined the very high significance the Hakataramea catchment has as habitat for the nationally critically threatened lowland longjaw galaxias. He has also noted that in his opinion there is a lack of analysis by many of the applicants as to the actual values of waterways and the flows required to protect those values. He also suggests that the proposed minimum flows in the catchment, if linked to ongoing survey and monitoring work, could go some way to addressing the adverse effects of the proposed applications.
- 45 That being the case, I consider that if those actions raised by Mr Ravenscroft, if implemented prior to the catchment wide review of consents, could represent sufficient consideration of matters under Policy 3 and 4.

- 46 In terms of Policy 7, Mr Ravenscroft provides no opinion as to the merits of locating takes either in smaller streams or the main stem of the Hakataramea, apart from the need to have minimum flows on both tributaries and the main stem in order to protect values in both.

Mixing of Waters – Policy 9

- 47 This policy would be a relevant consideration for the Haka Valley Irrigation Ltd application if the discharge from their proposed irrigation was to enter water within the Hakataramea catchment. I understand they will however require a section 52 certificate from Biosecurity New Zealand in relation to Didymo.

Allocation to activities – Policy 13

- 48 Policy 13 requires the consent authority to “*have regard to the extent to which the exercise of the consent could result in the water quality objectives of the Natural Resource Regional Plan not being achieved*”. In this regard Objectives WQL1.1 and WQL 2 of the NRRP are relevant to the Hakataramea as they outline objectives for surface and groundwater quality, with associated criteria outlined in Table 5.
- 49 The Department, along with Fish and Game, ECan Officers and Ms Torgeson have commented that the possible degradation in water quality as a result of water use is a potential issue. This is supported by the anecdotal observations of Mr Ravenscroft of large filamentous algae growths during times of low flow.
- 50 ECan have used the report prepared by Environment Canterbury (commonly known as the GNS report) as a basis of their assessment along with the lack of information supplied by the applicants.
- 51 I understand at this point in time there is some uncertainty as to whether the water quality of the Hakataramea catchment currently meets the

water quality outcomes set out in Table WQL 5 of the NRRP. Given the disparity between modelled results and actual water testing results (Ms Torgersons evidence), the MRNAG applicants intend to improve water quality through the use of “adaptive management” consent conditions as outlined in Appendix R of Ms Johnstons evidence.

- 52 Given the uncertainty of outcomes from such actions (i.e. lack of clarity or certainty about proposed farm management plans and what standards will be set in those plans), the actual impacts or effects on water quality are unknown. I am therefore not able to assess if the MRNAG applications are contrary to Objective 1.1 and 2.
- 53 I note that the R Robertson application does not include any consent conditions relating to nutrient budgeting or farm plans linked to irrigation. It is therefore less likely that that group of applications will meet the water quality outcomes in Table WQL 5 and Objectives 1.1 and 2 of the NRRP.

Locality specific policies

Hakataramea catchment – Policy 43

- 54 The MRNAG applicants are proposing to set an alternate flow regime in terms of differing minimum flows and cut off points for takes within all waterways in the Hakataramea catchment as opposed to those outlined in Rule 2 Table 3 WRP. As I have already discussed, Mr Ravenscroft suggests those flows may go some way toward addressing water quantity issues in the valley, provided adequate ecological and physical monitoring is undertaken before, during and after implementation of consents.
- 55 As I have already discussed, I also note that Policy 43 refers to the “Hakataramea catchment” and that the flow regime set in the rules is based on the values of the catchment. This in my view supports my

earlier discussion of my interpretation of Policy 43 and what constitutes the Hakataramea catchment.

Tributaries of the Lower Waitaki River – Policy 44

56 Otekaieke River and tributaries – The Department submitted on the Warnbro and Sunny Downs Limited applications. I understand after discussions with the applicants that the Department is satisfied with proposed consent conditions on the Warnbro application and has withdrawn its right to be heard. In relation to Sunny Downs, concerns remain as to cumulative ecological effects from the increased allocation of water within the agriculture “block” and effects of proposed lower minimum flows.

57 Kurow – The Department submitted on Westmere Estates Limited applications. Proposed consent conditions in the Officers report, if adopted, would meet the Departments concerns.

Lower Waitaki River – Policy 45-46

58 I accept Mr Ensors Officers report (Report 2) that all current and proposed allocations are within the 90m³/s abstraction rate.

RESOURCE MANAGEMENT ACT 1991

Sections 104-108

59 Relevant section 104 matters have been discussed throughout my evidence, with reference to the witness called by the Department and other experts.

Section 104

60 In relation to s.104 (1)(a) I consider that the cumulative effect of the applications may give rise to some significant actual and potential effects

on the environment arising from the construction and operation of the majority of the water takes and uses in the lower Waitaki catchment. Of particular note are:

- The possible significant and cumulative effects on threatened bird habitat and values of the Waitaki River, as outlined by Ms Robertson, combined with the lack of adoption of mitigation proposed by Ms Robertson by the current applicants in the lower Waitaki.
- The potentially significant effect on threatened Canterbury Mudfish and their habitats as outlined by Mr Ravenscroft.
- The potentially significant effect on threatened lowland longjaw and their habitats if a robust monitoring and review system is not implemented.

61 In relation to s.104 (1)(b), I consider that the applications in the lower Waitaki and Hakataramea will be contrary to some of the Objectives and Policies in the WRP and I have identified where I believe that to be the case. I have also identified other relevant policies which I cannot assess the applications against given the lack of certainty as to outcomes and lack of information in those cases.

Canterbury Regional Policy Statement

62 Under section 104(1)(b)(iii) of the Act, the consent authority shall have regard to any relevant Regional Policy Statement (RPS). I consider that the WRP gives effect to the objectives and policies set out in the RPS, and address the matters set out therein in greater detail. On that basis no further consideration of the RPS is considered necessary in the context of this evidence.

63 In relation to s104(1)(c), I consider there are other matters, in particular other plans and strategies, which are relevant and reasonably necessary to be considered. These are outlined below.

The New Zealand Mudfish Recovery Plan 2003 – 2013.

- 64 This plan is a further relevant consideration given the recognised key habitat of the threatened Canterbury Mudfish which will be affected by the proposed applications. The plan has been referred to by Mr Ravenscroft in his evidence. The key overall objective for the plan is:
- 65 Objective 1 – “Protect and manage habitats with key mudfish populations”

Section 104D

- 66 In relation to section 104D, based on the experts evidence and Officers reports I have referred to, the effects of the reduction in minimum flows that are being sought will be more than minor and are contrary to some of the Objectives and Policies in the WRP, which I have referred to earlier. Proposed activities in the Hakataramea catchment will have effects that are more than minor if those conditions discussed below are not adopted.
- 67 Given the limited number of policies I have reviewed I am unable to make an overall assessment as to whether the activities are contrary to all the relevant provisions of the WRP and NRRP or the overall direction of the WRP.

Section 108

- 68 Section 108 allows for consents to be granted with appropriate conditions. Proposed conditions for the MRNAG consent applications are set out in the evidence of Ms Johnston, Ms Antony and Mr McIndoe. Some other applications have also included proposed consent conditions.
- 69 Consent conditions for all applicants on the Waitaki main stem vary between applicants. For all the applications I have reviewed I have not seen any proposed consent conditions which address the concerns

raised by the Department, in particular lowered minimum flows on the Waitaki main stem, increased water abstraction and the subsequent adverse effects from these activities.

- 70 Conditions which would avoid, remedy or mitigate effects could be adopted for those applications in the Hakataramea Catchment which are not seeking lowered minimum flow on the lower Waitaki. In relation to water quality, the MRNAG applicants place great weight on the use of management plans to address various effects of the proposed schemes. Consent conditions need to set out details, standards, be specific and measurable for effects to be addressed and these details would have to be provided to and assessed by submitters in order that they could assess if their concerns had been addressed prior to any consent being granted.
- 71 Proposed conditions relating to minimum flows, fish screen design and monitoring of ecological values and flows for activities in the Hakataramea catchment may address the Department's concerns, as suggested by Mr Ravenscroft, if linked to catchment review of consents and applied to all applications in that catchment.
- 72 Generally, adoption of the s42A reports and Ms Johnston's recommended conditions relating to adopting fish screen standards outlined under the "Fishscreen working Group Guidelines" and Condition 14 of Appendix R are supported and suggested for all consent applications where they are relevant.
- 73 One further issue raised by the department was the term of consent. Such consideration is relevant to these applications, particularly in the Hakataramea catchment which has been identified as having significant values and current water quality and quantity issues.
- 74 I note that all applicants are seeking a 35 year term of consent. While the applicants require some certainty to allow investment in

infrastructure, account must also be given to the nature of the activity and sensitivity of the environment and uncertainties. To this end, Environment Canterbury is proposing to introduce a sliding scale for consent duration under the NRRP. Officers (Officers Report number 1) are suggesting consent terms of 15-35 years may be appropriate for water permits where there is high knowledge about the water source and low sensitivity of the environment to the activity. The scale reduces from that point down to 5 years. The department supports this approach, particularly in relation to the Hakataramea Catchment, allowing for monitoring, assessment and review.

PART 2 – PURPOSE AND PRINCIPLES

75 In considering an application for resource consent, pre-eminence must be given to Part 2, which sets out the purpose and principles of the Act.

Matters of National Importance – Section 6

76 Section 6 sets out that in achieving the purpose of the Act all persons exercising functions and powers under it shall recognise and provide for matters of national importance set out therein. Of relevance to these proposals in terms of matters raised by the Department, are:

77 **Section 6 (a)** – The ecological aspects of natural character that have been discussed by Mr Ravenscroft, Dr Jessop, Dr Allibone and Ms Robertson. Generally they have concluded that the effects of lower flows on the main stem may be more than minor. It is therefore unclear in my opinion if the natural character of these areas will be preserved.

78 **Section 6 (c)** – as noted in the evidence of Mr Ravenscroft, Dr Allibone and Ms Robertson, impacts can be expected on the significant habitats of Canterbury Mudfish and braided river birds from lower minimum flows in the main stem of the lower Waitaki. Given the lack of adoption of bird habitat mitigation and Mr Ravenscroft's evidence on Canterbury Mudfish,

reducing the minimum flow to 100m³/s will not protect significant habitat of indigenous fauna.

- 79 In relation to significant habitat in the Hakataramea catchment, particularly for lowland longjaw galaxias, any consents granted should be short term and have comprehensive monitoring and fish passage conditions included to enable effects to be addressed habitat protected.

Section 5

- 80 Section 5 outlines the Purpose of the RMA, being to allow the use of natural resources for some benefit while sustaining their long term potential, ensuring their life supporting capacity is safeguarded and avoiding, remedying or mitigating adverse effects.
- 81 The Applicant's have put forward a case that their proposals will provide people access to water to irrigate land, thereby providing social and economic benefits to people and communities.
- 82 There are however several potential adverse effects which have been identified by the experts I have referred to. In some cases these effects could have the potential to affect the significant habitat or life supporting capacity through the reduction of minimum flows.

CONCLUSION

- 83 I have presented evidence in support of the Departments submissions.
- 84 I accept this is one component of the wider analysis of the proposed water takes, diverts, dams discharges and land uses on the lower Waitaki catchment. The applicants have outlined positive benefits that may occur as a result of the scheme proceeding. In the alternative, the Department and associated expert have identified a number of adverse effects arising from the proposal.

- 85 I consider the cumulative effects of those applications seeking to reduce the minimum flow on the lower Waitaki to 100m³/s have the potential to be more than minor, having regard in particular to effects on ecological functioning. I am also of the view that those same applications are contrary to some of the objectives and policies of the WRP.
- 86 I consider the cumulative effects of those applications seeking to take, use, dam and divert water in the Hakataramea catchment have the potential to be more than minor and be contrary to some of the policies in the WRP unless adequate consent conditions are imposed.

David Newey
28/08/08