

**Before the Commissioners appointed by Canterbury
Regional Council**

IN THE MATTER OF The Resource Management Act
1991

AND

IN THE MATTER OF Application CRC012032 &
CRC012033 by KJ, DK & SR
Anderson for two Discharge
Permits to discharge water to
water.

Section 42A Officer's Report of Claire Penman

Date of Hearing: 21 September 2009

1. This report should be read together with the introductory s42A report which gives an overview of all applications presented at this hearing (Report 1) and the reports on cumulative water quality effects in the catchment (Reports 4 A-F and 5).

INTRODUCTION

2. KJ, DK & SR Anderson (the applicant) have applied for two resource consents to:
 - (a) Discharge excess irrigation and stockwater from a diversion race at a maximum rate of 110 litres per second into Backyard Stream (CRC012032);
 - (b) Discharge excess irrigation and stockwater from a diversion race at a maximum rate of 110 litres per second into Lake Benmore (CRC012033);

See Attachment One for a map of the location of diversions.

3. The applicant engaged Mr Bob Hall of GHD Ltd (formerly R J Hall) to prepare the application and assessment of environmental effects on their behalf. Subsequently, Ms Keri Johnston of Irricon Resource Solutions has been engaged to respond to further information requests.
4. A 35 year duration is sought. These are applications for replacement consent.
5. A site visit was undertaken during the audit of this application on 12 December 2008.

Background

6. These applications are the discharge permits associated with two diversion permits lodged by the applicant.
7. Application CRC012017 is the associated diversion permit for the discharge into Backyard Stream and is assessed in Report 6A. Application CRC012019 is the associated diversion permit for the discharge into Lake Benmore and is assessed in Report 6B All reports should be read together to get a full understanding of the proposal.

8. The plan attached in Appendix One identifies the respective diversion points, irrigation areas and discharge points for all applications.
9. The consents that these applications are replacing – WTK631233C and WTK691221C – expired on 1 October 2001 (A copy can be found in Attachment Two). As these applications were lodged 6 months prior to the expiry of the above consents, the applicant is currently operating under s124 continuation.
10. Applications CRC012032 and CRC012033 were lodged, in association with their respective diversion applications, on 28 March 2001 and considered to be notifiable on 20 June 2003. Requests for further information were sent in 2006 requesting a further detailed assessment of effects from that lodged with the applications in 2001.
11. There have been no changes to the rate or location of discharge since the application was lodged.

Notification

12. Details of the notification and wording are contained in Appendix 4 of the introductory s42A report (Report 1). These consent was notified in July 2003, the December 2003 “ministerial call-in” and August 2007 with 200 other applications for similar activities in the Waitaki catchment.

Submissions

13. Details of the submissions lodged on all applications (water, discharge and land use permits) notified at the same time as these applications are contained in Report 1, Appendix 5. While there were submissions specific to the overall proposals (see Reports 6A and 6B), none of those submissions made any reference to these discharge applications or the effects of the proposed discharges.

DESCRIPTION OF THE PROPOSED ACTIVITY

14. The overall proposals are described in detail in Reports 6A and 6B.
15. For these discharge permits specifically, the applicant proposes the following activities:

CRC012032

- (a) To discharge water into Backyard Stream at a maximum rate of 110 litres per second and 66,528 cubic metres per week, at or about map reference NZMS 260 H40:7984-1768.
- (b) The discharge shall only be unused irrigation water and stockwater, diverted in accordance with CRC012017.
- (c) The discharge shall not cause erosion to the bed or banks of Backyard Stream.

CRC012033

- (a) To discharge water into Lake Benmore at a maximum rate of 110 litres per second and 66,528 cubic metres per week, at or about map reference NZMS 260 H40:801-224.

- (b) The discharge shall only be unused irrigation water, irrigation bywash and stockwater, diverted in accordance with CRC012019.
- (c) The discharge shall not cause erosion to the bed or banks of Lake Benmore

LEGAL AND PLANNING MATTERS

Consent Requirements

- 16. An overview of the consent requirements under the Resource Management Act (RMA), Transitional Regional Plan (TRP) and Waitaki Catchment Water Allocation Regional Plan (WCWARP) for discharge permit applications is provided in the introductory s42A report (Report 1). These applications were lodged in 2001. The TRP is the regional plan which controls the activity type for both applications (pursuant to section 88A(1) of the RMA).
- 17. A summary of the requirements for these applications is provided below:

TRP

There are no provisions of the TRP that authorise the discharge of water into water as described in the proposed activities. Resource consent is therefore required as a discretionary activity pursuant to section 77C of the RMA.
- 18. Overall, proposed discharge permit applications are **discretionary** activities under the TRP and resource consent is required in accordance with section 15 of the RMA..

CONSULTATION

- 19. See Reports 5A and 5B for details of consultation undertaken.

DESCRIPTION OF THE AFFECTED ENVIRONMENT

- 20. A description of the values of the Waitaki Basin and Lake Benmore in general is provided in the introductory s42A report (Report 1).
- 21. See Reports 5A and 5B for a description of the affected environment specific to these proposals and photos of the diversion and discharge points. The diagrammatic sketch in Attachment Four of Reports 5A and 5B shows where all the applicants' activities are located relative to each other.

ASSESSMENT OF PROPOSED ACTIVITY

- 22. The proposed discharge permits are discretionary activities and must be considered in the context of s104 of the RMA.
- 23. Section 104(1) outlines matters that the consent authority must have regard to when considering an application for resource consent, including any actual and potential effects on the environment, any relevant statutory provisions, and any other matter the consent authority considers relevant.

Assessment of actual and potential effects (s104(1)(a))

- 24. The effects that have been considered for this type of activity (discharge of water) are presented in the introductory s42A report (Report 1). That report includes the identification of the relevant planning provisions which direct us to consider these

effects. A summary table regarding the assessment of individual effects for each application is provided below.

Adverse Effects	Applicant's assessment	IO assessment	IO Conclusion
Flood-carrying capacity & erosion	No assessment provided.	On inspection of the discharge during my site visit I did not observe and erosion of the bed or banks and the waterway appeared to have capacity for the discharge that was occurring. Given the maximum proposed rate will not likely be discharged for much of the time, I consider that with the recommended conditions, the effects of the discharge of flood-carrying capacity and erosion would be minor.	Effects minor.
Water quality & ecosystems	Discharge is water that is not required for irrigation or stockwater purposes. Consider water will not be subject to contamination that would not occur anyway. However, there is potential for contaminants from stock access to race for drinking water. However, consider that as water is not likely to significantly change by being diverted down race, effects on water quality would be minor.	I agree with the applicant that the level of contaminants in the discharge is likely to be low and/or similar to that already in Corbies Creek. I agree that effects on water quality are likely to be minor given the available mixing in the waterway and prior to its confluence with the Otamatapaio River and Lake Benmore. However, should a fish screen be required on the intake then one should also be installed on the discharge point to ensure no fish move up the channel and get trapped in the race.	Effects minor provided fish screen installed if required.
Downstream users and amenity values	No assessment provided.	The discharge has been occurring for a number of years without complaint from any users of the catchment waterbodies. Given the effects on water quality are considered to be minor, and the discharge occurs on the applicant's property several kilometres upstream of SH83, I am satisfied that effects on downstream users and amenity values would be minor.	Effects minor.
Tangata Whenua values	No assessment provided.	As effects on water quality considered minor, I am satisfied that effects on Tangata Whenua values minor.	Effects minor.

Table 1: Summary assessment of effects for application CRC012032.

Adverse Effects	Applicant's assessment	IO assessment	IO Conclusion
Flood-carrying capacity &	No assessment provided	On inspection of the discharge during my site visit I did not	Effects minor.

erosion		observe and erosion of the bed or banks of the lake and there is plenty of capacity for the discharge that was occurring.	
Water quality & ecosystems	Discharge is mainly water that has not been used for irrigation or stockwater, but may also contain sediment, nutrients and faecal matter from irrigation bywash from border-dyke system. Given the small volume of discharge relative to the lake, the applicant considers the discharge would be quickly diluted.	I agree with the applicant that there may be some contaminants in the discharge as a result of irrigation bywash water from the border-dyke system. I also agree that given the size of the discharge, the assimilative capacity of the lake would provide adequate dilution of any contaminants in the discharge.	Effects minor.
Downstream users and amenity values	No assessment provided.	While the discharge is located only 1.5 kilometres to the east of Sailors Cutting and the camping ground which are heavily used for recreation, the discharge has been occurring for a number of years without complaint from any users of the catchment waterbodies or Lake Benmore. Given the dilution capacity of the lake, I am satisfied that effects on downstream users and amenity values would be minor.	Effects minor.
Tangata Whenua values	No assessment provided.	As other effects are considered minor, I am satisfied that effects on Tangata Whenua values minor.	Effects minor.

Table 2: Summary assessment of effects for application CRC012033.

Statutory Assessment (s104(1)(b))

25. Section 88A(2) of the RMA states that any plan or proposed plan which exists when the application is considered must be had regard to in accordance with section 104(1)(b). For this reason it is appropriate to consider the objectives and policies of the PNRRP that are relevant to the applications to discharge of water. A discussion of the relevant objectives and policies is provided below.

Regional Policy Statement (RPS)

26. Under Section 104(1)(b)(iii) of the RMA, the consent authority shall have regard to any relevant regional policy statement. The Canterbury Regional Policy Statement has been operative since 26 June 1998.
27. Of significance to this application is Chapter 9, which relates to the management of the Region's water resources. The PNRRP take into account policies in the RPS and address the issues outlined in more detail. Any assessment of effects has been made using these documents and therefore I have had regard to the RPS throughout this assessment.

Proposed Natural Resources Regional Plan (PNRRP)

28. The objectives and policies of the PNRRP that are relevant to each potential adverse effect have been identified in the introductory s42A report. A discussion of the relevant objectives and policies is provided below.

Objective WQL1.1 – Water quality outcomes for rivers

This objective aims to maintain and improve water quality, physical and chemical characteristics of the rivers. The proposed discharge into Backyard Stream will be consistent with the outcomes required by this objective.

Objective WQL1.2 – Water quality outcomes for natural and artificial lakes

This objective aims to maintain and improve water quality, physical and chemical characteristics of the lakes. The proposed discharge into Lake Benmore will not result in any of the effects identified for artificial lakes.

Policy WQL1 – Point source discharges into surface water

This policy refers to consideration of whether the discharge is necessary, or whether other options are available. Consideration of the zone of non-compliance, the assimilative capacity of the receiving body, effects on cultural values and ecosystems are also referred to. The proposed discharges are in the most appropriate location for the systems and will be within the same catchment they originate from. The discharge into Backyard Stream and Lake Benmore will meet the water quality standards for “Class HILL” rivers outside the zone of non-compliance.

Other Matters (s104(1)(c))

29. There are no other matters that I consider relevant to these applications

PART 2 PURPOSE AND PRINCIPALS

30. Part 2 of the RMA contains sections 5 to 8 which define the purpose and principals of the RMA

Purpose of the RMA (s5)

31. Under Section 104, the consent authority must consider applications “subject to part II” of the RMA. The purpose of the RMA (Section 5(1)) is to:

“promote the sustainable management of natural and physical resources.”

32. Section 5(2) defines the meaning of “sustainable management”, which is to manage resources in a manner that provides for the social, economic and cultural wellbeing of communities while protecting the life-supporting capacity of the environment for the needs of future generations. This section also states that this should be achieved while “safeguarding the life-supporting capacity of water” and “avoiding, remedying or mitigating” the adverse effects of activities.

33. The proposal as a whole, including the diversion and use applications, will allow the development of land to occur, which may provide for the economic and social wellbeing of the community. For these applications specifically, the applicant has proposed measures to “safeguard the life-supporting capacity of water” and “avoid, remedy or mitigate” the potential impacts on water quality, as required in Section 5(2)(c), and mitigation measures will ensure that the proposed effects on water quality

will be minor so that it will be consistent with Section 5(2)(a), which aims to provide for the needs of future generations.

Matters of National Importance (s6)

34. Sub-sections (a) and (e) of Section 6 of the RMA are particularly relevant to these applications. The applicant has proposed measures to minimise the effects on water quality and ecosystems which will protect the natural character of the environment. The applicant has not assessed the impacts on cultural values, and runanga have submitted in opposition on this application, however, the scale of the proposed discharge, with the proposed mitigation, will provide for protection of water quality and ecosystems and subsequently cultural values.

Other Matters (Section 7)

35. In achieving the purpose of the RMA, the consent authority is directed to have particular regard to a number of matters as set out in (a) – (j) of Section 7.
36. Sub-sections (c) (f) and (h) are specifically relevant to these applications and should be considered when deciding the acceptability of effects resulting from the proposed discharge of water. Section (c) refers to the maintenance and enhancement of amenity values. The applicant has proposed mitigation measures to ensure that this objective is achieved.
37. Section (f) refers to the maintenance and enhancement of the quality of the environment. The applicant has proposed mitigation measures to ensure that this objective is achieved, particularly with regards to water quality and ecosystems.
38. Section (h) requires protection of the habitat of trout and salmon. Through the water quality mitigation proposed, the applications will be consistent with this objective.

Principles of the Treaty of Waitangi (s8)

39. Section 8 of the RMA requires the consent authority to take into account the principles of the Treaty of Waitangi. The site lies within the rohe of Moeraki Runanga. Runanga were informed separately when ECan received the application and later when the applications were notified. Submissions have been received from Ngai Tahu and runanga on these applications.

RECOMMENDATION

Grant or Refuse

40. Section 104B applies to any application which is a discretionary or non-complying activity and states that the consent authority may grant or refuse the application and may impose conditions under s108.
41. For the discharge applications I consider that there are no outstanding adverse effects of the proposed activities that have not been addressed through appropriate mitigation measures. When considering the matters outlined in section 104(1), I am satisfied the effects of the proposed activities are minor.
42. Under section 104B I recommend that applications CRC012032 and CRC012033 be granted, subject to the attached recommended conditions.

RECOMMENDED CONDITIONS

43. Comments on the mitigation proposed by the applicant are provided earlier in this report.
44. If the Commissioners decide to grant this application, a list of draft recommended conditions are provided below.

Table : Recommended draft conditions for discharge permit CRC012032		
No.	Consent Code ¹	Details
Scope		
1	DP01	<i>Waterbody from:</i> irrigation race <i>Waterbody to:</i> Backyard Stream <i>Map reference:</i> NZMS 260 H40:7984-1768 <i>Discharge rate:</i> 110 litres per second <i>Plan:</i> "CRC012017" (Attachment 1) <i>Other:</i> The water shall be unused irrigation and stock water and shall contain no contaminants.
Operation and Maintenance		
2	DP02	<i>Waterbody:</i> Backyard Stream
3	LU13 modified	The discharge shall not occur in a manner likely to cause erosion of, or instability to, the banks or bed of the Backyard Stream; or reduce the flood-carrying capacity of the waterway
4	DP03	
5	DP04	
Administrative Conditions		
6	AD03	Review
7	AD04	Lapse date

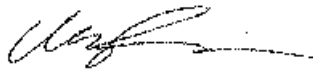
Table : Recommended draft conditions for discharge permit CRC012033		
No.	Consent Code ²	Details
Scope		
1	DP01	<i>Waterbody from:</i> irrigation race <i>Waterbody to:</i> Lake Benmore <i>Map reference:</i> NZMS 260 H40:801-224 <i>Discharge rate:</i> 110 litres per second <i>Plan:</i> "CRC012019" (Attachment 1) <i>Other:</i> The water shall be excess irrigation and stock water.
Operation and Maintenance		
2	DP02	<i>Waterbody:</i> Lake Benmore
3	LU13 modified	The discharge shall NOT occur in a manner likely to cause erosion of, or

¹ See Report 1, Appendix 6 for condition code and wording.

² See Report 1, Appendix 6 for condition code and wording.

		instability to, the banks or bed of Lake Benmore.
4	DP03	
5	DP04	
Administrative Conditions		
6	AD03	Review
7	AD04	Lapse date

Signed:



Date: 31st August 2009

Claire Penman
Consents Investigating Officer

REFERENCES

Canterbury Regional Council 2004. Proposed Natural Resources Regional Plan – Chapter 4: Water Quality.

Canterbury Regional Council 1998. Regional Policy Statement. Report No R98/4. ISBN 1-86937-337-5.

Canterbury Regional Council 1991. Transitional Regional Plan. October 1991.

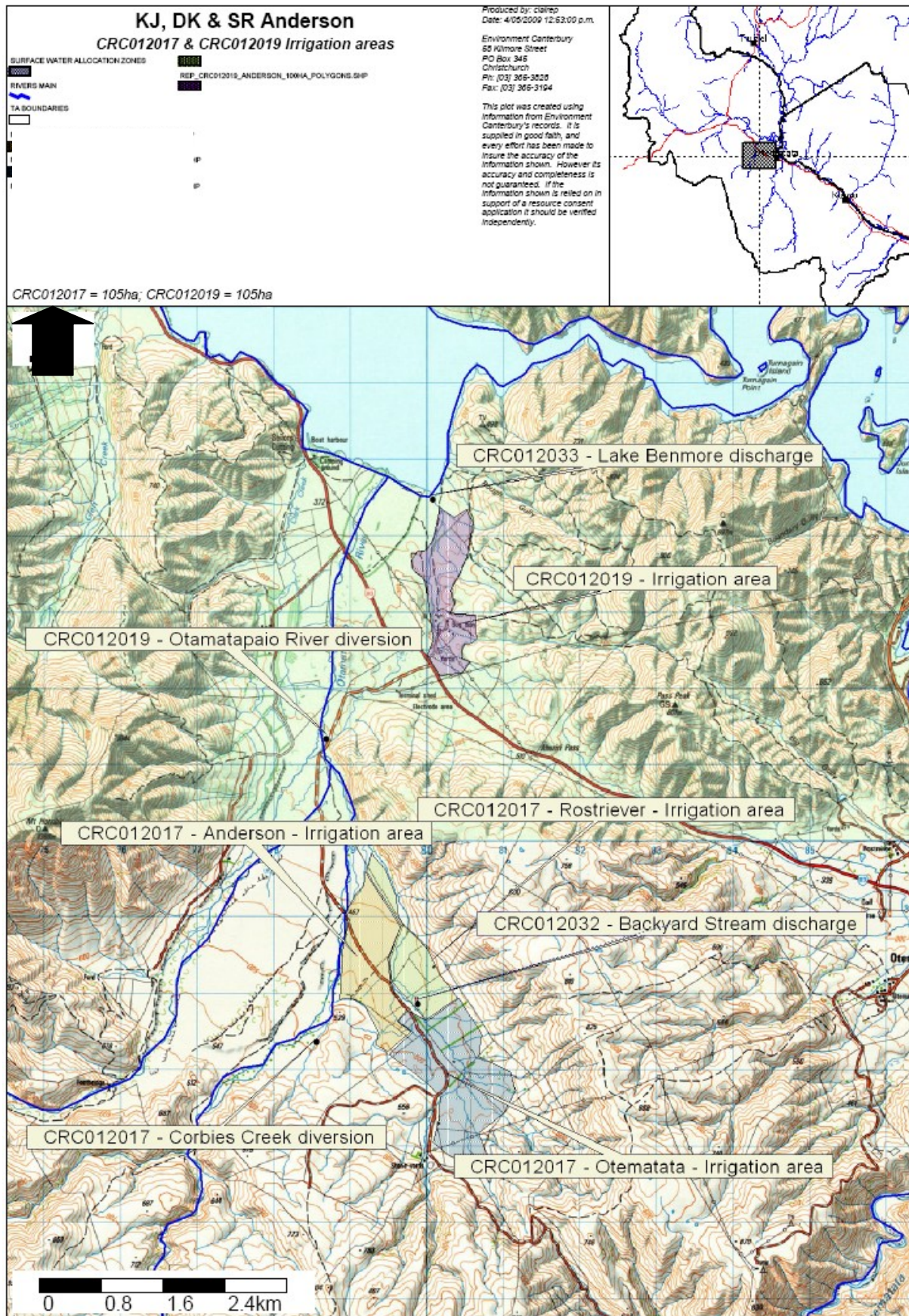
Department of Conservation 2003. Bog Roy Station Tenure Review - Conservation Resources Report.

Keller, J & Pfluger, Y. 2005. Working papers about the Natural and Physical Resources of the Waitaki catchment by locality. Report provided to the Waitaki Catchment Water Allocation Board.

Te Maire Tau, Anake Goodall et al., 1990. Te Whakatau Kaupapa: Ngai Tahu Resource Management Strategy for the Canterbury Region. ISBN: 0-908925-06-9.

The Resource Management Act 1991. Consolidated version including the Resource Management Amendment Act 1995. August 2005.

ATTACHMENT ONE – LOCATION MAP



ATTACHMENT TWO – PREVIOUS CONSENTS

RecordNo WTK691233

Type Consent
Source Existing Use Wtr
PermitType Discharge Permit
FileNo CO6C/05995

ClientID 267

ClientName Bog Roy and Rostriever Stations

To To discharge water to Lake Benmore at map reference H39:801-244 at a maximum rate of 110 litres per second.

Location

Status Continuation until new application determined

Events 31/Mar/1969 Consent Issued
30/Mar/1971 Given Effect To
31/Mar/1971 Lapse Date if not Given Effect To
23/Mar/2001 1st Expiry Reminder
01/Oct/2001 Sec 124 continuation starts
01/Oct/2001 Consent Expires

Subject to the following conditions:

- 1) Nil conditions

Consent Summary



RecordNo WTK691221C

Type Consent
Source Existing Use Wtr
PermitType Discharge Permit
FileNo CO6C/05995

ClientID 267

ClientName Bog Roy and Rostriever Stations

To To discharge water to Back Yards Stream at map reference S117:785-245 (H40:799-178) at a maximum rate of 110 litres per second.

Location

Status Continuation until new application determined

Events 31/Mar/1969 Consent Issued
30/Mar/1971 Given Effect To
31/Mar/1971 Lapse Date if not Given Effect To
23/Mar/2001 1st Expiry Reminder
01/Oct/2001 Sec 124 continuation starts
01/Oct/2001 Consent Expires

Consent Summary

