

**Before the Hearing Panel appointed by Canterbury
Regional Council**

IN THE MATTER OF The Resource Management Act
1991

AND

IN THE MATTER OF Application CRC061399 by
Waitaki Orchards Ltd for a Water
Permit to take and use surface
water from a spring fed pond for
irrigation.

Section 42A Officer's Report

Date of Hearing: August 11th 2008

Report of *Claire Penman*

1. I have been employed by MWH NZ Ltd as an Environmental Consultant since December 2005. I have 2 ½ years relevant experience in resource management particularly focused on water resources. I hold a Bachelor of Applied Science (with Honours) in Environment Management from the University of Otago. I have been engaged by Canterbury Regional Council (CRC) to act as Investigating Officer for this application.
2. This report is prepared under the provisions of Section 42A of the Resource Management Act 1991 (RMA). This section allows a Council officer to provide a report to the decision-maker on a resource consent made to the Council, and allows the decision-maker to consider the report at the hearing. Section 41(4) of the RMA allows the decision-maker to request and receive from any person who makes a report under Section 42A "*any information or advice that is relevant and reasonably necessary to determine the application*". This report will provide the decision-maker with information and advice related to:
 - (a) The background to the application;
 - (b) Details of the notification of the application and any submissions received;
 - (c) An outline of the relevant legal and planning provisions;
 - (d) Comments on the assessment of environmental effects provided;
 - (e) Details of Council policy relevant to the application;
 - (f) Comments in relation to the matters specified in Part II of the RMA; and
 - (g) Comments on the decision to be made by the decision-maker including comments on whether the application can be granted or should be declined; if the application is to be granted what measures are required to avoid, remedy or mitigate any adverse effects; what monitoring should be undertaken and the duration of consent.

3. It should be emphasised that any conclusions reached or recommendations made in this report are not binding on the decision-maker. It should not be assumed that the decision-maker will reach the same conclusion or decision having considered all the evidence to be brought before it by the applicant and submitters.
4. This report should be read together with the introductory s42A report which gives an overview of all applications presented at this hearing. The introductory s42A report covers issues that are common to all applications, and will provide the decision-maker with information and advice related to the notification of all applications and any submissions received, and an outline of the relevant legal and planning provisions.

INTRODUCTION

5. Waitaki Orchards Limited (hereon in 'the applicant') have applied for a consent to abstract surface water from a spring fed pond at a rate of 98 litres per second for irrigation of 7.6 hectares of apricot trees and for frost protection purposes on State Highway 83, Kurow.
6. Jenny Geddes (R J Hall Civil & Environmental Consulting Ltd) was engaged by the applicant to prepare the application on their behalf. Melissa Anthony (GHD) has been engaged to represent the applicant at the hearing.
7. The duration requested is 35 years.

Background

8. A previous consent (WTK860151.1) was held by Waitaki Orchard Partnership to take one megalitre (1,000m³) of water per year at a rate of 25 litres per second for trickle irrigation of 8 hectares. This consent expired on 30 June 1997.
9. The current owners were unaware this previous consent expired and understood that the consent for the entire orchard was held by another party who purchased part of the orchard. As such, they have continued irrigating the orchard since June 1997 and are now applying for the take to be re-consented.
10. The application was lodged on 27 October 2005. An email requesting clarification of some aspects of the application was sent to Jenny Geddes on 7 November 2005 with a response received on 2 December 2005. A section 92 request for further information was sent on 12 October 2006 and a response received on 14 December 2006.

Notification

11. Details of the notification and wording are contained in Appendix 4 of the introductory s42A report.

Submissions

12. Details of the submissions received for this application that are not common to all applications are contained in **Error! Reference source not found.** A summary of key issues/effects that are common to all applications is provided in Appendix 5 of the introductory s42A report.

Submitter	Issues	Support/ Neutral/ Oppose	To be heard
G F Keeling	Considers that allocation above Black Point should be 250 million cubic metres. Considers users with annual volume will be efficient.	Support	Yes
S Carswell	Concerns with water quality and irrigation runoff.	Oppose	Yes
Waitaki Valley Irrigators	Considers that allocation above Black Point should be 250 million cubic metres. Considers users with annual volume will be efficient.	Support	Yes
Meridian Energy Limited	Water metering, water quality, sustainable management and fitting with the flow regime for the Waitaki River.	Support	Yes

Table 1: Summary of submissions for CRC061399

DESCRIPTION OF THE PROPOSED ACTIVITY

13. The applicant proposes to take and use water as follows:

- (i) Water shall only be taken from a spring-fed pond at or about map reference NZMS 260 I40:1265-0176.
- (ii) The rate at which water is taken for the purposes of irrigation shall not exceed 98 litres per second, with a volume not exceeding 2,117 cubic metres per seven days (*six hours for one day out of seven*).
- (iii) The rate at which water is taken for frost protection purposes shall not exceed 98 litres per second, with a volume not exceeding 4,234 cubic metres per day.
- (iv) The annual volume of water shall not exceed 111,810 cubic metres between 1 July and 30 June.
- (v) Water shall only be used for the spray irrigation and frost protection of 7.6 hectares of horticulture on the area shown on the attached plan (see Attachment One).
- (vi) The Waitaki River minimum flow set out in Table 3 of the WCWARP will be complied with.

LEGAL AND PLANNING MATTERS

Consent Requirements

14. The consent requirements under the RMA, Transitional Regional Plan and PNRRP for water permit applications are outlined in the introductory s42A report. A summary of the requirements for this application are provided in Table 2 below, with a detailed discussion of the WCWARP rules in the following paragraphs.

Activity	RMA	TRP	PNRRP	WCWARP				
				Rule 2(1)(a)	Rule 2(1)(b)	Rule 2(2)	Rule 6	Classifying Rule
Irrigation & Frost-fighting	S14	Discretionary	n/a	Table 3 (xvii)(a)	Table 3 (xvii)(c)	n/a	Table 5, row v Ag & Hort	Rule 16 Non-complying

Table 2: summary of consent requirements for application CRC061399

15. For irrigation and frost protection, Rule 2 clause (1)(a) requires that no person shall take or use water unless the flow in the relevant river is above the minimum flow. The Lower Waitaki River is classified under Table 3, row (xvii). Table 3 specifies a minimum flow of 150 cubic metres per second and associated flushing flows. The applicant proposes the minimum flows and environmental flow regime set out in the WCWARP for irrigation but not for frost protection.
16. While the applicant proposes the appropriate minimum flows for irrigation, I am satisfied that the application complies with this rule as a minimum flow is not proposed for frost protection use.
17. For irrigation and frost protection, Rule 2 clause (1)(b) requires that no person shall take or use water unless the activity is within the instantaneous allocation limit for the water body specified in Table 3. For the Lower Waitaki River, an allocation limit of 90 m³/s has been established based on flows at the Kurow recorder. The proposed take is within the allocation limit for the Waitaki River taking into consideration the other consents on the river.
18. Rule 6 deals with annual allocation limits. For irrigation use, this activity is over the allocation limit for agricultural activities. Details of allocation and priority are contained in Appendix 3 of the introductory s42A report.
19. In summary, the proposed water permit is **non-complying** under Rule 16.

DESCRIPTION OF THE AFFECTED ENVIRONMENT

20. A description of the values of the Waitaki Valley in general is provided in the introductory s42A report.
21. The proposed location of take is a small spring-fed stream and pond system which is connected to the Waitaki River. The applicant has described how the spring-fed ponds were developed through historic digging of the site for a storage dam for the Upper Waitaki Irrigation Company Scheme. Springs were uncovered which now feed the pond. The springs are known to flow relatively constantly throughout the year. Any water that flows from this pond and neighbouring springs flows across three properties before entering the Waitaki River (see photos in Attachment Two). The applicant has noted that during winter months when there is less contribution from excess scheme water, the flow from the ponds resembles more seepage flow rather than a continuous surface flow, and there are no instream values maintained below the pond site as any water flows through a constructed race system. However, the pond levels do not tend to drop during winter as they are predominantly regulated by spring flow.
22. The applicant has noted that the pond and stream have abundant riparian vegetation and are considered to support a variety of fish and aquatic organisms.

23. There are no downstream consented users of this branch but there are two upstream abstractors taking a combined total of 22 litres per second.

ASSESSMENT OF ACTUAL AND POTENTIAL EFFECTS

24. The effects that have been considered for this type of activity (surface water abstraction) are presented in the introductory s42A report. That report includes the presentation of the relevant planning provisions which direct us to consider these effects. A detailed discussion regarding the assessment of individual effects for this application is provided in the following sections of this report.

Adverse effects on ecosystems

25. The applicant proposes to comply with the Waitaki River minimum flows for irrigation but not frost protection.
26. I consider that in establishing minimum flows for the plan, the ecological values of the Waitaki River would have been taken into account. Therefore I consider this minimum flow is appropriate for protecting the values of the Waitaki River. However, I note that by not proposing a minimum flow for frost protection purposes, there may be effects on ecosystems.
27. There are a number of submissions which identify establishing a minimum flows and protecting fisheries values in all rivers and tributaries in the Lower Waitaki catchment as a concern (see Appendix 6 of the introductory s42A report).
28. Fish and Game NZ and the Department of Conservation lodged submissions on the application and describe in detail the Waitaki River catchment, its importance for fisheries values, gamebird habitat and recreational area (see paragraphs 14 to 19 of Fish and Game's submission (submission id #16866)).
29. Given the description of the spring-fed pond provided by the applicant stating that there is no continuous flow downstream the ponds during winter months and photos to support their description, they conclude that there is no requirement for a minimum flow on the spring system to protect instream values.
30. Having looked at these photos and discussed the nature of the spring and pond system and the downstream channel with the applicant, I am satisfied that there is no requirement for a specific minimum flow for the pond that differs from the Waitaki River minimum flow.
31. There is currently a fish screen on the pump intake. The applicant has proposed a fish screen of 5mm mesh size. I consider that a more appropriate fish screen to protect fisheries values would be that similar to that outlined in the 'list of standard conditions' in Appendix 6 of the introductory s42A report.
32. The applicant proposes to install a measuring or recording device at the intake in order to monitor how much water they will be taking and when restrictions should be imposed in order to minimise adverse effects on ecosystems and other water users. Proposed wording for a consent condition to address this concern is contained in the 'list of standard conditions' in Appendix 6 of the introductory s42A report.
33. While the applicant proposes a minimum flow for irrigation and proposes to install a fish screen, as the applicant does not propose a minimum flow for frost protection, and there are submissions which identify minimum flows and protection of

ecosystems as an issue, I am not satisfied that the adverse effects of the proposed activity on ecosystems will be minor.

Adverse effect on other consent holders

34. Upstream of the pond the applicant proposes to abstract water from, the spring is sourced in the property of Mr Turner. The total consented take above the proposed abstraction point is 22 litres per second. The stream then becomes channelised and flows through downstream neighbour Mr Black's property, however, there is no consented take or application in process to take water by Mr Black from this stream.
35. No submission was received from Mr Turner or Mr Black on this application when it was notified in August 2007.
36. The applicant has noted that when pumping occurs the water level in the pond drops but recovers soon after pumping stops. Pumping is only for 6 hours once every 7 days. They also note that the pond is fed by not only the spring at this pond site but also by springs further upstream and any excess scheme water. They consider that the proposed take will not compromise the ability of other downstream users to abstract water for domestic and stock supply.
37. The applicant has noted that this consent would not affect the reliability of water for those current consent holders who have to cease abstraction when a specified minimum flow is reached at the Kurow recorder. This is because the Kurow recorder is located upstream of the proposed abstraction and the proposed abstraction would not result in minimum flow being reached any earlier.
38. However, there remain concerns about the relationship between current consents and new consents in terms of reliability of supply and banding which are discussed in more detail in a separate planning report (Report 2)
39. The applicant has considered that the taking of water for frost-protection purposes, whilst not restricted by a minimum flow on the Waitaki River, would not affect other users as water will be taken in the shoulder periods of the irrigation season or during winter months when the flows in the river are higher and other abstractors are not likely to be exercising their consents to the full.
40. Whilst the applicant has proposed an appropriate minimum flow on the Waitaki River consistent with the plan for irrigation, I note that there remains some uncertainty regarding the effects on other applicants in terms of flow-sharing or banding, should all consents be granted and a suitable minimum flow has not been proposed for frost protection. Therefore, I cannot conclude that effects of the proposed activity on other consent holders on the Waitaki River would be minor.

Adverse effect on people, communities and amenity values

41. The applicant considers that the inclusion of the Waitaki River minimum flow will ensure sufficient flows are left in the waterways to maintain amenity values. They therefore consider effects will be less than minor.
42. The spring-fed pond is unlikely to have high values for recreation or fishing given its location through private property with no easy road access and dense riparian vegetation. The land adjacent to the pond and stream is not going to be irrigated beyond its current extent and there will be no change to the visual amenity of the area.

43. While the Waitaki River is well used for fishing, hunting and recreation, I note that the Waitaki River minimum flows were set taking into account provision of flow for recreational and amenity values.
44. The applicant has not addressed the wider effects on community in respect of Policy 12 and availability of water to other activities listed in Objective 2 with regards to annual allocations to activities. This policy specifies that any activity that falls outside of the allocation limits specified in Rule 6, Table 5 must demonstrate the effect of granting the consent on the entitlements to other activities over the timeframe of the consent.
45. While a number of submitters raised concerns with regard to natural character and amenity values, I am satisfied that the local effects on people, communities and amenity values would be minor as appropriate minimum flows have been proposed. However, as the applicant has not provided an assessment of the cumulative effects on people, communities and amenity values, I am not satisfied that this effect would be minor.

Adverse effects of inefficient take and use

46. The taking of water in excess of that required for the intended use may contribute to water levels being unnecessarily reduced and less water available for other users. A number of submitters have identified this issue.
47. The applicant proposes a total annual volume of 111,810 cubic metres per year. This is a combination of the water required for irrigation of 7.6 hectares of fruit trees and water required for frost-fighting purposes.
48. The irrigation volume is based on an irrigation season from late September to early April, expected irrigation season rainfall of 200mm and average PAW of 75-110mm. This equates to a seasonal volume of 41,800 cubic metres.
49. The applicant is proposing to irrigate with an average application rate of 4.5mm per hour, with 27mm being applied once in every seven days. As the property is considered to have an average water holding capacity of 75-110mm, the proposed irrigation does not exceed half the AWHC of the soil and is considered efficient. The rate at which water is abstracted for irrigation is also considered appropriate and equates to an average of 3.89mm per day which is less than the typical evapotranspiration rates.
50. I have used Environment Canterbury's GIS system to confirm the parameters used by the applicant. I agree with the annual volume and parameters used by the applicant and I consider it to be an efficient volume for the property.
51. With regards to frost-fighting, the applicant has provided for a "harsh" season of 15 frost protection events lasting 12 hours per year. This works out to be a total of 63,504 cubic metres per year. However, the applicant notes that there could be as few as 3 frost events with an average of 6 hours over which water is required.
52. The applicant has proposed to install a water meter on the intake to ensure that the proposed rates and volumes are not exceeded.
53. I am satisfied that that the proposed seasonal allocation is reasonable for the proposed irrigation area and frost-fighting requirements.

Adverse effect of use on water quality and ecosystems

54. The applicant has assessed that the adverse effects of taking and using water on water quality, are less than minor. The reasons for this are that the proposed irrigation system is designed to provide efficient delivery and not exceed half the water holding capacity of the soils. They retain grassed rows between the fruit trees to help retain soil moisture. The applicant has not assessed the cumulative effects on water quality from the proposed irrigation.
55. The applicant considers that should any surface runoff occur it would be captured by the riparian buffer.
56. There were a number of submissions received which identified concerns on water quality.
57. I note that the nature of the horticultural activity is that there will be no stock on the property and therefore not likely to be any increase in nitrates leaching through to groundwater or runoff to surface water.
58. Whilst there are a number of submissions identifying this effect, I am satisfied that the adverse effects of the taking and use of water on groundwater and surface water quality will be minor.

Adverse effect on Tangata Whenua values

59. The Waitaki River has a statutory acknowledgment in the Ngai Tahu Claims Settlement Act 1998.
60. The site of the proposed abstraction is within the rohe of Te Runaka O Waihao. Te Runaka O Waihao and Te Runanga O Ngai Tahu were served notice of the applications in August 2007. Submissions were received in opposition to this application from Te Runanga O Ngai Tahu.
61. Given that there are a number of submissions which identify cultural values, I cannot conclude whether the actual and potential effects on the cultural values of the area will be minor.

STATUTORY ASSESSMENT

Part II Purpose and Principals

62. Part 2 of the RMA contains sections 5 to 8 which define the purpose and principals of the RMA.
63. In my opinion the proposed activity is not consistent with the purpose and principals of the RMA most notably Section 7 (f) and (g), Other Matters, in relation to allocation limits and other users' reliability of supply.

Regional Policy Statement (RPS)

64. 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.
65. Of significance to these applications is Chapter 9, which relates to the management of the Region's water resources. The WCWARP and 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.

Decisions on consents

66. The taking and use of water is a non-complying activity and must be discussed in the context of s104D of the RMA. If it meets the threshold test of s104D it must then be considered under s104.
67. Section 104D outlines matters that must be considered when determining an application for a non-complying activity. This section states that a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either, the adverse effects of the activity on the environment will be minor (s104D(a)(1)), or the application is for an activity that will not be contrary to the objectives and policies of the relevant plan (s104D(1)(b)).

S104D(1)(a)

68. As discussed in the assessment of effects section of this report, with the information provided to date, I am not satisfied that the adverse effects of the proposed activity on the environment will be minor, even when taking into account the proposed mitigation. In particular, I am not satisfied that effects on instream values have been mitigated, that other water users' reliability of supply will be protected, or that adverse effects people and communities will be less than minor.

S104D(1)(b)

69. Rule 16 of the WCWARP which classifies the taking, diversion and damming of water activities as non-complying states that the consent authority will have regard, among other matters, to all the policies of the WCWARP. The objectives and policies of the WCWARP that are relevant to each potential adverse effect have been identified in the introductory s42A report. A discussion of the policies and objectives where I consider there is conflict with these applications is provided in the following paragraphs. Where I am satisfied that there is no conflict with the policies and objectives, I have not discussed them.

Environmental flow and level regimes

70. Policies 2 – 8 and 45 deal with environmental flow and level regimes.
71. Policy 4 outlines a number of matters that must be considered when setting an environmental flow and level regime and is particularly relevant to this application. As discussed in the assessment of effects section above, I am not satisfied that the effects on the values of the Lower Waitaki River will be less than minor, particularly since the applicant does not propose a minimum flow for frost protection purposes. In addition, I am concerned that the application may be contrary to (a) mauri and healthy ecosystems of indigenous species, including mahinga kai species; (e) habitats including those of invertebrates, birds and fish; (f) fish passage; and (q) the amount and reliability of water that can be taken, used, dammed or diverted.
72. Policy 3 and 45 outline values that must be maintained when setting an environmental flow regime for the Lower Waitaki River and links directly to Rule 2 and the environmental flow and level regimes outlined in Table 3. Policy 3 is incorporated in Policy 45(1)(ii) and is therefore discussed under that policy. Policy 45 is a key policy in relation to the proposed application, as it recognises the natural and

recreational values of the Lower Waitaki River that the plan seeks to maintain when setting an environmental flow regime.

Policies on the allocation to activities

73. Policies 10 to 14 deal with the allocation to activities. Policies 10 and 14 are not applicable to this application.
74. Policy 12 outlines a number of matters that must be considered and links directly to Rule 6 and the annual allocations to activities outlined in Table 5 of the Waitaki Regional Plan. The proposed activity is not within the annual allocation limit set for this type of use between the Waitaki Dam and Black Point.
75. The applicant has not assessed the effect of granting these consents on entitlements of water to other activities listed in Objective 2 and the matters outlined in Policy 12. Therefore I cannot assess the application against Policy 12, and in particular, I cannot determine whether the application is contrary to Policy 12(f) relating to effects on water quality.

Restrictions

76. Policy 23 ensures that environmental flow and level regimes are complied with by requiring that all consent holders restrict their rate of take during times of low flow. As the applicant agrees to the minimum flow set out in Table 3, I am satisfied that the activity is not contrary to this policy.
77. Policies 25 and 26 deal with flow sharing among users and reliability of supply. As there are a number of existing consents to take water in the Waitaki River which are limited by minimum flow conditions, reliability of supply in the context of these policies is discussed in more detail in a separate planning report (Report 2).

Policies for the Lower Waitaki River

78. Policy 45 deals with the environmental flow regime of the Lower Waitaki catchment. Policy 45(1)(ii) enables access to water for the activities identified in Objective 2, to the extent consistent with Objective 1.
79. In particular, with regard to policy 45(1)(i), this policy recognises the physical and ecological characteristics of the river, its connectedness with riparian margins and wetlands, the habitat for aquatic plants, invertebrates, birds and, its cultural values and its natural and recreational appeal. Given that the applicant proposes to comply with an environmental flow regime consistent with that established in Table 3, I am satisfied that the application is not contrary to Policy 45(1)(i).
80. With regard to policy 45(1)(ii), the applicant has not provided an assessment of the effect so I cannot determine whether the application is contrary to this policy. Therefore, I am not satisfied that the proposed activity will allow access to water for the activities identified in Objective 2.

Objectives

81. Objectives 1 and 2 are key objectives in relation to the proposed taking of water. I have considered whether Objective 1 can be met in terms of sustaining the quality of the river and surrounding environment. This is a finely balanced decision and that while the proposal may not entirely be consistent with Objective 1 and the associated policies (particularly policies regarding flow sharing), it is difficult to determine if the inconsistencies are significant enough to make the proposal contrary to Objective 1.

82. The proposed activity will impact on the matters outlined in Objective 1, particularly (a), (b) and (c). There have been a wide range of people who have submitted against the proposed activity due to concerns about impacts on these values. I therefore cannot determine whether the proposed activity is contrary to these values at the time of preparing this report.
83. Objective 2 aims to provide water for different activity types. The proposed activity is not within the annual allocation limit for agricultural and horticultural activities outlined in Rule 6. The applicant has not assessed whether the granting of this application would affect availability of water to other users.
84. Objective 3 recognises that there are beneficial and adverse effects on the environment at a national and local scale, and that these factors must be considered.
85. Objective 4 aims to achieve a high level of technical efficiency in the use of water. The applicant has demonstrated that the use of water for irrigation is technically efficient.
86. Objective 5 deals with the practical and fair sharing of allocated water during times of low water availability. Given submitters concerns, I cannot be certain that the application is not contrary to this objective. This matter is discussed in detail in a separate planning report (Report 2).

Section 104(1)

87. If the Commissioners consider that the proposed activity passes either of the two “gateway” tests of section 104D, they may wish to consider the application with regard to section 104(1).
88. Section 104(1) outlines matters that the consent authority must have regard to when considering an application.
89. With regard to s104(1)(a), the actual and potential effects of the activity have been discussed in the assessment of the activity and summarised in the discussion regarding section 104D(1)(a). As discussed earlier, with the information provided to date, I am not satisfied under s104D(1)(a) that the actual and potential effects of the activity are minor. In addition, given that the applicant has not addressed several areas of concern (effects on other users reliability of supply and effects on provision of water to other activities) I cannot determine under s104(1)(a), whether the actual and potential effects of the proposed activity are acceptable.
90. With regard to s104(1)(b), the relevant provisions of the RPS, WCWARP, and PNRRP have been considered, Specifically, the relevant provisions of the WCWARP have been discussed in detail in the section 104D(1)(b) discussion.
91. With regard to s104(1)(c), the consent authority can consider any other matter relevant and reasonably necessary to determine the application. Other matters that the Commissioners may wish to consider include the integrity of the WCWARP, and the precedent effect of granting a consent over the annual allocation limit for agricultural and horticultural activities.
92. With regard to plan integrity, the WCWARP is an operative plan and several submitters expressed concern that the proposed activity contravenes the allocation limits specified in the plan, which was developed after a lengthy consultation process.
93. Annex 1 of the WCWARP at paragraph 76 states that:

“The environmental level and flow regimes, and the allocations to activities, are two key components of the allocation framework established by this Plan. They should be binding except in specific cases where it can be established that the adverse environmental effects of the proposal are minor, and where the activity is not contrary to the objectives and policies of this Plan.”

94. While the effects of the proposed activity, and its relationship to the provisions of the WCWARP are discussed elsewhere, I consider that this statement adds support to the argument that consideration of any consent that is over the allocation limit is a “key component of the allocation framework of the Plan”, and therefore must be considered very carefully in light of both plan integrity and public confidence in the plan development process.
95. The Waitaki Allocation Board did not prohibit a proposal such as that sought under consent application CRC061399. However, it is my view that granting this application with an annual allocation over that set out in Table 5 could be seen as a review of the Waitaki Allocation Board’s decision on what an appropriate allocation limit for agricultural and horticultural activities between the Waitaki Dam and Black Point should be. I consider that the Commissioners should take into account the precedent effect of granting this application, as it will inevitably result in existing and future water permit holders seeking consents with annual allocations above than that specified in the WCWARP, and ultimately be treated as a plan change with respect to the allocation limits.

RECOMMENDATION

Grant or Decline

96. Section 104B applies to any application which is a non-complying activity and states that the consent authority may grant or refuse an application for a non-complying activity, and may impose conditions under s108.
97. Having considered all relevant matters outlined in section 104D which contains particular restrictions for non-complying activities, I am not satisfied that either the adverse effects of the proposed activity on the environment will be minor, or that the activity will not be contrary to the objectives and policies of the WCWARP. I have also considered s104(1) and cannot determine whether the actual and potential effects are acceptable.
98. This is due to the lack of assessment of effects by the applicant. Of primary concern are effects on effect on ecosystems as the applicant does not propose a minimum flow for frost protection abstraction, effects on allocation to other activities as the proposed activity is over the allocation limit for agricultural and horticultural activities and effects on other water users through reduced reliability of supply and sharing between users.
99. Under section 104B I cannot recommend that consent application CRC061399 be granted.

Duration

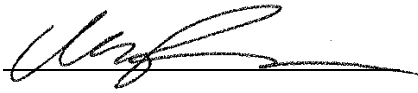
100. The applicant has requested a duration of 35 years.
101. Section 1.3.5 of Chapter 1 of the PNRRP relates to the duration of resource consents. Resource consents (other than for land use or subdivision) can be granted for a

maximum duration of 35 years. This section outlines a number of factors that must be taken into account when considering the duration of any resource consent to be granted. Some of the key clauses which I would like to direct the Commissioners attention to are clauses (a) (i), (ii) and (iii) which talk about the degree to which the sensitivity of the affected environment may become more sensitive over time, the risk of unforeseen effects arising over time and the level of knowledge about the affected environment.

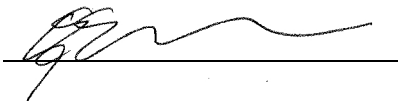
102. A number of submissions have been made which consider the potential duration for water permits. Most of those submissions consider that a duration of 10 to 15 years is more appropriate for these consents.

RECOMMENDED CONDITIONS

103. Comments on the mitigation proposed by the applicant for each application are provided earlier in this report.
104. If the Commissioners decide to grant the water permit application, a list of conditions that are usually included in a water permit are provided in Appendix 6 of the introductory s42A report. A list of conditions for this application can be provided to the Commissioners upon request.
105. It should be noted that I am not satisfied that these conditions would adequately mitigate that adverse effects that are of key concern, for example, adverse effects on existing users.

Signed:  Date: 18 July 2008

Claire Penman
Consultant Investigating Officer

Signed:  Date: 18 July 2008

Reviewed by Gillian Ensor
Consents Project Leader (Waitaki)

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ATTACHMENT ONE – MAP SHOWING LOCATION OF ABSTRACTION AND IRRIGATION AREA

