

IN THE MATTER of the Resource Management Act 1991

AND

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

**SUPPLEMENTARY LEGAL SUBMISSIONS ON BEHALF OF
NORTH CANTERBURY FISH AND GAME COUNCIL**

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1. INTRODUCTION

- 1.1 North Canterbury Fish and Game Council (**Fish and Game**) has had the opportunity to consider the supplementary evidence produced by Central Plains Water Limited/ Central Plains Water Trust (**the Applicant**).
- 1.2 In response to a request from the panel, Fish and Game has also considered the mitigation that an unmodified 80 cumec minimum flow on "B" permits in the Waimakariri River would provide (the "80 cumec minimum flow"), compared with an unmodified 100 cumec "B" permit minimum flow (the "de Joux proposal").
- 1.3 You have received brief supplementary evidence from Richard de Joux, Joe Hay and Dr John Hayes. Fish and Game's response is largely limited to technical issues that warrant a specific comment or require clarification. Where no comment is made, this is on the basis that there is nothing in the supplementary evidence produced by the Applicant that causes Fish and Game to alter its position in any way.
- 1.4 Mr de Joux has reviewed the hydrological modelling in Mr Tipler's supplementary statement of evidence dated 4 July 2008 and is present today to answer any questions you may have, together with Mr Jason Holland who gave planning evidence on behalf of Fish and Game in May 2008.
- 1.5 The panel has asked for comment on the possibility of imposing an 80 cumec minimum flow for the abstraction from the Waimakariri River. The flow-clarity relationship and optimal conditions for salmon angling was analysed extensively by Dr Hayes and considered by a number of expert anglers called on behalf of Fish and Game during presentation of the case in May 2008. Mr Geoff Canham also commented on the inappropriateness of a "weekends-only" mitigation option, noting that "reducing recreation use opportunity into compressed regimes is typically fraught with problems" (paragraph

5.23). This range of expert evidence comprehensively demonstrated, in my submission, the relative merits of the de Joux proposal.

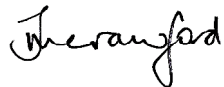
- 1.6 In conducting his analysis of the 80 cumec minimum flow option most recently suggested by the panel, Dr Hayes has assumed a linear relationship between flow, habitat and angling variables. Dr Hayes concludes that this alternative would have a mixed effect on habitat (depending on season) and will provide less mitigation of flat-lining (impacting on salmon passage). Dr Hayes' analysis of angler effort and catch rate indicates that unmodified flows in the vicinity of 100 cumecs produce optimum flow and clarity conditions for salmon angling, as well as maximising the fishable area available for anglers when preferred flow and clarity is available. Put simply, the de Joux proposal offers a high level of mitigation for cumulative losses of preferred salmon angling conditions.
- 1.7 Dr Hayes also comments on Mr Greg Burrell's supplementary evidence, in relation to reduction of flow and related instream habitat. Fish and Game's recommended mitigation options are made on the basis that any reductions in flow should be conservative, in the face of uncertainty about the resultant adverse effect on instream values.
- 1.8 Mr Joe Hay has considered the proposed mitigation options for Hackett's Creek and the proposed intake arrangements and potential risk of fish stranding, in response to the supplementary evidence of Mr Lewthwaite (Brief No. 4, July 2008). Of the two options set out in Mr Lewthwaite's evidence, passing the canal flow under Hackett's Creek is preferable from Fish and Game's perspective. However, there are some areas of risk that need to be resolved relating to the timing of the construction period, canal location, crossing design and appropriate remediation measures. The proposed intake arrangements also create a potential risk for fish stranding, as outlined in Mr Hay's evidence.
- 1.9 In our submission, such matters ought not to be relegated to a post-consent management plan structure or a working group concept. If the panel is minded to grant consent, Fish and Game's position is that

conditions must be imposed that area clear, transparent and enforceable. Any certification requirement should be linked to consent conditions. It is not appropriate to reserve discretion to a third party to approve the design of an aspect of the scheme following the grant of consent. In such circumstances, to require approval from another party would involve the unlawful delegation of judicial duties: *Turner v Allison* [1971] NZLR 833; *Ravensdown v Southland Regional Council* C194/2000.

1.10 There has been some discussion, during the course of presentation of the Applicant's supplementary evidence, about whether some access points along the Waimakariri and Rakaia Rivers would be considered more important than others. We draw the panel's attention to the evidence of Mr Geoff Canham (for example his paragraph 4.9) and, in particular, the appendices indicating the existing angler access points on both rivers, which are pamphlets published by Fish & Game that are widely available in fishing shops throughout the region. Mr Canham's evidence also noted that in braided rivers, access to the riverbed does not necessarily secure direct access to water, and users are often forced to walk or use four wheel drive vehicles to reach it (see for instance his p.11, point k). As stated in presentation of Fish and Game's case in May 2008, all access points are valued by recreationalists, together with the ability to access the main braids of the rivers for angling purposes unhindered by artificial structures or unnatural channels.

1.11 The extent to which particular recreational uses in the area are affected by the CPW Scheme has still not been comprehensively addressed by the Applicant. The various ad hoc mitigation measures out forward as options during the course of this hearing has yet to fully satisfy recreational concerns, particularly in peak periods. A number of key instream issues also remain unanswered by the Applicant - relating to matters such as the extended duration of low flows, factors influencing fishability and fishing amenity, related impact on instream habitat, public access and fish passage.

1.12 In conclusion, there is nothing in the further supplementary evidence produced by the Applicant that causes Fish and Game to alter its overall position; namely, that the potential adverse environmental effects of the CPW Scheme on sportsfish and gamebird habitat, and angler and hunting amenity are more than minor and will not be adequately addressed by various mitigation measures put forward by the Applicant to date.



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JM Crawford/SJ Eveleigh

Counsel for North Canterbury Fish and Game Council

25 August 2008