

---

*in the matter of:* the Resource Management Act 1991

*and*

*in the matter of:* an application by the Central Plains Water Trust to take water from the Waimakariri River

*and* applications by the Central Plains Water Trust to use water from the Waimakariri and Rakaia Rivers and for all associated consents required for the construction and operation of the Central Plains Water Enhancement Scheme

*in the matter of:* a Notice of Requirement by Central Plains Water Limited to the Selwyn District Council for the designation of land for works associated with the construction and operation of the Central Plains Water Enhancement Scheme

---

Synopsis of submissions on behalf of Waimakariri Irrigation Limited, Waimakariri District Council and Kaiapoi Community Trust Board.

---

Dated: 26 June 2008

---

**Chapman Tripp** *Barristers & Solicitors*

119 Armagh St Tel +64 3 353 4130  
PO Box 2510 Fax +64 3 365 4587  
Christchurch NZ DX WP21035

*Reference:* JM Appleyard (jo.appleyard@chapmantripp.com)  
BG Williams (ben.williams@chapmantripp.com)

**SYNOPSIS OF SUBMISSIONS ON BEHALF OF WAIMAKARIRI  
IRRIGATION LIMITED, WAIMAKARIRI DISTRICT COUNCIL AND  
KAIAPOI COMMUNITY TRUST BOARD**

**Introduction**

- 1 This hearing is now in the long process of considering the various positions' of submitters in respect of the applications for resource consent and requiring authority status by the Central Plains Water Trust and Central Plains Water Limited (*CPW*). I appear with Mr Williams today in support of the submissions in opposition by:
  - 1.1 Waimakariri Irrigation Limited (*WIL*); and
  - 1.2 Waimakariri District Council and the Kaiapoi Community Board (together '*WDC*').
- 2 These entities have a specific interest in the Waimakariri River. At the outset it is appropriate to emphasise that *WIL* and *WDC* are not opposed to irrigation *per se*. However *WIL* and *WDC* are concerned about the potential for adverse effects to the amenity and use of the Waimakariri River, the surrounding groundwater areas, and existing abstractive users.
- 3 To this end:
  - 3.1 *WIL*'s interests are principally confined to the potential effects of the *CPW* Waimakariri take(s) on existing abstractive users and the way in which this decision will implement the existing allocation regime under the Waimakariri River Regional Plan (*WRRP*); and
  - 3.2 *WDC*'s concerns are wider than this. Although also supportive of *WIL* in so far *WDC* also has abstractive takes from the river, *WDC* has other more general concerns about the Waimakariri River environment for its rate payers, safety issues regarding the *CPW* intake and sediment pond flushing, groundwater interaction in the area of the Kaiapoi aquifers, and flooding risks in the lower river.
- 4 As an extreme *WIL* and *WDC* maintain a bottom line position that if these concerns can't adequately be addressed by conditions or amendments to the final design then the applications related to the Waimakariri River should be declined. However, in practical terms *WIL* and *WDC* are hopeful that all matters can be addressed by way

of appropriate conditions and are happy to cooperate in attempting to draft these.

- 5 On this basis these legal submissions address a number of issues specific to the issues raised in evidence and around what WIL and WDC consider to be the correct interpretation or application of the WRRP. This includes:
- 5.1 the appropriate area of assessment for the point of take;
  - 5.2 the intended flow regime for the Waimakariri River including the nature of A and B permits and "unmodified flows";
  - 5.3 whether the threat of didymo spread is still relevant to any section 104 assessment under the Act; and
  - 5.4 the nature of assessing environmental effects on aquifers and the implications for conditions of consent.
- 6 These submissions have been structured to avoid pre-empting or repeating the detail of any matters raised in evidence.

#### **The Waimakariri Regional River Plan**

- 7 The taking of water from the Waimakariri is a restricted discretionary activity in terms of the WRRP. Rule 5.1 notes that the discretion is limited to a number of matters, including:
- (a) The reasonable need for the quantities of water sought, and the ability of the applicant to abstract and apply those quantities.
  - ...
  - (d) For surface takes:
    - (i) the effects the take has on river flows, and consequential effects on those values identified in (a) to (h) of Objective 5.1, **near the point of take**;
    - (ii) **the effects the take has on other authorised takes.**
  - (e) The collection, recording, monitoring and provision of information concerning the exercising of the consent in accordance with Section 108(4) of the RM Act.

*[Emphasis added]*

- 8 As has already been briefly discussed as a part of this hearing the correct interpretation and application of Rule 5.1 is a little difficult to encapsulate in the immediate context of the CPW Waimakariri take application. Although perhaps limited to assessing the effects around the intake site (if that is what is meant by "*near the point of*

take”), it nevertheless appears reasonably clear that the Commissioners are entitled to take into account a wider range of effects through:

- 8.1 the overall status of the proposal which, through the dominant purpose of the application being for irrigation, is a discretionary activity on the basis of *K B Furniture Limited v Tauranga District Council*<sup>1</sup>; and
- 8.2 the obligation to have regard to the effects the take has on other authorised takes (which includes WIL and WDC) under Rule 5.1(d)(ii).

**Allocation: A and B permits**

9 It is our understanding that regardless of the outcome of the priority issues with Ngai Tahu Property Limited (*Ngai Tahu*), CPW is still seeking conditions of consent which, in some circumstances, would permit the taking of *A permit* water.

10 The currently proposed conditions (CRC061972) provide:

1. The maximum total combined take from the Waimakariri River, at the upper and lower intake sites shall not exceed 40 cubic metres per second.
2. Subject to Condition 1, whenever the flow in the Waimakariri River, as estimated by the Canterbury Regional Council from measurements at the Old Highway Bridge, at or about map reference NZMS 260 M35: 818-547, is greater than 41 cubic metres per second, the actual rate of take shall not result in the flow in the river falling to below 41 cubic metres per second.
3. Condition 2 does not confer priority rights to the consent holder for Class A and Class B water as defined by the Waimakariri River Regional Plan, that has been previously allocated by resource consent. **Condition 2 does allow the consent holder to abstract any Class A or Class B water that may be allocated to other consent holders, but is not being taken at that time, provided written approval has been obtained from the existing consent holder that allows the consent holder to take its unused allocated water.**

...

[Emphasis added]

11 It is WIL’s submission (supported by WDC) that the condition is both ambiguous and inconsistent with the WRRP.

---

<sup>1</sup> [1993] 3 NZLR 197

- 12 This includes a primary submission that it is inappropriate to provide CPW with an *A permit* take for anything other than the 2.72 m<sup>3</sup>/s of *A permit* water described in the Ngai Tahu application.
- 13 Although it is my understanding that CPW modelling (and consent conditions) initially assumed that this water would be taken by Ngai Tahu, at this point in time this is not a correct assumption to make. However, for the *B Permit* portion of the take by CPW there should be no reference to a possible take of *A Permit* water.
- 14 Turning back to Rule 5.1, the WRRP effectively defines two classes of water:

***A permit water***

- 14.1 A permit water is an allocation of 22 m<sup>3</sup>/s which is restricted as flows measured at the Old Highway Bridge decline from an "unmodified" flow of 63 m<sup>3</sup>/s down to an "unmodified" flow of 41 m<sup>3</sup>/s. This means that when the river flow is above 63 m<sup>3</sup>/s then *A permit* users can take their maximum individual allocation, but when the river is between 63 m<sup>3</sup>/s and 41 m<sup>3</sup>/s, the total of *A permit* abstractions must be gradually reduced.
- 14.2 If the river falls below 41 m<sup>3</sup>/s then all *A permit* users must cease (apart from certain domestic/ stockwater supplies and augmentation of the Cust River which amount all to an abstraction total of around ~4 m<sup>3</sup>/s).
- 14.3 The Plan expressly limits *A permits* to the allocation limit described above:

"A" Permits are water permits which are granted to take water until the sum of the individual takes from the "Water Resource" equals the "Allocation Limit". No "A" permits are to be granted above this limit...

The *Allocation Limit* is the total flow rate of water to be allocated via *A permits* – i.e. 22 m<sup>3</sup>/s.

- 14.4 Following the grant of CRC052033 to Ngai Tahu, all the *A Permit* water from the Waimakariri River is either fully or possibly slightly over allocated.<sup>2</sup> Whether it is actually Ngai

---

<sup>2</sup> Central Plains' opening submissions noted that there could be slightly over 22 cumecs of *A Permit* water actually granted.

Tahu that holds the final 2.72 m<sup>3</sup>/s of *A permit* water is dependent on the final outcome of the priority arguments with CPW that are to be heard in the Supreme Court

- 14.5 Rule 5.1(h) provides that for *A permits*, any restrictions during periods of low flow may be achieved by reallocating available water within a "Water Users Group", that limits the combined abstractions from water permit holders in accordance with the restrictions. Whenever agreement amongst all the permit holders in a catchment or part catchment to operate within a water user group cannot be achieved, then the normal restrictions on individual takes will still apply.
- 14.6 An *A permit* remains an *A permit* on the transfer in whole or part of the permit, provided the same "Allocation Limit" applies to the permit. New permits that are granted as replacements for an *A permit* on its expiry or review, remain as *A permits*.

***B permit water***

- 14.7 Rule 5.1 also defines a *B permit* allocation for which the Plan has not limited the size of the *B permit* allocation block. *B permit* users must cease their abstraction when the unmodified flow in the Waimakariri River is below 63 m<sup>3</sup>/s.
- 14.8 As presented in the evidence of Mr Peter Callander it appears that the formation of the *B permit* allocation in the Plan was loosely based on a potential future take of around 8 m<sup>3</sup>/s. This is not to say a greater (or perhaps lesser) amount might still be a reasonable and efficient allocation (given the apparent low reliability) in some contexts.
- 14.9 Although it appears clear from the *Ngai Tahu* approach that a consent holder may hold consent for both *A permit* and *B permit* water, there is no express provision in the Plan contemplating the formation of a *B permit* water user group. Rule 5.1(h) is limited to *A permit* holders.
- 15 On the basis of the above, and the current CPW proposal to take *A permit* water, it is necessary to address exactly what level of sharing was intended among lower-reliability users and the methodology by which this should be achieved.

16 In part, we agree with the comments of the Commissioners in the *Ngai Tahu* matter that the allocation regime should enable unused allocated water (both A and B class permits) "to be effectively, efficiently and equitably utilised by other consent holders, in [that] case *Ngai Tahu*, so that the water cannot in practical terms be treated as an exclusive property right which can be used to exclude other users, even if not being utilised" (para 41).

17 The issue is however, that without an express provision in the Plan stipulating any such arrangement or the potential 'double allocation' of the resource (subject to agreement and concurrency), there is no basis in the WRRP to accommodate a *B Permit* holder having an immediate, albeit conditional, right to take *A permit* water.

18 We also emphasise that the existence of *A permit* water users group, or the ability to share *A permit* water is premised on the basis of all *A permit* holders in the defined catchment agreeing with Environment Canterbury regarding the sharing of flows. Where they cannot agree then, as stated, they will be subject to their normal pro rata restrictions during times of low flow.

19 WDC and WIL are aware that the *Ngai Tahu* conditions provide:

2. Subject to conditions 3 and 4 of this consent, the consent holder may take water up to the rates specified below:

(a) A permit water ("a") calculated on a daily basis as 2,720 litres per second **plus any water authorised to be taken under any other A permit that is not being exercised on that day; and the total rate shall not exceed 3,960 litres per second;** and

(b) B permit water ("b") calculated on a daily basis as 3,960 – a litres per second; or 1,240 litres per second; whichever is the lesser. [Emphasis added]

20 The hearing Commissioners for the *Ngai Tahu* matter had commented:

**"270. The way we have drafted condition 1, means that if on particular days other consent holders are not utilising their A permit consents to their maximums, that water will be available to Ngai Tahu on that day.** That can be justified on the basis that (provided CPWT does not have priority) Ngai Tahu is next in line for the A water and should

be able to access all that is available on a particular day after other consent holders have taken all they want to and are allowed to take. That situation is not in our view a transfer of the consent of the type dealt with in section 136(2A). Rather, section 136 (2A) provides an alternative mechanism for the more usual situations where consents do not provide for the type of flexibility we have provided here, or where the parties prefer the security of a formal transfer.

[Emphasis added]

- 21 With respect, subsequent cases such as *Central Plains Water Trust v Synlait Investments Limited*<sup>3</sup> and one decision maker dealing with a consent application (P & E Limited – CRC060221) since the grant of *Ngai Tahu* have declined to follow this approach. [Refer.]
- 22 To this end, and although set in a slightly different context, the comments of the Environment Court in the *Synlait* matter are also of assistance:

[93] We cannot see any basis on which a new application can argue that they should have the same restriction as a consent much earlier in time. To do so would, in our view, derogate from the principle on which this waterway has operated from inception, that the earliest applications in time are the last to be restricted. If there is a case for review of the restriction conditions because of changes in use by other parties, then that is a matter which should be subject to either review by the Council or applications for review by other parties. In our view it cannot form the basis for a later applicant to obtain a much higher reliability of water supply than would otherwise exist.

- 23 This issue was not revisited by the High Court,<sup>4</sup> and Synlait have recently been declined leave on this issue by the Court of Appeal.<sup>5</sup>
- 24 The exception to the above (and one where conceivably it might be possible for Central Plains to justify reference to an *A permit* take while holding a *B permit* consent) is where:

24.1 CPW has obtained a transfer under section 136 of the Act; or

---

<sup>3</sup> Unreported, Environment Court Christchurch, C045/07, Smith J

<sup>4</sup> Unreported, High Court Christchurch, CIV-2007-409-1157, 11 March 2008, Chisholm J.

<sup>5</sup> Unreported, High Court Christchurch, CIV-2007-409-1157, 29 May 2008, Chisholm J.

- 24.2 CPW and an existing *A permit* holder have entered into an agreement (on a similar basis to Barrhill Chertsey Irrigation Limited and Glenroy Irrigation Company Limited - CRC051803) which permits the later in time applicant to take water at higher reliability.
- 25 At least to an extent this position even appears to have been partially acknowledged by Ngai Tahu themselves in the recent P&E Limited hearing to take 480 L/sec from the Waimakariri River. Ngai Tahu commented that:
- "the Ngai Tahu Property resource consent CRC052033 provides a clear separation of "A" and "B" permit rights. In particular, the "B" permit rights do not extend to the taking of "A" permit water (under any circumstance)"
- 26 Accordingly it is submitted that the *A permit* take from the Waimakariri by CPW should be limited to the 2.72 m<sup>3</sup>/s.
- 27 In the event that priority is lost (and as for the wider *B permit* take), there should be no mechanism provided for in the conditions to allow CPW to automatically take *A permit* water outside of an agreement being entered into directly with an existing *A permit* user.
- Effects on reliability of other users**
- 28 It is the submission of WIL (supported by WDC) that the effect of the existing suite of conditions for CPW is that there could be a reduction in reliability of supply to existing *A permit* users. The reason for this will be outlined in the evidence of Mr Callander.
- 29 WIL and WDC propose CPW should be limited to a take of *A permit* water of 2.72 m<sup>3</sup>/s during such times as there are no restrictions affecting any *A permit* takes. And during times of restriction, in the absence of an *A permit* water users group, CPW will only be entitled to take their pro rata entitlement – there should be no right to take another's 'unused flows'.
- 30 WIL (as supported by WDC) is therefore requesting that for the *B permit* take the currently proposed conditions 2 & 3 be deleted and replaced with:
2. Abstraction must cease whenever the flow in the Waimakariri River, as estimated by the Canterbury Regional Council from measurements at the Old Highway Bridge, at or about map

reference NZMS260 M35: 818-547, is less than 64.24 m<sup>3</sup>/s (or 63 m<sup>3</sup>/s if CPW is granted priority over Ngai Tahu Property Ltd).

**Just what is the meaning of allocation?**

- 31 This is related to the last point raised above (the take of another's unused flows), but it is also a relevant issue in its own right.
- 32 As identified by counsel during the initial ACWT 'take' hearing, there is a potential issue on the Waimakariri River of exactly what is meant by "allocation" in the context of a consent to take water for irrigation. The issue arises in the context of WIL's consent which does not limit the taking of water to an irrigation season. WIL asserts that the correct interpretation of its consent is that it allows it to take water for irrigation in winter (and for example store it for use in summer).
- 33 Since those preliminary discussions there has been an exchange of correspondence between CPW and WIL and we understand that both are in agreement that:
- 33.1 WIL holds consent CRC000585.6 to take up to 10.5 cumecs on a 365 day per year basis. We understand that this is acknowledged by CPWT and they do not seek to argue that WIL's consent is limited to an (unspecified) irrigation season.
- 33.2 WIL would only accept CPWT taking what was otherwise WIL's allocation (whether winter or summer) if a commercial water sharing agreement is entered into. This would presumably be achieved by either an informal or temporary transfer via a commercial agreement and/or via a water users group as described in the Waimakariri River Regional Plan.
- 34 WIL is not opposed to considering such an agreement in principle but wishes to defer discussion on it until it is clear that CPW has secured consents for its scheme.
- 35 Copies of the correspondence are **attached**.
- 36 For this reason also it is unnecessary to provide for CPW to take A class water in CPW's consent conditions. It is quite reasonable to expect that both WIL and CPW could, if both parties desired, enter into a commercial arrangement whereby CPW would be able to take unused winter flows (if any) but that is a matter for negotiation between the parties

**“Unmodified” flows – the correct measure?**

- 37 The WRRP specifies that, but for a number of listed exceptions, the taking of water should cease on the basis of certain “*unmodified*” flows at the Old Highway Bridge recorder:
- “(d) For ‘A’ permits, the taking of water, downstream of Woodstock, from the Waimakariri River and its tributaries, or from hydraulically connected groundwater shall:
- (i) cease whenever the ‘**unmodified flow**’ is at or below the ‘minimum flow’ for ‘A’ permits specified in Table 2 (page 28).” [Emphasis added]
- 38 The definitions section provides:
- “‘**Unmodified flow**’ is the rate of flow in the river calculated by Environment Canterbury as if there was no taking occurring. ...”
- 39 This definition is intended to mirror the otherwise “*natural*” flow in the river, which would be measured at the downstream location of the Old Highway Bridge but corrected by adding on the effects of upstream abstractions to create the “*unmodified*”, or natural, river flow.
- 40 In simplistic terms the Plan writers appear to have envisaged a regime where an upstream abstraction would not impact on the allocation reliability of existing abstractors because the effect of the upstream abstraction is added to the measured river flow to return it to its “*unmodified*” flow. In the absence of telemetry, and consistent with the Plan, the deductions are based on the peak consented rate for the relevant consents – effectively a spreadsheet exercise which, in itself, should be easy to follow.
- 41 However, in practice ECan has in a number of instances – we submit wrongly - based consent conditions on measured flows at the old Highway bridge. The outcome of this approach is that if the CPW abstraction causes the flow at the Old Highway Bridge to flow below 63 m<sup>3</sup>/s for longer periods than is currently the case, it would result in an adverse impact on the reliability of supply of existing consent holders.
- 42 It is submitted that the matrix of existing consents, however so granted, form part of the existing environment which is the environment against which the CPW application should be assessed.

CPW itself should also only be granted a consent that adopts "unmodified" flows to avoid exacerbating the issue described above.

### **Didymo**

- 43 Didymo was first identified in the lower Waiau River in October 2004. Despite very high use of the Waimakariri River on a recreational and abstractive basis, it has not entered the Waimakariri River.
- 44 If Didymo did enter the Waimakariri then it could have a significant effect on WIL and WDC. Given the site constraints of the Brown's Rock intake it is very likely that major alterations or a complete 're-think' of the WIL take site would be required.
- 45 WIL has already obtained a permit from Biosecurity New Zealand for the possible conveyance of Didymo throughout the WIL scheme area and surrounding environs. This was obviously done outside the resource consent process.
- 46 However, it is submitted that in the context of CPW, the potential to convey Didymo is relevant to the determination of the application under section 104 and the wider provisions of the Act. Didymo falls within the definition of effect within section 3, and although similar concerns may be raised during the permit application, I submit there is also a requirement for similar concerns to be raised under the present process.
- 47 Alongside stringent conditions concerning cleaning and movement within the river bed, particular regard should also be had to minimising or avoiding the by-wash of water across the wider Waimakariri-Rakaia scheme area

### **What is an effect on an aquifer?**

- 48 A number of submitters (including WDC) have raised concerns around the impact on aquifers on both sides of the Waimakariri River. Related concerns have also been raised in the context of gravel extraction and also in relation to ground-water takes from the Rakaia River.

- 49 As set out in the evidence of Mr Don Young, WDC is particularly reliant on its groundwater takes for domestic and community supply. The effect of 'getting it all wrong' would therefore be catastrophic. For this reason, although it is submitted that there will be a permissible level of effect (otherwise you could never grant any subsequent application), in the context of CPW it should only be a very small one.
- 50 We also mindful of the Commissioner's comments at other stages of this hearing and, for example, the evidence presented by Synlait. Synlait suggested that, in the context of the Rakaia, a take by CPW and ACWT could be a derogation from existing consent holders' consents.
- 51 Previous cases relating to water under the Water and Soil Conservation Act 1967 (WSCA) and the Resource Management Act 1991 (*RMA*) that have dealt with this issue generally have emphasised the priority that existing users have and the need for them to have security in the grant of consent.
- 52 For example, the Planning Appeal Board's decision in *Stanley v South Canterbury Catchment Board*<sup>6</sup> acknowledges that in some circumstances there may be a permissible level of effect. Similar statements were made in *Napier City Council v Hawkes Bay Catchment Board*<sup>7</sup>. However, this was refined in *Jordan v Marlborough Regional Water Board*<sup>8</sup> which followed the decision in *Napier City*. In *Jordan*, the Board considered a possible conflict between an existing resource consent holder and an applicant for a further consent in respect of the same groundwater resource.
- 53 The Board considered the decision in *Napier City*, quoting the preceding passage from that decision, and went on to say:

"We have included the last sentence in this question because we think that otherwise too much might be read into the passage. We agree with the Number [Two] Board that there is nothing in the Act which necessitates the maintenance of well pressure, as opposed to the

---

<sup>6</sup> (1971) 4 NZTPA 63

<sup>7</sup> (1978) 6 NZTPA 426

<sup>8</sup> (1982) 9 NZTPA 129

availability of natural water itself. But, in allocating water resources, it may be necessary to have regard to the rate at which that water should be drawn off to avoid adverse effects on other users. **We agree with the Board that the effects must be considered in any particular case.** We do not find it necessary to rely on that decision to support our own decision in respect of these appeals." ...

In the end, we have determined these appeals on the factual finding that the granting of this application will not have an adverse effect on the appellants or any other existing or foreseeable users in the Woodbourne area. That being the case, the appeals are disallowed and the respondent's decision to grant the right is confirmed. (page 133)

- 54 WDC and WIL are therefore not (on the basis of the current predicted effects anyway) seeking to argue there is any "derogation" to their existing rights in the sense used in the *Aoraki Water Trust* decision. If that were not the case in many situations no consent beyond the first could ever be granted as the addition of new users will often have some impact on the reliability of previous users.<sup>9</sup>
- 55 What do however seek is for the Commissioners to have particular regard to the facts in *this* case and the effects that could occur were there a significant adverse effect. It is submitted that on this basis alone the monitoring and review provisions proposed are essential to address any concerns.

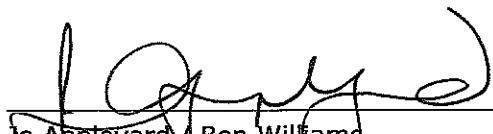
#### **Evidence**

- 56 We will call evidence from:
- 56.1 **Mr Gerry Clemens** who will appear on behalf of WIL;
- 56.2 **Mr Ron Keating** who will appear on behalf of WDC;
- 56.3 **Mr Peter Callander** who will present technical evidence a variety of issues on behalf of both WIL and WDC; and
- 56.4 **Mr Don Young** who will present further technical evidence on some further issues specific to WDC.

---

<sup>9</sup> This issue arose in a different context in *Southern Alps Air Limited v Queenstown Lakes District Council*.

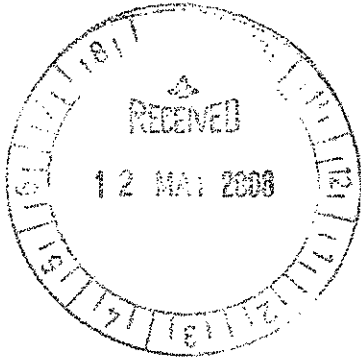
Dated: 26 June 2008



---

Jo Appleyard, Ben Williams  
Counsel for Waimakariri Irrigation Limited,  
Waimakariri District Council and Kaiapoi  
Community Board

# BUDDLE FINDLAY



To  
Chapman Tripp  
P O Box 2510  
Christchurch 8140

For  
Jo Appleyard

From  
Rachel Dunningham

By  
Post

Date  
9 May 2008

Dear Jo

## Waimakariri Irrigation Limited

1. We refer to discussions our respective clients have had regarding your client's resource consent CRC000585.6, to take water from the Waimakariri River, and the inter-relationship with it and Central Plains Water Trust's application to take and use water from the same river.
2. We understand you are seeking clarification as to whether Central Plains Water Trust will seek to argue that your client's consent to take water from the Waimakariri River is implicitly confined to a summer allocation and therefore, during the winter, the consented rate of take, 10.5 cumecs, is able to be allocated to Central Plains Water Trust. We note there is no express condition in the consent restricting the permitted take to the irrigation season only.
3. Central Plains Water Trust confirms that it will not seek to challenge that the water is allocated to your client all year round and, while your client holds a consent which does not expressly confine the water take to the irrigation season, our client would only seek to take water in the winter at the rate permitted in your client's consent, by agreement with your client. We understand that, unless your client has a consented use for that water in the winter, it is willing to allow Central Plains Water access to that water when it is not required by your client.
4. We trust this explains our client's position. If not please come back to us for any further clarification required.

### LAWYERS

CHRISTCHURCH  
Clarendon Tower  
78 Worcester Street  
PO Box 323  
Christchurch 8140  
New Zealand  
DX WFP20307  
Tel: 64-3-379 1747  
Fax 64 3 379 5658

AUCKLAND  
PricewaterhouseCoopers Tower  
188 Quay Street  
PO Box 1433  
Auckland 1140  
New Zealand  
DX CP24024  
Tel 64-9-358 2555  
Fax 64-9-358 2055

WELLINGTON  
State Insurance Tower  
1 Willis Street  
PO Box 2694  
Wellington 6140  
New Zealand  
DX 5P20201  
Tel 64-4-499 4242  
Fax 64-4-499 4141

Yours faithfully  
**BUDDLE FINDLAY**

A handwritten signature in black ink, appearing to read "Rachel Dunningham".

**Rachel Dunningham**  
Partner  
Direct dial: +64-3-371 3535  
Email: rachel.dunningham@buddlefindlay.com

Copy to: Pat Morrison  
Hukanui  
RD 1  
Darfield

Derek Crombie  
C/- GHD Limited  
P O Box 13-468  
Christchurch

23 - 29 Albert Street, PO Box 2206, Auckland 1140, New Zealand.  
 Tel +64 9 357 9000. Fax +64 9 357 9099. DX CP24029.  
 Offices also in Wellington & Christchurch. [www.chapmantripp.com](http://www.chapmantripp.com)

PARTNERS, PRINCIPALS AND CONSULTANTS

D S Alderslade	C M Elliffe	L Jones	J L Parker*	C J Street*
K Anderson*	P J England	A J Keenan*	R I Parker	W J Strowger
M G Anderson	J M Floyd*	B R Kidd*	L J Partridge*	M C Sumpter*
N A Anderson	S H Fooka	J A Knight	C M V Plunket	P C Sumpter*
J M Appleyard	S L Franks*	C S N Lawgun*	A S G Poole	E L Sutcliffe*
H D Arthur	N E Gray*	A F Lester*	P M Reese	T A Tubman*
F K Bennett*	S C Hale*	N W Lough*	V J Rive	R F Wallis
P W Bennett	M J Harper	S B Lowe	A S Ross	J M Walters*
H M Bowie	J J Hassan	B L McArthur	D M M Ross	N R S Wells
P Brosnahan*	V L Heine*	R B McClintock	S H J Rowe*	T G R Williams
B J Brown	J E Hodder	A G McDonald	W A Sandston	R J Wilson*
R A Bycroft	S A Hodge	J A McKay	E S Scorgie*	M W Woodbury
M J Carroll	J L Holland	F D McLaughlin	B A Scott	A N C Woods
G T Carter*	G A Hughes*	P A McLeod*	J G M Shirlcliffe	M E Yarnell
D J Cochrane	B H W Hutchinson*	H C McQueen*	C J Sinnott*	A W Young
M K Corse-Scott*	E R Jack*	A J Nicholls	C J Somerville*	
G W David	P R Jagose	M R Nicholson*	J G Sproat	
B A Davies*	S M Janissen	D J Parker	V H Stace*	

*Principals and Consultants do not share Partners' liabilities for the firm.  
 \* Principals • Consultants*

*Our ref:* Jo Appleyard / Ben Williams  
*Direct dial:* +64 3 353 0343  
*Email:* [ben.williams@chapmantripp.com](mailto:ben.williams@chapmantripp.com)  
**by email**

5 June 2008

Rachel Dunningham  
 Central Plains Water Trust  
 C/- Buddle Findlay  
 PO Box 322  
 Christchurch 8140

**WAIMAKARIRI IRRIGATION LIMITED**

- 1 We refer to your letter dated 9 May 2008.
- 2 We thank you for writing to us regarding the position of Central Plains Water Trust (CPWT) on the consents held by Waimakariri Irrigation Limited (WIL).
- 3 Although your letter largely captures the position we have been instructed to clarify WIL's position on the matter. This is that:
  - 3.1 WIL holds consent CRC000585.6 to take up to 10.5 cumecs on a 365 day per year basis. We understand that this is acknowledged by CPWT.
  - 3.2 WIL would only accept CPWT taking what was otherwise WIL's allocation if an agreement had been entered into which was in all ways satisfactory to WIL. This would presumably be accompanied by

either a temporary transfer under section 136 and/or via a water users group as described in the Waimakariri River Regional Plan.

- 3.3 At this point in time it is overstating the position to say that WIL is "willing to allow Central Plains Water access to that water when it is not required by WIL". Although WIL is not opposed to considering such an agreement, this will only be discussed once CPWT has gained its necessary consents and only if it is still in the interests of WIL.
- 4 Given the current absence of an agreement and WIL's (or possibly other parties') interest in winter flows no absolute reliance should be placed on the flows being available to CPWT. However WIL is prepared to discuss the availability of this water with CPWT in the future, and this would probably be on a season-by-season basis.
- 5 WIL is also preparing some draft conditions for a CPWT consent which they would like to seek your agreement on before they present them to the hearing panel. These conditions will help to confirm the arrangement between WIL and CPWT related to the allocation of water and the operation of the scheme intakes.
- 6 We hope that this clarifies the position and that you are agreeable with WIL advancing on this basis.

Yours faithfully



Ben Williams  
Solicitor