

RESOURCE MANAGEMENT ACT 1991

CANTERBURY REGIONAL COUNCIL

Hearing of 60 applications for water permit resource consents; 30 applications for land use permits, and 20 applications for discharge permits in the Upper Waitaki River Catchment.

EVIDENCE OF ROBERT WILLIAM BATTY

Personal Background

My name is Robert William Batty. I am the Principal Consultant to a planning and resource management consultancy based in Christchurch that I established in 1992. I hold post graduate Diplomas in both Town and Country Planning and in Landscape Design. I am a Member of the New Zealand Planning Institute, and hold 'Retired' Membership of the Royal Town Planning Institute (UK). I have been employed in the practice of planning since 1958, initially in the UK, but since 1977 in New Zealand. Over the past fifteen years a significant part of my professional activity has been as a hearing commissioner for district and regional council hearing processes on RMA related matters, in Canterbury, Otago and Westland.

1.0 INTRODUCTION

- 1.1 I have been requested by the applicants collectively known as the Upper Waitaki Applicants Group ('UWAG') to present planning evidence on those of the above applications made by UWAG members that relate to the taking of water for irrigation purposes, together with associated works within and adjoining the water bodies concerned in the Upper Waitaki River Catchment.
- 1.2 Specifically the following evidence provides a brief overview/peer – review of the general planning evidence and opinion presented to the Commissioners by both ECan s42A reporters and Mackenzie Water Research Limited ('MWRL), particularly that of Mr John Kyle. Further planning evidence, will be presented at a later time, to deal with individual applications by some of the UWAG members, where planning (as opposed to more specialised technical considerations) are raised by s42A reporters.
- 1.3 For the purposes of the following planning assessment I adopt and endorse the expert evidence of Messers Andrew Craig, landscape architect; David Boraman, hydrologist; Richard de Joux, hydrologist; Andrew McFarlane, rural farm consultant; Haidee McCabe, Irrigation Consultant; Keri Johnson, Irrigation Consultant; Cathy Begley, RMA Planner and irrigation advisor; Dean Olsen Ecologist; Buddy Mikiaere, cultural values. These witnesses each present detailed assessments from their own disciplines of individual UWAG applications.
- 1.4 With regard to the statutory 'Planning Framework' referred to in Mr Kyle's evidence, I note that at paragraph 3.86 of his evidence he briefly refers to the operative Mackenzie, Waimate and Waitaki District Plans as not being relevant in this case. I believe that in assessing these applications against

the provisions of section 104 of the Act regard must be had by the Commissioners to any relevant provisions in those plans (there being no distinction between district and regional plans in section 104(b)(iv) of the Act). The 'weight' to be accorded to that consideration is of course a matter for the Commissioners to determine.

1.5 The over-arching planning issues in relation to these applications are in my opinion:

- Whether granting of these consents would undermine the operational integrity of the Regional Policy statement, Plans, and District Plans, and/or establish undesirable precedents in relation to the consideration of potential future.
- Whether, having regard to the range of mitigation measures proposed in each case, the granting of these consents will have adverse cumulative effects in terms of the available quantity of water and/or its resultant quality downstream following irrigation and subsequent discharge, when considered together with existing consents for the taking and discharge of river waters.
- Whether these proposals promote reasonable, efficient and sustainable management of the natural and physical resources concerned, consistent with the purpose and principles of Part II of the Resource Management Act.
- Whether consents in any of these cases are likely to significantly derogate from the exercise by other parties of previously granted resource consents (other than where written consent to these applications has been obtained from those affected parties).

1.6 I have read the s42A report prepared by Claire Penman together with those by Maria Bartlett, Susannah Vessey and Yvette Rodrigo. I have also

considered those reports of other experts who have contributed professional opinions to the s42A reports on matters of water quality, landscape effects, environmental flow and level regimes. I comment on these reports where appropriate.

- 1.7 I have read the code of conduct for expert witnesses contained in the Environment Court's Consolidated Practice Note 2006 and I have complied with it when preparing this evidence. I have not omitted to consider any matters of which I am aware that might alter or tend to negate my conclusions as set out below.

2.0 STATUS OF APPLICATIONS

- 2.1 I have reviewed the activity status for each of the applications by UWAG members and concur with the relevant status of each of those as identified in Appendix 7 of Ms Penman's s42A report. Of the total of 110 applications being considered here, some 70 are applied for by members of UWAG. Of those, 63 applications are assessed to be 'discretionary activities' and 21 of these are recommended for consent by the relevant s42A reporters.

- 2.2 The remaining 7 UWAG applications to be assessed as 'non-complying activities' are:

- Glenmore Station Limited CRC052503
- Glentanner Station Limited CRC071362
- Haldon Station (1991) Limited CRC082270
- Haldon Station (1991) Limited CRC082271
- A. N. Hope CRC041542
- A. N. Hope CRC041543
- Lillybank Station Ltd. CRC071786

Of the above the applications by Glenmore Station Limited CRC052503 and Haldon Station (1991) Limited CRC082270 are however

recommended for consent by the relevant s42A reporters.

- 2.3 Of the 70 applications by UWAG members (identified in Appendix 3 to Ms Penman's s42A report) 14 seek 'renewal/replacement' of existing water allocations. All have received derogation approval from Meridian Energy Limited ('MEL'). A further 25 UWAG applications seek 'new' water allocations and again all of those have received derogation approval from MEL.
- 2.4 Appendix 1 of Ms Penman's report identifies the various applications by sub-catchment. For convenience in locating the water source involved in UWAG applications, these are distributed as follows:

From canals:

Classic Properties Ltd.

Glentanner Station Limited;

Ahuriri Catchment:

Dunstan Peaks Ltd;

Twin Peaks Station Ltd;

Upper catchment tributaries:

Bellfield Land Company Ltd;

Birchwood Run Ltd;

Grays Hill Station Ltd;

Haldon Station Limited;

A. N. Hope;

Maree Horo;

Irishman Creek station Ltd;

D. W. McAughtrie;

D. W. McAughtrie, Ellis-Lea Farms Ltd & Greenfield Rural Opportunities Ltd;

Mid catchment tributaries:

KJ, DK & SR Anderson;

Aviemore Ltd;

SM Falcolner, RN Macassey & Cook Allan Gibson Trustee Co Ltd;

FI Graham;

Otamatapaio Station Ltd;

Otematata Station Ltd;

Totara Farming company Ltd;

Waitangi Station Ltd;

Upstream of Lake Pukaki outlet:

Glentanner Station Ltd;

Upstream of Lake Tekapo outlet:

Glenmore Station Ltd;

Lillybank Station Holdings Ltd;

These latter two properties are also within an area deemed by the Waitaki Catchment Water Allocation Regional Plan ('the WRP') as having "High Natural Character" (Policies 29 – 340 apply).

3.0 SECTION 42A REPORTS - GENERAL ASSESSMENT

- 3.1 All of the applications under consideration here were lodged with ECan many years ago and with variable levels of accompanying information and assessment of effects on the relevant environments. Given the formulation of the WRP, all were put 'on hold' pending its completion and are now considered in combination at this hearing under the 'umbrella' description of the 'Upper Waitaki Catchment'. However, as noted in previous evidence and reports, the total area involved extends over three territorial district council areas and is considered by the landscape experts to involve eight discretely different landscape units based on physical characteristics. Under these varying circumstances it can not be readily assessed against any individual measure as a 'single' catchment, neither do I accept that in this instance all of these applications should be 'bundled' in terms of their status and subsequent assessment.

3.2 In line with an apparent 'whole of the upper catchment' approach to this hearing, the s42A reports have therefore identified a number of what I call 'generic' issues, which have then been applied to the consideration of individual applications. This approach is generally confirmed at paragraph 138 of Ms Penman's report. For individual applications, where the s42A reporting officer (apparently) had insufficient information to reasonably determine these matters, recommendation to consent has been withheld. Examples of these 'generic' issues are:

"Water Quality – Cumulative effects on....."

"Cultural values – "...no assessment of...."

"Landscape Values – no mitigation has been provided..."

"Efficiency (in use or application of water) – "... not demonstrated..."

3.3 In my opinion each of those types of assessment criteria tend to start from a perspective that: (a) there **is** a potential for more than minor adverse effect on the environment to occur, and (b) that therefore under those circumstances the proposal can not be "consistent with" objectives and policies relating to those matters in relevant planning documents. I have two observations on that approach. Firstly that it is 'circular' in effect in that (a) implies that (b) must automatically follow. Secondly (and with respect to the individual s42A reporters concerned) the statutory test (particularly under s104D of the Act) is not about the resultant degree of "consistency" or otherwise with objectives and policies. Rather, for non-complying activities, it is whether or not the proposal being considered is "**contrary**" to relevant statements of objective or policy in statutory plans – in the sense of being 'repugnant to' or opposed in basic intent' to their desired outcomes. It may be that some aspects of proposals may be inconsistent in some respect with individual statements but sound planning practice dictates a balanced view of all applicable provisions rather than

primacy being accorded to any individual statement.

3.4 In this instance there is a further practical problem with a 'collective' approach to assessment of the future potential cumulative effects of these particular applications. The applicant farms concerned are spread out over a considerable distance (covering only between 30 – 35% of the catchment) and also vary considerably in scale and nature of the farming activity pursued. Many other properties and other land use activities therefore intervene. Management and land use activities on those other properties is also likely to have a potential to contribute 'effects' upon the types of issues referred to above, yet there can be no assessment of the impact of, or control exercised over those 'intervening' activity areas when determining whether to consent or what conditions of consent for the individual applications may be relevant here.

4.0 My Planning Assessment

4.1 I have considered the planning evidence prepared by Mr John Kyle which itself refers to other specialist technical assessments carried out by experts on behalf of MWRL. Mr Kyle's evidence addresses the general planning framework under which these applications are to be considered. Specific provisions of that framework including relevant objectives, policies and rules have been comprehensively set out in both the s42A reports and Mr Kyles planning evidence. I will not repeat those other than to draw the Commissioners' attention to provisions within relevant planning documents that I consider to be significant.

4.2 I generally adopt and endorse the planning analysis and the conclusions reached Mr Kyle, with the exception of his suggested condition for monitoring water quality at 'nodes'. In particular I agree with his demonstration outlined in 2.19 – 2.30 of his evidence that given the

confusing structure of the relevant rules in the PNRRP, no resource consents are currently required under that Plan for the use of water for irrigation or stock-water purposes. I note that the planning evidence provided by Mr Kenneth Gimblett on behalf of MEL disagrees with that conclusion (particularly in relation to Rule WQL62). He comments further upon a consequential effect therefore being to change the status of many of the current applications from 'discretionary' to 'non-complying'. For the reasons set out below, even if that were to be so (which it is not in my opinion), then on the basis of the evidence presented, in my view both the first and the second threshold tests of section 104D(1) can be satisfied in the case of those applications made by UWAG members and probably the majority of all other applications being considered here. Effectively from that point onwards, the statutory assessment of these applications follows a common path to that for discretionary activity.

- 4.3 In describing the existing social, economic and cultural characteristics of that part of the catchment upstream of the Waitaki Dam, the WRP at page 12 notes that as a consequence of recent tenure review processes, some of the land on the high country stations that was formerly held as Crown leasehold has now been transferred to individual farmers as freehold title. The WRP goes on to note:

"This reorganisation of land holdings can mean that run-holders have an increased need to use farmland more intensively. Changes in land use, including the introduction of viticulture and dairying conversion, will influence the community in future." (my emphasis).

- 4.4 The WRP clearly anticipates the likelihood of additional irrigation in the Upper Waitaki and in that regard I consider it difficult to see that irrigation proposals for increased agricultural activities could therefore be seen as being repugnant or contrary in intent to the objectives and policies of the WRP, unless they are shown to be demonstrably contrary to the those

viewed as a cohesive whole.

- 4.5 Chapter 4 of the WRP provides an overview of requirements for water, including increased abstraction for irrigation, noting that the potentially irrigable land upstream of the Waitaki Dam could be as high as 80,000 ha. I understand that there is an agreement between MEL and the Mackenzie Irrigation Company ('MIC'), recognised in Annex 1 to the WRP which effectively sets a figure for future irrigation in the upper Waitaki Catchment at 25,000 hectares as discretionary activities, beyond which further proposals would be assessed as non-complying.
- 4.6 The achievement of improved technical efficiency in the use of allocated water is sought by Objective 3 and Policies 15 & 16 of the WRP. In my opinion this would relate not only to renewal of consents for existing irrigation systems but would also logically encompass new applications for piped methods so as to provide for the even application and distribution of irrigation water by such as pivot irrigators.
- 4.7 The importance of maintaining the integrity of the mauri of the waters concerned by protecting water quality, discouraging the mixing of waters from different catchments and respecting areas of wahi tapu and wahi taonga are probably the most critical aspects of potential cultural concern. Mr Kyle's evidence refers to the Cultural Impact Assessment of existing and new irrigation in the upper Waitaki prepared by Tipa and Associates and the peer review of that report by Mr Buddy Mikaere. My understanding of the outcomes of those assessments is the adoption of a consultation framework between various individual applicants and Te Runanga o Ngai Tahu ('TRONT') so as to identify and avoid or mitigate specific areas of concern in each particular case. In my opinion those provisions should be included in the Farm Environmental Management Plans ('FEMP') recommended by Mr Kyle as one of the conditions of

consent to each of these applications.

- 4.8 In addition to addressing and avoiding the potential for adverse cultural impacts, the recommended FEMP's also provide the framework for managing farm operations so as to successfully intensify the productive output from the lands concerned whilst at the same time ensuring that adverse water quality effects are avoided. MWRL has produced an extensive water quality study which not only quantifies the extent of potential irrigation but also demonstrates the way farming operations need to be managed in order to avoid cumulative adverse water quality effects in the upper Waitaki catchment. Evidence presented by Dr. Coffey, Dr. Ryder, Dr. Bright and Dr. Robson confirms that subject to the adoption and implementation of such management practices, any adverse environmental effects from nutrient run-off on water quality will be no more than minor.
- 4.9 Mr Kyle has recommended that in order to control the cumulative effects on water quality of consents to these applications there a condition be emplaced to monitor the quality of water bodies at 'nodes' within the catchment so as to then be able where necessary to restrain upstream discharges where specified quality thresholds are being exceeded. As noted in paragraph 3.4 above I consider that there are both practical and equity difficulties in that 'node-water quality' approach and that while individual discharge points to water bodies can be accurately monitored, non-point discharges of nitrates etc., can not be enforced for areas of land outside the current consenting process.
- 4.10 A comprehensive assessment of landscape character in the upper Waitaki Basin has been provided by Mr Glasson. The landscape evidence presented by Mr Andrew Craig provides both overall and site specific landscape impact assessments (in relation to the UWAG applicants' sites)

of these applications. Both of these witnesses conclude that this catchment is incapable of being considered as a single unit in landscape terms.

4.11 I accept and endorse Mr Craig's assessment, in particular that visual effects upon wider landscape amenity and character will depend upon the scale and extent of individual proposals if/where these are capable of being viewed from significant public vantage points. Primary visual effects on the existing landscape are likely to be changes in vegetative cover and management (the so-called 'greening effect') and the presence of man-made structures such as pivot irrigators in areas that visually appear as otherwise uncultivated/un-managed/'natural'. Mr Craig concludes that in relation to the UWAG sites such landscape changes will be significantly less than minor. He considers that these sites have already been visually modified to varying degrees and/or cultivated so that public view into/of them (where relevant) will not change in an adverse or incongruous way.

4.12 As stated earlier, I consider that the operative Mackenzie, Waitaki and Waimate District Plans also contain provisions in relation to landscape issues that should be taken into account in the assessment of these applications. I have set these out following.

4.13 **Mackenzie District Plan – Plan change 13**

The Mackenzie District Council publicly notified the acceptance of Commissioners' recommendations on Plan Change 13 ('the Change') to the Mackenzie District Plan on the 5th September 2009. Among other matters this change provides for greater protection of landscape values within the Mackenzie Basin. At the time of writing the Council's decision is still open to appeal. The Change contains statements of objective and policy the following of which are considered relevant to the issue of future irrigation in the Basin.

- **“Objective 3A – Distinctive and Outstanding Landscapes**
To protect and sustain the distinctive and outstanding natural landscapes and features of the District from subdivision and development that would detract from those landscapes.
- **Policy 3C – Adverse impacts of Buildings and Earthworks**
To avoid adverse impacts on the outstanding natural landscape and features of the Mackenzie Basin, in particular from residential, buildings, domestication, structures, earthworks, tracks and roads.

Explanation and reasons

- Some Structures associated with more intensive farming such as large irrigators or industrial style buildings, when placed in the foreground of views can reduce the scenic values and sense of openness valued within the Basin.
- **Policy 3H – Views from Roads**
To require buildings to be set back from roads, particularly state highways, and to encourage the sensitive location of structures such as large irrigators to avoid or limit the screening of views of distinctive and outstanding landscapes of the Mackenzie Basin.

Explanation and reasons

- Structures such as large irrigators and storage of polythene-wrapped feed and long lengths of shelter planting aligned along roads can impact on the experience of road users. Given the emphasis on the unique natural character and landscapes of the Mackenzie Basin it is appropriate to encourage sensitive placement of structures, feed, etc including setbacks from road frontages, particularly state highways, through information and guidelines.” (my emphasis added).

Effectively therefore there are no ‘rules’ constraining irrigation activity in this District Plan.

Visual Amenity.

The hearing of these matters concluded at the end of August 2009 and the Council's decision is awaited.

“16.8.2 Landscape Objective

Subdivision, use and development are managed so that :

- *The values identified for the outstanding or significant natural features, the outstanding natural landscapes, and the significant coastal landscapes are protected from inappropriate use and development; and*
- *The overall landscape qualities of the Rural Scenic Zone are retained.*

16.8.3 Policies

1. *To adopt a shared values approach which recognises that members of the community can be given the opportunity to consider what are the important landscapes in the district and the appropriate means by which to manage these landscapes.*
2. *To maintain the character of those high country landscapes identified as being outstanding because of their high degree of openness, naturalness and/or visual coherence, and to avoid subdivision, use and development in those parts which have little or no capacity to absorb change.*
3. *To manage landscape change in the Rural scenic zone in a manner that maintains the overall character of the landscape, which forms the basis of the visual amenity associated with this zone.*
12. *To assist in the development and establishment of land management practices that do not adversely affect landscape values, by providing information and guidelines to local landholder groups concerning landscape values.*

4. RURAL ZONE RULES

4.3.1 PERMITTED ACTIVITIES

- 4.3.1.4 *Farming activities, except for the farming of chinchillas and*

the irrigation of land for pastoral or crop production within areas identified as Outstanding Landscapes shown on the Planning Maps.

4.3.4 NON-COMPLYING ACTIVITIES

4.3.4.6 *Farming activities involving the irrigation of land for pastoral or crop production within areas identified as an Outstanding Natural Landscape shown on Planning Maps.*

4.15 While not yet 'operative', the effect of the above provisions are to require separate land use resource consents to be sought for any irrigation proposals in the Waitaki District within any area shown on the planning maps in its District Plan as 'Outstanding Natural Landscape'. The 'weight' to be accorded to consideration of the above provisions when any such applications are made will depend upon the procedural stage reached by that proposed Plan change at that time.

4.16 **WAIMATE DISTRICT PLAN**

"Objective 4 – Landscape Character and Natural Features

"Protection and enhancement of significant landscape values of the District, and of those the natural processes and features and cultural values which contribute to the overall character and amenity.

Policy 4A – Waitaki Lakes

To avoid the adverse visual effect of development on the landscape and visual values of the lakeshore and the hinterland of the Waitaki Lakes by:

- *Requiring buildings to be set back from Lake Aviemore (refer Lakeside Protection Area 1). Lack of road access to the shorelines of Lakes Benmore and Waitaki limit development potential.*
- *By providing for new buildings as Controlled Activities in the hinterland area (Lakeside Protection Area 2) to achieve development which is sensitive to the landscape character of*

the area.

Policy 4B – Adverse Effects

Avoid, remedy or mitigate the adverse effects which could detract from important landforms and other natural features, or adversely affect areas of the District which have a high degree of naturalness, visibility, aesthetic value, or expressiveness.

Policy 5B – Livestock Farming

To avoid, remedy or mitigate adverse effects of livestock farming in order to protect the amenity of rural areas and the quality of its physical environment.

OBJECTIVE 6 – Waterbodies and their Margins

Protection and enhancement of waterways and wetlands and their margins to avoid degradation of the natural amenity, cultural and recreational values of these areas and their associated waterbodies.

Policy 6B – Livestock Farming

To avoid, remedy or mitigate the adverse effects of livestock farming so as not to cause a deterioration in the environmental quality and natural functioning of riparian areas, their adjacent areas and groundwater.

RULES 6 – SITE STANDARDS

q Dairying

lil All irrigation water shall be applied to ensure that contamination of waterways and wetlands by effluent is avoided, and to ensure that no surface flooding or spray encroaches onto adjacent properties or roads.”

Non-compliance with the above standard would necessitate application for land use resource consent as a ‘Discretionary activity’ with the council’s discretion restricted to the above matter. These provisions are fully operative.

- 4.17 As a general observation therefore, all of the above district plan provisions in relation to potential landscape effects of activities in rural areas seek to

mitigate these by separation set backs for buildings or equipment so as to lessen their visual impact that might otherwise intrude into publicly accessible view-shafts of significant or outstanding natural landscapes. Where appropriate, provision for such set backs can be incorporated in the recommended FEMP's. Both landscape and water quality provisions reflected above echo the intentions set out in the WRP in relation to those issues.

5.0 Conclusions

- 5.1 I am satisfied that based upon the expert technical evidence presented by witnesses appearing for MWRL and UWAG and subject to the range of conditions recommended by those witnesses to mitigate adverse effects, that the grant of resource consents to the applications sought would not undermine the operational integrity of the policies and provisions set out in the RPS, or the WRP. Within this catchment I consider that the provisions of the WRP take precedence over those of the PNRRP and where these two documents (currently) may be in conflict as to detail, the former is the dominant planning document. The PNRRP is still in its procedural stages and as noted there are aspects of its proposed rules that certainly require resolution as to how/where they are to be given effect to.
- 5.2 Actual effects on the environment of the particular proposals in each case have been evaluated by technical experts in each case. Their evidence indicates that given compliance with appropriate environmental management practices as set out in the proposed FEMP's for each farm, together with specific mitigation measures in particular cases, potential adverse effects will be no more than minor on water quality, cultural concerns, landscape impact and the efficient use of the water resources concerned. In my opinion the appropriate point at which to monitor and prevent the potential for cumulative adverse effects on water quality to occur is at or within the individual properties concerned, rather than at

some removed 'node' which may be open to contamination from other sources than those subject to these applications.

5.3 Section 5 of the RMA promotes the sustainable management of natural and physical resources. For such management to be sustainable it must reflect efficient use of available resources, particularly so that these can meet the reasonably foreseeable need of future generations, while protecting the life supporting capacity (in this case) of the water, soils and ecosystems concerned. I recognise that of particular importance in these cases is the protection of outstanding landscapes from inappropriate use. None of the planning documents I have considered indicate that farming as such is an inappropriate use in this catchment, although the nature and extent to which such activity can be undertaken is heavily constrained by topography and soil quality in this area, as well as the availability of water. Viewed at least from the district plan perspective, the protection of (views of) the area's outstanding landscape, and the protection of significant and ecosystems is to be achieved by 'buffer/separation' distances between elements of farming activities that could adversely impact on such features.

5.4 As far as I am aware all of the resource consents sought by the UWAG applicants have now received 'derogation' approvals from MEL for the volumes of water sought by these applications. Overall therefore I conclude that subject to the conditions recommended for each individual site in the UWAG proposals any resultant adverse effects on the environment will be no more than minor. Viewed in the context of the RPS, the WRP and Part 2 of the RMA, I therefore consider resource consents to be appropriate in this instance.

A handwritten signature in black ink, appearing to read 'R. W. Batty'.

R. W. Batty,

Principal Consultant,

Planit R.W. Batty & Associates Ltd

25th September 2009.