IN THE MATTER OF	the Resource Management Act 1991
IN THE MATTER OF	applications by Central Plains Water Trust to:
	Canterbury Regional Council for resource consents to take and use water from the Waimakariri and Rakaia Rivers for the Central Plains Water Enhancement Scheme and for associated consents required for the construction and operation of the Central Plains Water Enhancement Scheme
AND	
IN THE MATTER OF	applications by Central Plains Water Trust to:
	Selwyn District Council for resource consents to construct and operate the Central Plains Water Enhancement Scheme
AND	
IN THE MATTER OF	a Notice of Requirement by Central Plains Water Limited to:
	Selwyn District Council for the designation of land for works associated with the construction and operation of the Central Plains Water Enhancement Scheme

JOINT DECISION AND RECOMMENDATION OF INDEPENDENT COMMISSIONERS 28 MAY 2010

PART 2

Discussion of Disputed Conditions

GUIDE TO DECISION DOCUMENTS

PART 1 – Introduction, Part II RMA, assessments, objectives and policy summary, conclusions, decisions and recommendations

PART 2 – Disputed conditions

PART 3 – Beneficial, economic, social and cultural effects of the scheme

PART 4 – Intakes and headraces

PART 5 – Distribution network

PART 6 – Waimakariri and Rakaia takes

PART 7 – Use of water

PART 8 – Objectives and policies

PART 9 – Regional Council consents and conditions

PART 10 – Selwyn District Council consents and conditions

PART 11 – Recommendations to Central Plains Irrigation Limited in respect of Notice of Requirement and Conditions

PART 12 – List of hearing dates and appearances

TABLE OF CONTENTS FOR PART 2

1. INTRODUCTION 1
The process for finalising conditions 1
Scope of this discussion of conditions 3
2. WAIMAKARIRI TAKE CONSENT 3
3. FISH SCREEN CONDITIONS 18
4. SAFETY OF BOATERS AT THE WAIMAKARIRI INTAKE 19
5. TELEMETRY 21
6. LOSSES OF WATER FROM THE CANAL 22
7. EFFECTS OF GROUND WATER MOUNDING ON GRAVEL EXTRACTION 22
8. TERRESTRIAL ECOLOGY 25
9. HOURS OF OPERATION FOR CONSTRUCTION OF NOR WORKS 26
10. BOND 27
11. ENVIRONMENTAL MANAGEMENT FUND 32
12. SUSTAINABILITY PROTOCOL (SCHEDULE 2 ADMIN CONDITIONS) 35
13. LAPSE DATE 35
14. TERM OF CONSENTS 36
15. FINALISATION OF THE DESIGNATION CORRIDOR 36

1. INTRODUCTION

1.1 This document sets out our views on conditions which remained in contention following the resumed hearing in March 2010. A more detailed discussion of Waimakariri take conditions can be found in **Minute 12**. There is also a discussion of contentious matters in **Minutes 14** and **15**. The **Parts 3** to **7** contain more general discussion of conditions in relation to key components of the scheme.

The process for finalising conditions

1.2 We were provided with draft conditions by the CPW at the beginning of the hearing. That draft was revised in 2009 for the resumed hearing. We asked the officers not to include draft conditions in their original reports since we considered that premature. We did however ask for the officers comments on CPW conditions in their reports and during the hearing.

1.3 We issue **Minute 11** on 30 October 2009 providing our preliminary conclusions on the revised scheme and signaling that officers and CPW should from that point, engage in finalising conditions and outlined a process for that. Our preliminary views on the Waimakariri take including associated conditions were set out in **Minute 12** on 24 November 2009.

1.4 We have discussed the Waimakariri take conditions in **Minutes 9**, and **12**. We issued **Minute 13** on 28 January 2010 which outlined some issues which had been raised and/or which we considered would need to be addressed in relation to conditions.

1.5 In **Minute 14** we provided some guidance to the Applicant and officers as to matters which we thought needed to be addressed in conditions or amendments required. The officers and CPW then prepared revised conditions and many issues were resolved. We resumed the hearing at the end of March to hear discussion regarding those conditions and residual issues including comments from relevant submitters. Following the hearing at the request of the Applicant, we issued **Minute 15** on 30 March to provide the Applicant and officers with further guidance on the very limited number of remaining issues. **Minutes 14** and **15** record our reasons for our views on a number of significant issues concerning

conditions and we will not repeat that discussion or the reasoning in earlier minutes here.

1.6 There were further discussions between the Applicant and officers in early April, which resulted in a final set of draft conditions in April 2010 along with comments from Regional Council officers and some submitters on changes. We had invited comments from those with a direct interest in the 'holiday rule' and had some brief submissions on that. We received the Applicant's reply regarding conditions on 30 May. This reply was brief and indicated that most residual issues had been resolved.

1.7 We sought comment from the Applicant in relation to the so called "holiday rule" in relation to the Waimakariri take and in particular a reply to the response on behalf of Whitewater New Zealand. We also sought a final response from officers in relation to some issues raised by the Applicant in its reply. We sought this latter response not to relitigate any issues but to see whether the officers agreed or disagreed with some of the suggestions made by the Applicant. The Applicant's further response was received on 14 May and the officers response on 6 May. We formally closed the hearing on 14 May.

1.8 We sought some clarification of some non contentious factual points from the officers and Applicant's experts during the following weeks. We also issued various drafting directions to the officers to accord with our final decision.

1.9 We record our gratitude to CPW's consultants and the reporting officers/consultants who have put considerable effort into redrafting the conditions to address issues which we had identified. We also acknowledge the effort put in by Fish and Game, Whitewater New Zealand and other submitters in relation to the Waimakariri take conditions and the fish screening condition amongst others. It is encouraging that after such a long and complex hearing most matters are now agreed.

1.10 We outlined the residual issues in **Minute 15** along with our preliminary thoughts. Most of these matters have been resolved with the exception of some points outlined in the Applicant's reply of 30 May.

Scope of this discussion of conditions

1.11 The discussion below largely relates to matters which were still in dispute. Those with a particular interest should refer to **Minute 14** in relation to the background to conditions and **Minute 15** in relation to our conclusions on various matters concerning conditions. So far as the Waimakariri take is concerned, readers should also refer to **Minutes 9** and **12** and in relation to the holiday rule, **Minute 15**.

2. WAIMAKARIRI TAKE CONSENT

2.1 The Waimakariri take will on average be around 27-30 % of the annual volume of take under the original scheme. This is in large part because there will now only be a limited take during winter (in the absence of a reservoir) and in part because of the one to one flow sharing and other restrictions now included in the consent which were not part of the original proposal.

2.2 The key elements of the final take regime as discussed and largely agreed at the hearing are as follows:

- *The take will be subject to the existing minimum flow regime and existing A and B permit takes. Accordingly it will not affect the frequency and duration of flows below the A/B permit transition.*

- *The maximum take diverted for irrigation purposes will now be 24 cumecs rather than the originally proposed 40 cumecs.*

- *There will be very little take outside of the irrigation season because CPW will be limited to only so much as is required to top up on farm storage.*

- *The take will be subject to one to one flow sharing from the commencement of take at 66.1 cumecs as measured at the Old Highway Bridge (CPW will only be able to take one cumec for each additional two cumecs of flow).*
- *In addition the take will be subject to the so called "holiday rule" which will limit its take to 6 hours per day (largely overnight) during summer weekends, public holidays and some weekdays during the peak recreation season. This is directed at maintaining adequate flows*

downstream of the Crossbank during high use periods for kayakers and jet boaters.

- *During these periods the take cannot commence until an unmodified flow of **around 75 cumecs as estimated at the old highway bridge**, thus maintaining a residual flow of **at least 55 cumecs**.*

- *No takes during the coast-to-coast event.*

- *After sustained periods of low flow (more than 21 days of flows less than 41 cumecs), CPW will be required to let the first fresh pass through unimpeded as a flushing flow.*

- *Rakaia water will be taken in preference to Waimakariri water and when sufficient water is available from the Rakaia no water will be taken from the Waimakariri. (An average rate of take for the Rakaia and Waimakariri rivers of 26.35 and 5.18 m3/s respectively).*

The one to one flow sharing rule

2.3 Following the close of the hearing it occurred to us that the one to one flow sharing may not need to apply at flows above about 100 cumecs. However given that we did not hear evidence on this point we have left the condition as it is for the time being.

The 'holiday rule'

2.4 This was the most substantive remaining issue. In **Minute 12**, we accepted that the 30 cumec gap approach proposed by ECan officers to reflect Plan Change 1 would mitigate the effect of the CPW take on recreation amenity at low flow However, we concluded that 1:1 flow sharing proposed by CPW as a result of our comments in **Minute 12**, would provide a more sustainable outcome which balances both instream and out of stream needs.

2.5 We concluded that the CPW 1:1 flow share proposal would provide adequate mitigation if combined with additional restrictions at times of likely peak use for kayaking and jet boating. We noted that these additional restrictions would incidentally have mitigation benefits for river bird life and angling amenity. In

Minute 12 (at 8.7 and following) we outlined the rationale for the additional restriction and then outlined the objective as follows:

> *"**The objective of the condition would be to reduce the occurrence of flows below 55 cumecs at OHB during the peak usage periods. We have concluded that with this additional mitigation measure or similar, the effects of the take regime on kayaking will be no more than minor.** We also observe that this additional mitigation will also further reduce the potential for adverse effects on jet boating amenity, fishing amenity and other in stream values. Tables 2 and 3 suggest that this additional restriction would not in fact be applied very often and therefore should not be particularly onerous for CPW. However, it would be useful if CPW could model how often and how much this restriction (or whatever variations may be proposed) would apply.*
>
> *These are our tentative views as to an adequate mitigation regime. We would like to hear from the kayaking and jet boating submitters and from CPW as to the merits of our suggestion. An alternative or additional approach may be to limit afternoon or early evening takes on say 2 out of 3 weekdays over summer."*

2.6 At the resumed hearing CPW indicated that it had concluded that the holiday rule in the form suggested by us would have little benefit. Mr Duncan agreed. In **Minute 15** we noted that our conclusion that an additional restriction is needed remained unchanged, but we agreed that there was no point in a condition which is not effective.

2.7 The kayaking groups and Fish and Game were in favour of retaining the so called "holiday rule" and indeed extending the period when it applied. Ms Baker for the kayaking interests suggested that if we concluded that the rule would be ineffective we should revert to the 30 cumec gap approach, which we had concluded would provide better mitigation for those particular values.

2.8 We indicated that we did not think that it would be appropriate or consistent with our conclusions in **Minute 12** to entirely dispense with the holiday rule. However we accepted that there was no point in including a restriction which reduces the economic benefits of the take with little resultant benefit to in stream amenity. That would not be an efficient use of the resource or the scheme.

2.9 We indicated that we did not think that it was necessary to revert to the 30 cumec gap, because we have already concluded that the one to one flow sharing will provide adequate mitigation while maintaining greater flow variability than the 30 cumec gap (see para 12.27 of **Minute 12**). We had already concluded that this is a more sustainable approach than the 30 cumec gap which we consider to be unduly restrictive for little additional instream benefit.

2.10 Nevertheless we remain of the view that there needs to be an additional restriction which provides **effective** mitigation at times of potential high use. We accept that such a restriction will inevitably have some effects on reliability of scheme water and consequential impacts on the storage requirements of the scheme and/or on reliability of irrigation. However, given the very high amenity values provided by the river, we consider that it is essential that effects on these values be adequately mitigated at the times of highest potential use. The interests of irrigators and economic considerations must take second place.

2.11 We asked the officers in consultation with CPW, the kayakers, and Fish and Game, to draft a condition for specified high use periods which will provide adequate, albeit not complete mitigation of the effects of the CPW take at these times. The full details of what we sought and the reasons for that are in **Minute 15**.

2.12 We expressed the view that the broad objective should be to ensure that:

> *During the specified days and times the CPW take should not reduce downstream flows by more than 5 cumecs when flows would otherwise have been at or above 60 cumecs at OHB.*

2.13 We indicated that the objective and the rule should be primarily directed at the area from Crossbank downstream. This is the area many kayakers get in to the river and where most novice jet boating occurs; it is also highly used by anglers. We also understand from Mr Duncan that upstream of this area the river is less braided and therefore riffles tend to be deeper, so the take will have less impact on the primary channels. We made the following comment:

> *Given the impacts of the restriction on CPW we think that there could be some reduction in the number of days on which the restriction applies.*

The aim should be to focus the mitigation at times of highest recreational use, with greater mitigation (retained river flows) possible if applied at more limited high-use times. If an alternative focussed regime cannot be agreed by 16 April, we have tentatively decided that it should apply on all weekend days and public holidays between 1 November and 15 March (refer para 8.17 of Minute 12) but that it need only apply on week days during 21 December to 31 January. The latter will capture the summer holiday period and the peak salmon angling period in the Crossbank to SH1 section. We accept that this will not address effects at low flow periods on weekdays outside of the stated period. However, we think that potential usage is likely to be significantly lower outside of the stated period. Having said that, we note that kayaking interests did seek that the restriction apply on weekdays beyond this period and in particular during February leading up to the Coast to Coast. Accordingly we would prefer some arrangement which allowed for some weekday restrictions into February.

We have concluded that the restriction does not need to apply on a 24 hour basis. That would have significant consequences for CPW and at times would achieve little or no benefit for river users. Whilst we accept that there will be some boating in the target reach during mornings, we think that the highest use will be in the afternoons. Accordingly we think that it will be sufficient albeit incomplete mitigation, ***to target the noon to evening period at and downstream of the Crossbank area.*** *Accordingly the restrictions on take could apply from say 7am to 4pm or whatever start and finish times will result in the "wave" reaching Crossbank by noon and the effects of the CPW take reaching SH1 by 8 pm.*

We note that this approach would allow CPW to take on a normal (1:1) basis for the remaining 14 to 15 hours per day. Again, we accept that this is a compromise. That is, it is a value judgement as to whether the timing should be longer. We accept that this approach will provide no benefit to early morning anglers and boaties. However, the rule is not primarily directed at angling amenity, which we think will be less affected by the 'normal' take (see para 8.33, Minute 12) and we think that most kayakers will be able to target the afternoon periods.

2.14 Following our **Minute 15**, Mr Duncan (for ECan) calculated the average time for a small fresh to travel from the Waimakariri Gorge to SH1 as between 19 and 31 hours. After discussions with the Applicant and kayaking interests and further modelling Mr Duncan proposed the following:

> *4 For the periods including the days listed in Appendix 1, the following restrictions shall apply:*
>
> *(a) whenever the unmodified mean 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, for any 24 hour period ending at noon is:*
>
> *(i) greater than 80 cubic metres per second and less than 95 cubic metres per second, then the take shall not exceed the difference between the unmodified flow and 80 cubic metres per second, or 5 cubic metres per second, which ever is the lesser. This restriction shall apply between the hours of 3pm and 3am, or a similar 12 hour period so that the unmodified flow at Crossbank (located between map references NZMS 260 M35:701511 and M35:701517) between 7am and 7pm is between 55 and 65 cubic metres per second (measured flow).*
>
> *(ii) Greater than 95 cubic metres per second, then take shall not exceed half the difference between the unmodified mean daily flow and 95 cubic metres per second.*
>
> *APPENDIX 1*
>
> *The restrictions specified in condition (4) of CRC061972, shall occur starting the day prior to:*
>
> *(a) all weekend days and public holidays between 1 November and 15 March; and*
>
> *(b) all weekdays from 21 December to 15 February; and*

> *(c) the fourth Monday of October (Labour Day) and the Easter weekend starting Good Friday and ending on Easter Monday.*

2.15 We confirm that the wording set out above conforms to our expectations as discussed in **Minute 15**. In particular it should be noted that the condition is now directed only at the lower river from the Crossbank down and only applies for a 12 hour period. This allows the consent holder to take for the other 12 hours of the relevant days subject to the other restrictions including 1 to 1 flow sharing.

2.16 The Applicant has confirmed that it accepts this proposed wording. Fish and Game did not comment on the revised rule. Jetboating NZ agreed that the rule was beneficial:

> *The Rivers sub committee have agreed with the findings and recommendations of Whitewater NZ. Jet boaters generally do not need quite as much water as Kayakers to make safe passage but when there are kayakers and Jet boaters on the same stretch of water, (as often is the case) then we do need more water to navigate safely past with the minimum of disturbance to both parties.*
>
> *By also having the holiday rule it may create a small regular imitation fresh that will then move the fines and possibly keep some of the smaller channels from closing out.*

2.17 Whitewater New Zealand agreed with the nature of the rule but sought that the timeframe it applies to be extended. We reproduce parts of Ms Baker's submission below:

> *The Commissioners asked during the March 2010 hearing about the impact of incremental changes in flows, and whether such changes would be noticeable and beneficial to paddlers. We have consulted with three extremely experienced users of the lower Waimakariri, and they have all responded with similar comments. They confirm that at lower flows an increment of 2-3 cumecs is hardly noticeable, but that an extra 5-10 cumecs is both noticeable and beneficial.*

2.18 Whitewater NZ commented on the rule as follows:

- *In essence, we understand that if the unmodified flows are at 80 cumecs above the CPW intake then 55 cumecs would remain instream at the Old Highway Bridge (OHB); at 85, 60; and at 95, 65 respectively.*

- *Based on information provided by Maurice Duncan of NIWA and Jenna Hutchinson of URS, we note that the impact of CPW unmitigated by the Holiday Rule is that days per annum in the marginal paddling band of 55 cumecs or below, as measured at the OHB, would increase in an average year by around 16 days, from 106 to 122. The Holiday Rule in a "typical year" would reduce this by 7 or 8 days – so there would still be a significant increase in days in the marginal range.*

- *Further, we note that the impact of CPW unmitigated by the Holiday Rule is that days per annum in the next flow band, 55 to 65 cumecs, as measured at the OHB, would increase in an average year by around 3 days, from 34 to 37. The Holiday Rule in a "typical year" would further increase days in this band by about 6 per annum.*

- *It is clear that even with the Holiday Rule in place in its present form kayaking amenity is negatively affected.*

- *One way to further reduce the impact is to increase the period that the Holiday Rule applies from that noted in Ms Dean's memorandum.*

- *We submit that the period be extended at the start of the season to include all weekend days from 1 October, and two midweek days through the whole of the period [from 1 October to 20 December, and 15 February to 31 March] This will also support the use of the Waimakariri for training for the Arawa Classic race, which is usually held on the first weekend of December.*

- *We note that the Holiday Rule as now drafted specifically relates to flows as measured at Crossbank – this is near the put-in point for the commonly paddled section from where the pylons cross the Waimakariri River down to the OHB. This is a key section, and it is important that we achieve an outcome at that point without needing to specify when takes cease – whether that is 3pm to 3am, or whatever other time.*

- *Further, we submit that the hours need not be stated as 7am and 7pm at Crossbank – rather, it might be useful to state that the hours should be from 30 minutes before sunrise to 30 minutes after sunset.*

- *We note that the primary benefit from the Holiday Rule is intended to provide mitigation for the loss of kayaking amenity. We submit that from time to time that the needs of the Applicant and the needs of the Submitters may mean that the parties jointly agree to vary the Holiday Rule. For example, at present, Whitewater New Zealand has a working arrangement with Meridian Energy regarding releases from Lake Tekapo. Whitewater NZ have foregone releases required by resource consent conditions in exceptional years and had deferments for when water is available. Any such similar temporary change in the Holiday Rule would need to be undertaken as a short term change to the resource consent condition, which would need to be approved in writing by Whitewater New Zealand as the national representative body.*

2.19 Ms Baker also provided revised wording to us to reflect that request. The Applicant responded by memorandum on 10 May indicating that it considered that the further extension of the condition was not warranted. Counsel noted that while CPW agreed to the package of restrictions in the draft conditions including the holiday rule, it saw this as a package and reserved its right to appeal any changes.

2.20 We now set out our conclusions on the requests above.

- We agree that the CPW will have some impact on kayaking amenity, however it seems that the combined restrictions on the take including the holiday rule will reduce those effects to a minor level for the periods of high kayaking use.

- We accept that during the period from 1 October to 20 December, there is a potential for effects on days when the holiday rule will not apply but where some kayaking of the lower river might occur.

- We have concluded that it would be appropriate and consistent with our earlier views to extend the rule to cover all weekends and public holidays

(Labour Day) in October, but do not think that it is necessary to extend this beyond 15 March.

- It seems to us that this limited extension will have little effect on CPW in most years. Even when it is applicable CPW will still be able to take for the remainder of the week (subject to flows). We also note that in general, nor west conditions and resultant inland rain, during November and often into December mean that flows are on average higher during this period than in March.

- We have decided that it is not necessary to include 2 midweek days from 1 October to 20 December, or from 15 February to 31 March. We base this on earlier evidence from Ken Livingston from Arawa Canoe Club that 98% of their members kayak on the weekends.

- At this stage we do not have any record of the level of weekday kayaking usage apart from Mr Livingston's comments, but we do have evidence as to the effect of additional restrictions on CPW and its shareholders. We have concluded that the costs to irrigators of the additional weekdays sought by Whitewater NZ, plus 2 weekends in late March, would greatly exceed any in stream benefits.

- In the event that significant weekday usage (and/or late March weekend usage) is documented in the future **and** if CPW is shown to be having a significant effect on amenity at these times, the conditions of consent could be reviewed to increase the restriction.

- We consider that the current wording as to the times of day when the flow applies at the Crossbank is adequate. Most kayakers are unlikely to be launching at the Pylons before 7am or after 7pm (just upstream of Crossbank). Furthermore, as users become used to the new regime they are likely to adapt to it.

- We do not agree that any additional voluntary restrictions by CPW would need to be the subject of a formal change to the condition in question. It is open to CPW to agree additional restrictions with any group. The conditions do not require it to take water.

- We think that it would be useful for a river users group to be formed to liaise with CPW. However, we do not see the need for that to be a requirement of the conditions. Angers, kayakers and jet boaters are all represented by well organised local and national bodies and it will be in CPW's interest to co operate with these bodies (such an approach is also implicit in the Trust's objectives).

2.21 In conclusion the condition remains as set out above. However, we have made the following minor change to Appendix 1.

> *APPENDIX 1*
> *The restrictions specified in condition (4) of CRC061972, shall occur starting the day prior to:*
> *all weekend days and public holidays between* ***1 October*** ~~*November*~~ *and 15 March; and*
> *all weekdays from 21 December to 15 February;*
> ***Easter weekend starting Good Friday and including Easter Monday*****.**

2.22 In **Minute 15** we observed that that the condition in question and indeed the overall take regime, involves a balance (value judgement) between **adequate** mitigation of effects on recreational amenity of national significance and increased costs (reduction of scheme reliability and storage costs and resulting reduced economic benefit). We have done the best we can, based on the evidence we have heard. Ultimately this is a condition that will be best tested in situ. If needs be, it can be adapted either by way of negotiation or by way of a section 127 application by CPW or a 128 review by the Regional Council.

Waimakariri Condition 3 (a) (iv)

2.23 We noted in **Minute 15**, that what was then Condition 3(a)(iv) did not reflect our views that the flat lining interval should be reduced from 21 to 14 days. The revised condition proposed by officers is as follows:

> *(i) at or below 41.0 cubic metres per second for a continuous period of* ***14 days,*** *the consent holder shall not take water in accordance with conditions 3(a)(i) until the flow rate is greater than 41 cubic metres per second for a period of two days or*

until the flow is greater than 130 cubic metres per second, whichever is the sooner. This clause shall not apply if water is being taken under clause 3(a)(iii).

2.24 In its reply CPW submitted that condition should remain as 21 days as originally proposed by it during the hearing. It noted that the proposed extension of the restriction to shorter periods of low flow would further affect reliability of the scheme and storage requirements. It relied on the evidence presented by Dr Burrell for the 21 days.

2.25 Counsel also noted that the original suggestion of 21 days was before the one to one flow sharing approach was developed.

2.26 The additional mitigation provided by one to one flow sharing and the holiday rule in terms of effects on flushing flows, has not been modelled because these changes were developed after the original evidence had been prepared. However we note Mr Duncan's evidence that flows of up to 130 m3/s were needed for flushing to be effective, so the holiday rule is unlikely to greatly improve flushing.

2.27 The original rationale for the 14 day flat lining interval was Dr Glova's comment in response to our questions that 21 days flat lining may be too long for migrating salmon to 'hole up' awaiting a flush to trigger movement upstream (refer our **Minute 9** paras 9.86-9.89 and **Minute 12** para 7.7). In terms of flushing flows we accept that Dr Meredith in WRRP Plan Change 1 has used 21 days, not 14. The issue is the potential benefit for salmon migration. Given Dr Glova's comment was simply an off-the-cuff albeit expert opinion, and ECan is using 21 days in its PC1 analysis, we have concluded that it is appropriate to revert to the 21 day cut off.

2.28 Again, this is a parameter which is amenable to adaptive management via the review condition or a section 127 change of conditions.

Waimakariri take CRC061972 condition 4 (a) (ii)

2.29 CPW submits that this clause has been inserted by mistake and seeks its deletion. We understand that the officers agree with this suggestion.

Winter allocation

2.30 In **Minute 15** we made the following comment:

> *We are of the view the legal allocation under the take consents for both rivers needs to be clear. In the absence of an external storage scheme, CPW does not require water outside of the irrigation season except to refill on farm storage. Currently the officers have proposed to limit the combined winter allocation from both rivers by reference to the volume required to refill projected on farm storage. We think that it would be preferable to state a maximum winter volume **for each river**. That is to ensure that other potential applicants can ascertain the limits of the CPW allocation. We do not require an irrigation season limit because that can be defined by the rate of take in conjunction with other restrictions. However that maximum rate of take will not be required for either river in the winter.*

2.31 We also understand that the on farm storage requirement has assumed no holiday rule. We do not require any limit as to on farm storage. However the winter take should be sized to take into account any additions to storage required as a result of the holiday rule in its final form.

2.32 Ms Dean in her final response from the officers commented as follows:

> *I do not consider that a volumetric limit is necessary to determine the legal allocation of water as it is defined by the maximum rate of abstraction. For example, the WRRP defines the allocation limit for the A Permits for the Waimakariri River to be the "total flow rate of water to be allocated". With regards to the Rakaia River, Policy WQN14 of the Proposed Natural Resources Regional Plan (PNRRP) states:*
>
> *"(3) For surface water bodies:*
>
> *(a) In the absence of storage in the system, the limit for each allocation block shall be set as a flow rate;*

2.33 This does not address our concern, which was to ensure that CPW may only take water outside of the irrigation season for the purpose of filling whatever storage it or it shareholders have available. Our aim was to achieve certainty for other

potential applicants as to how much winter water has been allocated from the Waimakariri Reliance on potential rates of abstraction does not provide that certainty because those rates allow abstraction of water which is not needed for the scheme.

2.34 On reflection we think that this issue can be addressed by stipulating on both take consents wording to the effect that outside of the irrigation seasons the rate of take from each river is limited to only so much water as is required by the consent holder to supply water to replenish on farm storage and to maintain minimum levels in the Headrace.

2.35 Accordingly, we have included an addition to condition 2 of the Waimakariri take permit as follows and an equivalent addition to the Rakaia take permit.

> 2. *The rate at which water may be taken from the Waimakariri River shall not exceed whatever rate is required in conjunction with the take from the Rakaia river and any other sources of water to the scheme to:*
>
> - *supply the irrigation demand from users of the scheme to use the water in accordance with the conditions of resource* ***consent CRC061973*** *; and to*
> - *replenish on farm storage;*
>
> *and shall not exceed 24 cubic metres per second.*

2.36 Our reason for this approach is to ensure that other potential users of winter water are not deprived of their right to apply for water which is not needed by CPW. That would not be an efficient use and development of the resource. We also think that it would be inefficient for CPW to be left with a tradable surplus. In any event, that is not the basis on which it advanced its proposal and as far as we are aware it is not its intention to use the water for anything but the needs of its shareholders.

2.37 We do not think that it is necessary to specify the volume of storage which may be serviced by the scheme because the details of that are unknown and we do not want to place any constraints on maximising storage opportunities. We observe that the wording above would not preclude CPW developing off scheme storage,

however it would need to apply to amend the condition above if it wished to take water from either or both rivers to service such storage.

Protection of existing takes

2.38 We need to be satisfied that the CPW take will not detract from the ability of any existing consent holders to take pursuant to their consent, even if the existing consents are not consistent with the Plan, either as it is now, or as it will be if Plan Change 1 is adopted.

2.39 In **Minute 15** we noted that Mr Callander's suggestion for the following clause seemed to have some merit:

> *The abstraction of water at "unmodified" river flows of greater than 66.1 cubic metres per second shall only occur at times when A permit holders are authorised to exercise their full allocation.*

2.40 This has been incorporated into the draft conditions as condition 7. In its submission in reply CPW opposes this condition.

2.41 We accept that it is possible that this issue will be addressed via the Plan Change and a subsequent review of the conditions of existing consents, however we cannot speculate as to what the outcome of either process may be. We do not think the issue revolves around what the existing consent holders applied for. We must take their consents as they come. These are A permit consent holders and they have priority over CPW both in terms of being granted earlier and in terms of the fact that their consents and the plan provide them with priority.

2.42 Accordingly, we think that we are required to ensure that CPW does not cause any substantial derogation from these consents. There are legal issues involved which have not been fully argued before us and given that it is not for us to interpret other persons' consents, we have decided that the condition should remain. CPW of course has the right to challenge the condition. If that occurs then the interpretation of existing consents and the rights provided by those would be considered by the Court. Alternatively, it may be that the issue can be sorted out via the plan change and subsequent consent review process and/or by negotiation.

3. FISH SCREEN CONDITIONS

3.1 There was much debate as to whether the fish screening condition should specify mesh and slot sizes or specify an objective and a process for designing and certifying a screen or other system. CPW favoured the latter. Fish and Game and the Department of Conservation along with Dr Meredith for ECan favoured specification.

3.2 Having heard arguments for and against this approach, we concluded in our **Minute 15** as follows:

> *We have provisionally concluded that the fish screen condition should either be Mr Lewthwaite's Option A but with a design objective of excluding at least 95% of adult juvenile salmonids, adult longjawed galaxias and longfin eels, or his Option B but with the same design objective as above and mesh and slot sizes as proposed by Dr Meredith. Either option would potentially allow CPW to seek a variation of the objective if further studies establish that such an objective is too conservative. Under the second option, CPW could subsequently utilise section 127 to change the objective and/or the mesh or slot sizes. Neither option would preclude other design solutions being advanced at any time up until the final design of the screens.*
>
> *Based on Figures 19-22 of the NIWA 2007 Fish Screening Guidelines, and to achieve an entrainment risk for salmonid and longjawed galaxias less than 'high', we would conclude that if a traditional fish screening approach is taken, it would need square mesh size of less than 4mm.*

3.3 The parties have negotiated further and reached agreement on an objective and a process for designing and certifying a screen or other system, together with a fallback position as indicated by us of a 4mm mesh size. We left it to the officers to propose an amended condition after further discussions with CPW and Fish and Game.

3.4 The amended conditions are now in conditions 9 and 10 of consent CRC 061972. We have not had any further comment from Fish and Game regarding this proposal but assume that its experts were involved in the discussions. We are satisfied that the approach now adopted is consistent with what we outlined in **Minute 15** and is appropriate for the reasons set out in that document.

3.5 The Applicant has indicated only one issue with the draft condition. It has requested that condition 10 (g) (ii) be amended so as to read:

> *the screen material voids shall be a mesh, **wedge wire, or similar material**, with a maximum width of 4 millimetres;*

3.6 CPW says this will allow some flexibility in terms of screen construction. Dr Meredith commented that: "…strictly according to the guidelines it should read 4mm side of square or diameter of material apertures, or 3mm slot width for slotted materials". They may however choose to state 4mm for both but that will introduce some additional leniency (lower efficiency and possibly <95%) if slotted materials are chosen."

3.7 We have concluded that the wording should be:

> *"the screen shall be a mesh, wedge wire, or similar material, the screen material voids shall be a maximum 3mm slot width for slotted materials or 4mm side of square, or diameter for other materials."*

3.8 There is an opportunity for CPW to seek to modify the condition before final design if studies show that this approach is unnecessarily conservative.

4. SAFETY OF BOATERS AT THE WAIMAKARIRI INTAKE (CRC 061972 CONDITION 14)

4.1 We expressed some concerns regarding the lack of detail in relation to measures to minimise risk to kayakers at the Waimakariri intake. We heard extensive and useful evidence from Hugh Canard for the kayakers in this regard. Following the initial hearing CPW developed a condition in conjunction with Whitewater New Zealand and the wording has now been agreed. We are appreciative of the constructive approach which has been taken by both parties in relation to this important issue. We are now satisfied that the condition is appropriate and will ensure that risks to river users are minimised.

4.2 Whitewater New Zealand comments on the approach as follows:

> *The key objective is that the safety features are designed in order to achieve an overall International Grade 2 standard, suitable for racing kayaks.*
>
> *Key aspects of the design include inclined trash racks with limited approach velocities to enable a person swept on to the rack to be able to self rescue, and that the rack must be cleared of accumulating debris to ensure its continual safe operation.*
>
> *The intake structures must be certified by independent experts prior to construction and prior to commissioning, and both Whitewater New Zealand and the New Zealand Jet Boat Association will be invited to take part in a series of tests after commissioning.*

4.3 We note the qualification:

> *Despite our involvement in trying to mitigate the effect of the intake structures, we continue to assert that any intake structure is inherently more dangerous than no intake structure, and further that an operating intake structure is inherently more dangerous than one which is not operational due to intake velocities.*

4.4 Whilst both of those statements are clearly correct, the RMA is not a "no risk" statute and kayaking is an inherently risky activity. We are of the view that the condition as drafted will minimise the risk to kayakers albeit that the risk cannot be entirely avoided if the intake is installed and operational. There will be signage to warn of the residual risk.

4.5 Whitewater New Zealand suggests some minor changes as follows:

> *The main put in and take out locations at which signage should be placed are:*
>
> *Mt White Bridge (put in)*
> *Woodstock (put in)*
> *At the Waimakariri Gorge Bridge (take out)*

In addition it is requested that the signs need to be at least 2m x 1m, weatherproof and UV proof.

4.6 We agree that those changes should be incorporated into the condition; we also think that signage at the Gorge Bridge should be both at the intake and at the car park.

4.7 We note that Mr Judkins, the organiser of the Coast to Coast event, emphasised the importance of signage and was supportive of the approach which has been adopted in relation to this issue. He was also supportive of the modified take regime so far as it affects kayaking and the Coast to Coast race and training for that. We are appreciative of his input into the hearing and note that our understanding is that his concerns have now largely been addressed.

4.8 The Applicant has requested a minor modification to paragraph n of the condition as follows:

Within 40 working days, ***or such other timeframe as may be agreed by the Canterbury Regional Council****, the consent holder shall adopt the modifications to the intake design as identified in the report required in condition 14(m).*

4.9 We think that is a sensible suggestion and the officers agreed.

5. TELEMETRY

5.1 The Applicant has raised a minor issue with proposed condition 15 (d) of CRC 061972. It does not see the need for data to be collected and stored by *"an independent network provider"*. We understand that the officers agree that this is not essential. We see no reason why CPW should not be able to collect and store data so long as ECan can access it and audit it.

5.2 The Applicant also has an issue with condition 17 of CRC021091. (Rakaia take). Counsel for CPW noted that the draft condition requires telemetry of other users. Ms Dean comments that … *the proposed condition now only requires on/off telemetry as opposed to the rate of abstraction. This means CPW can only take water when the other abstractors aren't taking any water at all.*

5.3 We accept that for enforcement purposes it may be sufficient for there to be a secure data logger on each of the other takes. ECan could then retrospectively check compliance and take action if there is any non compliance. Nevertheless, given the complexity of the proposed system we have concluded that at least on/of telemetry should be provided by CPW except where access for that can not be agreed with the consent holder, in which case a secure data logger would be the minimum requirement. Ideally, we think that there should be real time telemetry for all takes. However, the cost of that should be borne by all consent holders. The same comments are applicable to the Waimakariri. As a minimum the WIL and Ngai Tahu take should have real time telemetry as well as CPW.

6. LOSSES OF WATER FROM THE CANAL (CONDITION 3 OF CRC061949)

6.1 CPW has proposed has suggested some rewording of this condition. Ms Dean has responded as follows:

> *I consider that the combined 20% losses from by-wash and leakage should be based on the total volume taken over the year, as the instantaneous rate would be difficult to monitor. If losses are based on a volume, CPW will already know how much water is taken over the year, how much is used for irrigation, how much is discharged at the by-wash points to have a reasonable understanding of how much is being lost into the groundwater system.*

6.2 We have no difficulty with the changes proposed by CPW. However, we note that we do not require a 20% loss target as there are benefits for aquifer recharge. In any event there are adequate economic incentives for CPW to minimise losses.

7. EFFECTS OF GROUND WATER MOUNDING ON GRAVEL EXTRACTION

7.1 We discussed our views in relation to the concerns of gravel extractors in **Minutes 11**, **14** and **15** and the mounding issue is discussed more generally in **Part 7**. CPW made submissions in reply to the gravel extractors in October 2009 as follows.

> *CPW's preferred position is that effects on the gravel resource are appropriate to take into account if and when they become manifest. An expert panel (constituted for other concerns) can be tasked with*

assessing an increase in MRGL if and when it occurs, and attributing responsibility. This can then trigger a s127 review of conditions. The actual effects will be then ascertainable (and quantifiable), and the range of solutions also more identifiable.

The effects, even once an increase in MRGL is identified, will not be immediate and the response need not be instantaneous. Both the gravel extractors and CPW can (and have the incentive to) co-operate in resolving with ECan and CCC the problems of access to the gravel resource, which has already been identified (in the Road Metals case) as a priority.

7.2 Subsequently, Mr Chapman for the extractors made further brief submissions in March in relation to conditions. He indicated that no agreement had been reached with CPW in relation to conditions dealing with this issue. He sought the following changes to conditions.

22. The GTRP shall comprise at a minimum the following:

(b) A technical representative of potential effects on gravel pit operations in the Miners Road area,

23. The role of the GTRP shall be to:

To review the Groundwater and Drainage Plan described in condition 25, and

………..(inter alia)

(d) To determine the likely cause of reported problems with drainage or groundwater including using information gathered in accordance with condition 26, propose mitigation or remedial measures and determine the extent to which the consent holder must implement them, or contribute to the cost of implementing them, given the consent holder's degree of contribution to the problem identified in accordance with condition 28(f). Where effects cannot be addressed by mitigation or remedial measures they shall be addressed by way of financial compensation;

25. Groundwater and Drainage Plan

(a) Prior to the first exercise of this consent, the consent holder shall develop a Groundwater and Drainage Plan outlining the measures that will be undertaken to monitor and mitigate potential adverse effects that may arise in regard to the following issues:

(i) Loss of Waimakariri River seepage on the Christchurch-West Melton and Kaiapoi aquifer systems;

(ii) Increase in the concentrations of nitrate-nitrogen or other contaminants in the groundwater both beneath and downstream from the Scheme area; and

(iii) Raised groundwater levels both beneath and downstream from the Scheme area, including any effects on gravel pit operations.

25(c)(ii) At least one groundwater level monitoring bore shall be located in the area of the Miners Road gravel extraction pits.

28. Response to Groundwater Complaints

When the consent holder is notified by a "complainant" of an adverse environmental effect, then:

(d)The consent holder may, instead of undertaking any remedial work or completing the assessment process, with the agreement of the complainant choose to negotiate with the complainant to undertake or pay the cost of those remedial works directly to the complainant, or agree to provide financial compensation to the complainant for losses, or otherwise reach agreement with the complainant in respect of any damage.

(e)Any agreement for the consent holder to pay costs directly to the landowner shall include a written undertaking from the property owner, that on the sale of the property, the property owner will advise the purchaser that the holder of this consent is

no longer liable for any effects associated with the use of water that may occur on that property. [as suggested by ECan]

19. *The consent holder shall avoid, remedy or mitigate adverse effects on groundwater, gravel pit operations and lowland drainage which occur as a result of the exercise of this consent.*

7.3 The change to condition 19 has been agreed. We have concluded that there is not need for the change sought to condition 22 (b). The Groundwater Technical Review Panel will have an expert in hydrogeology and can if needs be consult with the gravel extractors. The panel is now to be appointed by ECan.

7.4 We have decided that the suggested amendments to 23 (d) and 28 (d) in relation to financial compensation are not appropriate and probably beyond our jurisdiction. The change to condition 25 (c) (iii) seems sensible and we understand is not contentious.

7.5 We discuss the mounding issue in more detail in **Part 7**. We have concluded that the evidence suggests that mounding as a result of increased irrigation is not likely to be as significant as predicted by CPW and will take years to emerge. In any event we think that the issues concerning effects on gravel extraction operations are more to do with the rules within relevant plans than environmental effects. To the extent that there needs to be any arrangement between CPW and the gravel extractors we see this as a matter for side agreements rather than conditions.

8. TERRESTRIAL ECOLOGY

8.1 We have included a general condition in relation to the distribution races and the Notice of Requirement works, that there be no net loss (by area) of vegetation – and that an equivalent area, preferably of indigenous species, be established and maintained to compensate for the loss of all vegetation removed as a result of scheme construction works. This would provide a scheme-wide offset mechanism, and address issues raised by terrestrial ecologists and others. We appreciate that it would not address the issue of habitat loss as a result of land use intensification, but we regard that as a matter for the District Plan and/or the Protocol/farm plans.

9. HOURS OF OPERATION FOR CONSTRUCTION OF NOR WORKS

9.1 Having regard to the scale and duration of the construction works we have recommended a condition on the Notice of Requirement as follows:

> ***Hours of Work***
>
> *Construction of the scheme shall be undertaken in accordance with the following restrictions:*
>
> *(a) Work on the designation works within **300m** of any residential dwelling shall be limited to between **0730 - 1800** hours, Monday to Saturday inclusive, but excluding any public holiday, except with the written approval of the owner/s and occupier/s of any such dwelling.*
>
> *(b) Work on the designation works within **500m** of any residential dwelling shall be limited to between **0730 - 1800** hours, on Sunday and on any public holiday, except with the written approval of the owner/s and occupier/s of any such dwelling.*
>
> *(c) There shall be no work on Easter Friday, Easter Sunday, Anzac Day, Christmas Day and Boxing Day.*
>
> *(d) Movement of heavy construction vehicles through Coalgate within 200m of any residential dwelling shall be limited to between 0630 – 2000 hours, Monday to Saturday inclusive, but excluding any public holiday and 0730 – 1800 hours on Sundays, except with the written approval of the owner/s and occupier/s of any such dwelling.*
>
> *(e) Notwithstanding the above restrictions (but subject to (b)), concrete pouring and associated activities can occur at any time, subject to compliance with all other conditions of consent, including noise restrictions.*

9.2 This recommended condition is slightly modified from what was agreed between SDC officers and CPW. We consider that the additional restrictions on the hours of work near dwellings is not unreasonable and will better protect residential amenity values than the original proposal.

9.3 There was no blanket restriction proposed on hours of operation associated with the construction of the headrace, with the exception of evenings. We propose that works within 300m of any residential dwelling be confined to the period between 7:30 AM and 6 PM Monday to Saturday, with more restrictive hours on weekends and public holidays. This restriction can be overcome if the Applicant is able to obtain the written consent of the affected party. We also consider that special

provision is required in the vicinity of Coalgate, as it is the only urban area adjoining the headrace, and construction noise effects could be exacerbated by the fact that the headrace canal will be elevated up to 5m above ground level in the vicinity of the township, as well as requiring more earthworks as a consequence.

9.4 While we appreciate that noise can be managed through monitoring sound levels to determine compliance, this does not provide any certainty for members of the public in circumstances where we have a long linear canal, the construction of which could affect a number of dwellings in the rural area along its length. We have decided that a condition needs to be imposed on Sundays and some public holidays that the 300 m buffer zone be extended to 500 m at those times (again with provision for the consent of affected parties), and that no work at all be undertaken on Good Friday, Easter Sunday, Anzac Day, Christmas Day and Boxing Day. We have confirmed CPW's suggested condition that less noisy concrete pouring and associated activities will be excluded from the application of these rules. With respect to Coalgate, we have incorporated further restrictions on heavy traffic movements associated with this project within 200 m of dwellings, again with additional restrictions on Sundays and public holidays.

9.5 We consider that the works required to establish the distribution race network are not likely to be as disruptive as those associated with the larger and wider headrace, and accordingly that condition allows for longer hours of work.

10. BOND

10.1 Two types of bond have been discussed. The most contentious aspect surrounding the matter of bonding is the SDC officer's proposal for an *"unexpected risk event*" bond to cover the risk of catastrophic events such as failure of one of the terrace canals.. The other aspect of bonding is the "performance bond" to cover rehabilitation should the consent holder and/or Requiring Authority walk away from the scheme for any reason during either the construction or operational period.

10.2 Although a provision for a bond was not originally included in the officer's recommendations except in relation to the dam it was requested by some submitters. CPW submitted we had no authority to recommend a bond on the NoR. We sought advice on this issue. Mr Rogers, (counsel for SDC) advised us that it is within our jurisdiction to recommend a bond on the designation. We

accept that advice. We also note that a bond was proposed by CPW in relation to the dam designation.

10.3 In **Minute 15** we expressed the view, that there should be provision for a bond in relation to the headrace, to cover the possibility of any significant failure of the canal and consequential damage and repair. We also suggested that the bond should cover damage from flooding if culverts prove inadequate.

10.4 CPW in its final reply on conditions, noted that the proposed bond deals with performance of conditions, post project remediation **and** "*unexpected risk*" (eg. the risk of canal or culvert failure and consequent flood damage). It was strongly opposed to the unexpected risk bond but did not appear to be so concerned regarding a bond ensuring performance of conditions in the event that that CPW became insolvent.

10.5 Counsel submitted that there is no jurisdiction to include a bond in relation to unexpected risk. They also submitted that in any event such a bond is unnecessary and therefore unreasonable. CPW argue that day to day risk is a matter for conditions and the question of *unexpected risk* is a matter for insurance rather than a bond.

10.6 CPW indicate that it would be agreeable to a consent condition which requires it to hold an adequate level of public liability insurance and for that to be in a form where it can be paid to Council if CPW were to fail for any reason. Counsel pointed out that if there is both public liability insurance and a bond for unexpected risk then there would be duplication. It was also pointed out that a bond is very costly and it was suggested that it could threaten the viability of the project.

10.7 In short, CPW proposes that the bond condition be modified to exclude unexpected risks and that this be addressed by a requirement for adequate public liability insurance.

10.8 In view of the significance and cost implications of this issue we sought further advice from Mr Rogers and also sought confirmation from SDC officers as to what their recommendation is in relation to this issue. We think that this is important because if there were a serious failure and if CPW was not in a position to meet the costs of addressing that, SDC may be left with the cost of remediation works. Accordingly, to a large degree this aspect of the bond/insurance is a matter in which SDC has a vital interest both as the relevant consent authority, the owner of potentially affected infrastructure and a settler/ underwriter of the scheme.

10.9 Mr Rogers' further advice can be summarised as follows:

- A bond covering unexpected risk is within jurisdiction and such a bond was included in the *Cypress* decision relied on by both parties in the present instance. In that case one of the bonds related to unexpected post mine closure risks.

- The costs of a bond and the potential implications for the project is a matter which is relevant to our decision as to whether to recommend such a bond and/or impose it as a consent condition.

- We have no evidence before us as to the costs and consequent implications of a bond.

- The use of insurance will reduce potential risks to the Council and the environment in relation to unexpected risks but not so effectively as a bond.

- Insurance is subject to the risk that CPW might (in theory) fail to meet its premiums or otherwise compromise the insurance.

- An event might occur which might cause the insurer to decline continued cover or increase the premium to levels which are prohibitive for CPW.

10.10 Selwyn District Council reporting officers indicated that their recommendation for such an unexpected risk event bond stands at least in relation to the NoR components. On the basis of the reduced consequence of failure of the distribution network (and hence consequence of the possible risk that insurance is compromised) SDC Officers indicated insurance would be appropriate for the resource consents. SDC Officers still seek that there be a bond on both the resource consents and the NoR covering competition or reinstatement in the event of CPW failure independent of any unexpected risk.

10.11 This is a difficult issue for us. There are merits in both arguments and the issue has not been fully argued by us nor have we heard evidence on the point. For example we do not know what approach has been adopted in relation to other similar projects. We observe that the Cypress mine situation and the Kate Valley Landfill are somewhat different situations. In both cases there are risks of

catastrophic failure which do not apply here to the same degree. In the present case the principal (but low) risk of catastrophic failure relate to the terrace/escarpment canals. Neither of those threaten buildings or infrastructure to any significant degree. However if there was a failure the costs of repair and environmental remediation could be prohibitive. There are some elevated portions of the canal but it seems likely that the risks of a catastrophic failure are very low and could at least in this instance be covered by insurance.

10.12 The other significant difference in the present instance is that in the present case we are not talking about a landfill or a mine with a limited life span and express post closure remediation requirements.

10.13 We consider that it is likely that we do have jurisdiction to recommend an "unexpected risk event" bond in relation to the designation and to require one in relation to the consents. However, it appears to us that section 108 requires this to be related back to the *performance of consent conditions*. Although section 108 does not apply to Notices of Requirement/designations, we think that the situation is likely to be the same for a designation. However, this is a legal issue which we are reluctant to engage in.

10.14 We accept that there is a significant element of duplication between public liability insurance and an unexpected risk event bond. However we also accept that there are some limitations to insurance.

10.15 Notwithstanding the lack of evidence on the point we accept that the combination of a performance bond, public liability insurance and an unexpected risk event bond may be prohibitively expensive and may jeopardise the project. However we are not in a position to assess this.

10.16 We also note that the current situation is rather unique. Selwyn District Council has a direct involvement in CPWT as one of the settlors. It also has a financial stake in the scheme. It was asserted at one point that CPWT is a *Council Controlled Organisation.* We are unsure whether or not that is the case.

10.17 In any event, in the present case **we have concluded that**:

- In relation to both the designation and the distribution network there should be a performance bond to ensure that any part completed works are properly completed or the site is adequately remediated in the event that CPW became insolvent.

- There is no need for an unexpected risk event bond in relation to the distribution race system because any failures would not have catastrophic consequences and can be addressed by a suitable condition requiring CPW to hold appropriate public liability insurance and to maintain it at all times. This shall be in a form which would be available to the Council. In addition to this, we also note the general duty to avoid, remedy or mitigate adverse environmental effects under section 17 of the Act.

- We think that an unexpected risk event bond may be desirable in relation to the NoR Headrace and terrace canals, but have concluded that it should only relate to the designation which would authorise those works rather than the associated regional consents.

- We think that such a bond relating to the risk of failure of some part of the infrastructure and consequential environmental damage would need to be linked to the performance of conditions of the Designation.

- We have recommended that there be a condition requiring that the Requiring Authority be responsible for the full costs of remediating any environmental damage, including damage to private property or public infrastructure in the event of any failure of the canal or any other part of the intake and headrace system.

- We think that there should be an unexpected risk event bond condition which is tied to the performance of this and any related conditions and have asked the officers to draft such a condition to be included amongst the recommended NoR conditions.

10.18 Notwithstanding the above, we do accept that there may be an element of duplication in this approach. We also accept that the costs of a bond may be prohibitive. However there are many things that CPWL can do in the design and construction of the scheme to further minimise this risk (increased use of control gates along the headrace etc). It can balance the design/bond to arrive at the most efficient outcome for them. The process of setting the Bond needs to allow for this.

10.19 We acknowledge the relationship between the Requiring Authority (CPWL) and the Trust and the public nature of the Trust. We also note that there will be a contractual relationship between CPWL and the Council in relation to parts of the headrace which cross Council owned or managed land and/or interfere with Council infrastructure. We accept that it is arguable that these factors mitigate against the need for an unexpected risk event bond and perhaps even the performance bond.

10.20 As will be apparent, we are not entirely convinced that an unexpected risk event bond is necessary in the present case. However, given that the issue has not been fully debated and adopting a precautionary approach, we have included it as a recommendation so that further thought can be given to the issue by both CPWL and the Council.

10.21 It will be up to CPWL as to whether it accepts our recommendation. In the event that it does not do so, SDC and submitters will have the opportunity to challenge its decision on appeal. If that point is reached, there will be further opportunities to refine the bond and/or associated conditions via mediation or as a last resort litigation.

10.22 Whilst somewhat unusual, we consider that this process of resolving this issue is appropriate, given the role of SDC in the scheme and given that the issue arose quite late in the hearing and was not fully debated.

10.23 In view of this process and the opportunities for further engagement, we have concluded that there is no need for us to seek further submissions or evidence on the point. We will review the amended draft recommended conditions proposed by SDC and will make any amendments we think fit and will include them in our recommendation to CPWL.

11. ENVIRONMENTAL MANAGEMENT FUND

11.1 We have suggested that the fund should be administered by a trust separate from CPW and the draft wording of the relevant condition requires that. CPW "strongly" opposes this on the basis that:

- It would add administrative costs which would deplete the fund.

- The Trust is a Controlled Organisation required to report annually to the Christchurch City Council and the Selwyn District Council (the Settlors of the Trust).
- The Trust is accountable to the public in any event (the beneficiaries being the regional community).
- The District Councils appoint some of the trustees.
- There is provision for representatives of Ngai Tahu and the environment on the trust.
- The trustees have obligations under the trust deed.
- The Trust was set up to carry out this function, that is one of its primary roles.

11.2 Ms Dean in her Memorandum sets out the ECan officer's position:

> *I note that majority of the current CPWT Trustees represent the agricultural sector and that there may not be a fair representation of environmental interest groups. Given the purpose of the Environment Management Fund is to fund mitigation and environmental management projects, I consider that it would be appropriate for representation from environmental or community interest groups to help manage and distribute the fund.*
>
> *I have drafted a condition which requires an Environment Management Fund Committee to manage and distribute the fund. The conditions outline the membership requirements of that committee.*

11.3 We remain of the view that the fund should be administered by an entity which is independent of CPW and whose members are predominantly representative of environmental interests. We agree that the current make up of the Trust is dominated by farming interests. Nevertheless, we have reservations as to whether we have jurisdiction to **require** a different structure for administration of the fund. Accordingly, we have concluded that we will not require that in the conditions, but do make a strong **recommendation** to CPW and the two settlor councils to

ensure a structure which provides assurance to the public that the fund will be managed in accordance with environmental objectives, with appropriate expertise on the administering body.

11.4 As noted in our Minute, we are of the view that the primary focus of the fund should be on riparian management, water quality, Te Waihora and maintaining or enhancing aquatic and terrestrial ecology and bird life within the scheme area. As identified in our **Minute 14**, the Schedule 2 Admin Condition currently numbered 9 should refer explicitly to a priority objective of minimising nutrient losses to lowland streams and Te Waihora. The conditions make it clear that the fund must not be utilised for measures required by conditions or the Sustainability Protocol or Farm Management Plans, nor for any administration or education associated with these.

11.5 CPW was also strongly opposed to our suggestion that the levies should commence 5 years before the projected commissioning of the scheme or at the time the outline plan is approved. We had noted that this will allow the fund to be built up in advance of the scheme. We noted that the proposed $150,000 per annum is modest in comparison to the predicted increases in profits to shareholders. We are of the view that if levies commence in advance of the scheme, this will allow a reasonable base fund to be established and with that and the removal of the dam and reservoir, we think the scheme will provide adequate offsets of effects which can not be mitigated.

11.6 We accept CPW's concern that shareholders should not be expected to contribute before they get water. However, we remain of the view that the fund should be allowed to build up prior to the commissioning of the scheme. Again, we doubt that we can **require** this by way of condition, since we can not require what is in essence a financial contribution, since that is not provided for in the regional or District Plans. This difficulty is overcome if CPW agrees to the increase but it does not.

11.7 Accordingly, we simply make a recommendation that CPW should ensure that the fund balance is no less than $300,000 at the time the first irrigation commences. How it sources that seeding would be a matter for it, if it accepts this recommendation.

11.8 In view of the jurisdictional issue, we have not included either of these points in the Regional Council conditions. However we have added these two

recommendations to our recommendations in relation to the Notice of Requirement. That leaves CPW with the option of accepting or rejecting those recommendations. If the recommendations are rejected Selwyn District Council and/or submitters **may** have a right of appeal. (we say "may" because of the jurisdictional issue).

11.9 We also noted in **Minute 15** that there needs to be an explicit means of inflation adjusting the levy commencing from 2011. This has now been included.

12. SUSTAINABILITY PROTOCOL (SCHEDULE 2 ADMIN CONDITIONS)

12.1 We have required that a condition be added to provide for reviews of the Protocol either 5 yearly or upon request by ECan. This would allow, among other things, for priorities to be changed as mitigation methods begin to have effect. The Protocol should also be reviewed the year before irrigation commences (by review, we do not mean a review of consent conditions, but rather an informal review. The following wording has now been included:

> *"At least one year prior to the commencement of the scheme, and at least once every five years after the commencement of the scheme, the sustainability protocol shall be reviewed and updated to reflect best practice."*

13. LAPSE DATE

13.1 We included a lapse period of 8 years on the Ashburton Community Water Trust consents. We consider that the same period is appropriate for the CPW scheme. We discussed this further in **Minute 15**. It seems to us that if CPW can not make "substantial progress" within 8 years then the scheme should not prevent consideration of other alternative options beyond that time. We have included a lapse date of 10 years on the distribution network consents since some of that network may not be put in until after the headrace is constructed.

13.2 Furthermore, we think that the land owners who are affected by the scheme, adjoining landowners and the community as a whole are entitled to have certainty around the scheme as soon as possible. Even with an 8 year lapse period, construction might not commence for at least 10 years and the scheme might not be commissioned for another 3 to 5 years. CPW is able to apply for an extension provided that it has made substantial progress.

14. TERM OF CONSENTS

14.1 With the exception of construction and Rakaia consents, we have accepted that given the investment involved, the adequacy of conditions and in particular the adequacy of adaptive management and review conditions, a term of 35 years (the maximum term) is appropriate.

14.2 In relation to the Rakaia water and discharge permits we have concluded that these should expire at the same time as the ACWT consents **(2044)**. This will allow for an integrated approach at the time of renewal. We see no difficulty with having a slightly different timing for the two rivers since the effects on one are independent of the effects on the other. **We observe that we did not discuss this with CPW at the hearing but we understand that it has no difficulty with this approach.**

14.3 The distribution network consent is a land use consent which runs with the land and does not have a term on it. We can limit that consent to a fixed term but no party has sought that we do so and accordingly we will keep to the normal position of an indefinite consent. The question of access to private or public land and the narration, duration and terms of that access is a matter for negotiations between CPW and land owners.

15. FINALISATION OF THE DESIGNATION CORRIDOR

15.1 CPW has kept the corridor wider than would otherwise be "reasonably necessary" to achieve its objectives. It has done so because it did not wish to spend further funds on a final design until it had a final decision from the RMA process. If there are appeals, that would be some years away.

15.2 We think that this approach was reasonable, however, in our view it is essential that the final canal route be confirmed as soon as possible after the designation is confirmed (if it is confirmed). This will enable the corridor to be narrowed so that it encompasses only what is *reasonably necessary* to construct the headrace and other designation works. This is likely to be required in any event to enable CPW to purchase or acquire the necessary interests in land.

15.3 The Bulls, the three Deans families, Madeline de Jong, Farmers Group Southern Headrace and other landowners have now had the uncertainty of this Notice of

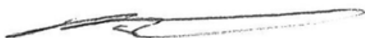
Requirement for many years. We consider that they are entitled to have some certainty in their lives if the designation is ultimately confirmed. Accordingly, we have recommended that CPW finalise the **general** location of the intake, head works, sediment ponds, fish screens, terrace canals, headrace and other components, sufficiently for it to be able to withdraw the designation over land which is not *reasonably necessary* for the purpose of constructing and maintaining the works and to do so within 3 years of the Notice of Requirement being confirmed. (which will not be until appeals if any have been resolved).

15.4 We accept that CPW will need to maintain some flexibility to subsequently make minor changes to the design by way of the Outline Plan process and/or non notified variations to the designation. However we consider that it is reasonable and appropriate to require CPW to finalise the designation corridor within 3 years of the designation being confirmed. We envisage that this would also include confirmation of its chosen option in relation to the Bull property and any other properties where there is currently uncertainty as to the location of the works.

15.5 In our view it is within our jurisdiction to make such a *recommendation*. It is then up to CPW as to whether to accept it. If it does not do so, then it may end up being be a matter for the Environment Court as to whether it has jurisdiction to put a time frame on the finalisation of the location of the works, and if so whether that is appropriate.

Independent Commissioners 28 May 2010

Philip Milne (chair)



Bob Nixon

Andrew Fenemor

Ray O'Callaghan