

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 to

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

**Minute 15 of Commissioners
Further comments on draft conditions**

31 March 2010

1. Introduction

- 1.1** Last week we heard from Central Plains Water (CPW), officers of both councils and relevant submitters in relation to the draft conditions which were circulated by the Councils in early March. We are grateful 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 are appreciative of the fact that there is a large degree of agreement as to revised wording.
- 1.2** Inevitably there were some issues where there was still debate as to the final wording of conditions. Agreement has been reached on most of these residual issues at prior to the resumed hearing. There remain a small number of issues where either there is still a measure of disagreement, or where we are not satisfied that the draft conditions are adequate in their current form. Most, if not all of these points relate to issues raised by submitters and/or identified by ourselves or officers during the substantive hearing in submissions on conditions. With a few exceptions, the outstanding issues largely relate to matters of detail rather than substance.
- 1.3** CPW and the officers agreed that it would be useful for us to issue this further (and hopefully final) Minute to summarise the outstanding matters and provide directions as to the general nature of the further amendments or additions which we seek.
- 1.4** CPW and the officers asked for a further 3 weeks (until Friday 16 April) to finalise the conditions. This will include an exercise of checking cross references and fixing various minor errors which have been identified, as well as redrafting or adding some conditions or recommended conditions to reflect the directions in this Minute and any other matters which have already been agreed. We had hoped to get this Minute out on Monday afternoon. Given the slight delay, we will extend the period for the final draft of conditions until until Friday 23 April and CPW's reply until 30 April. (see below for the timetable for the holiday rule).
- 1.5** What we are seeking to achieve is a set of conditions which can be attached to our final decision, with little if any alteration by us. We are hopeful that so far as is possible, the remaining wording can be agreed with the Applicant. We note however, that there may well be some matters of substance where agreement can be reached on wording, but where CPW reserves its position to reject our recommendation in relation to the Notice of Requirement conditions, or appeal our decision in relation to consent conditions.
- 1.6** We now set out our views as to the matters which we think need to be addressed, starting with some more substantive issues and moving to some minor issues. There are some other matters which we discussed at the hearing, or which had previously been agreed which will need to be incorporated into the final set of conditions, but which we do not need to discuss here. However if the officers require further guidance we would be happy to provide that upon request. There will also be some matters raised by submitters which we have no addressed here but will do so in the final decision once we have CPW's reply on these matters. (for example the issues raised by the gravel extractors).

2. Waimakariri take consent 061972 and Rakaia take consent 021091

The 'Holiday Rule'

- 2.1** This is the most substantive remaining issue. In Minute 12, we accepted that the 30 cumec gap approach proposed by Environment Canterbury (ECan) officers to

reflect Plan Change 1 would be marginally better at mitigating the effect of the CPW take on recreation amenity at low flows, than one to one flow sharing would on its own. Nevertheless we concluded that the CPW proposal would provide adequate mitigation if combined with additional restrictions at times of likely peak use for kayaking and jet boating. These additional restrictions would also incidentally benefit river bird life and angling amenity. In Minute 12 (at 8.7 and following) we expressed the objective of the additional restrictions as follows:

- *"Clearly any substantial increase in flows of less than 70 cumecs during periods of high kayak usage of the river would reduce amenity values. We noted in Minute 9 that "the summer regime would need to largely maintain suitable flows at least at weekends and during holidays and afternoons".*
- *As shown in Tables 2 and 3 above, the CPW take (predicted without BCIL) would increase the number of days in the 50-70 flow range by on average 7 days per year.*
- *We do note that the CPW proposal will no longer affect the winter training or the winter race series, since it does not require winter water. However it does have the potential to have some impact on training for the Coast to Coast event during the summer, since some of that training occurs downstream of the proposed intake.*
- *We have concluded that an additional condition is needed to mitigate these potential effects.*
- *We favour something along the following lines to further mitigate potential effects on kayaking, jet boating and salmon angling amenity values.*

No taking by CPW (under this B permit consent) at unmodified Old Highway Bridge (**OHB**) flows of below (say) 75 cumecs between 9am and 9pm on Saturdays and Sundays, each weekend between November and March inclusive, and on all public holidays, and on every day during the period commencing the Friday before Christmas each year through to the end of February.

- ***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.'*

2.2 Our conclusion, that an additional restriction is needed remains unchanged. We have an open mind as to what is required to achieve what we think is required. We made two tentative suggestions as set out above.

- 2.3 Mr Tipler for CPW and Mr Duncan for ECan have modelled the effect of our suggested 10 cumec gap during the periods which we indicated should be the target periods. They both concluded that the restriction as suggested by us would provide little benefit to recreation amenity for most of the time when it applied, and modest benefit during dry years. Mr Tipler concluded that the rule, as suggested by us, would result in significant additional costs to shareholders as a result of the additional on-farm storage which would be required by those farmers who do not have access to ground water to supplement scheme water. He explained that for these farmers, the scheme would already provide low reliability without the holiday rule and further decreases in reliability would need to be compensated for by storage (at least if the same area is to be irrigated).
- 2.4 Mr Duncan agreed that the rule as modelled would result in significant costs for little benefit in terms of mitigation. He pointed out that the maximum benefit from the rule would be 5 cumecs and he doubted whether the less than 5 cumec reduction in flow, from pre-CPW flows which would usually be the result of the rule, would be particularly noticeable by river users.
- 2.5 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 to weekdays. 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. Fish and Game also sought to retain this condition.
- 2.6 We do not think that it would be appropriate or consistent with our conclusions in Minute 12 to entirely dispense with the holiday rule. However we accept that there is no point in including a restriction which reduces the economic benefits of the take with little resultant mitigation in relation to effects on in stream amenity. That would not be an efficient use of the resource or the scheme.
- 2.7 On the other hand, we do not think that it is 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). Nevertheless we remain of the view that there needs to be an additional restriction which provides **effective** mitigation at times of potential high use.
- 2.8 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 at these times.
- 2.9 We had made a tentative suggestion as to what was required. In essence that suggestion was a 10 cumec gap between the B1 cut-off flow and the CPW starting flow, for 12 hours per day on the specified days. Given the one to one flow sharing that would otherwise apply, that would leave an additional 0-5 cumecs in the river at those times. As noted in paras 8.13, 8.17-8.18 and 9.3 of our Minute 12, we had not intended that this should be the only option explored. We had hoped that CPW and officers would work with the recreation interests to develop an effective rule, however perhaps we did not make that sufficiently clear.
- 2.10 In any event we would now like the officers in consultation with CPW, the kayakers, and ideally Mr de Joux for 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.

2.11 There are 6 components to the condition:

- The objective of the rule;
- The part of the river to which it should be directed;
- The days on which it should apply;
- The times of day it should apply;
- The flow bands which it should apply to; and
- The nature of the restriction at these times and flows.

2.12 We are of the view that the broad objective should be "... to reduce the **impact** of the take on flows below 55 cumecs at OHB during the peak usage periods". However, we think that the objective could be refined so that it aims to ensure that:

"During times of potentially high boating use, the CPW take should not reduce flows in the lower river by more than 5 cumecs when flows would otherwise have been between 55 to 70 cumecs at OHB."

2.13 We accept that there is a degree of conjecture as to what reduction in flow will be detrimental to kayaking and jet boating. Put alongside the flow band analyses of Messrs Tipler, Duncan and de Joux, Mr Burrell's evidence (Figs 3 and 4 of his original brief) suggests that flow changes of up to, say, 3 cumecs will be unnoticeable in terms of depth changes. The recreational evidence suggests, however, that jet boaters, kayakers and perhaps salmon anglers are likely to register detraction in amenity at least between Cross Bank and State Highway 1 (SH1), if flows are reduced by 10 cumecs at times of low flow. In the absence of clear evidence as to what would amount to a material detraction of amenity, we think that a maximum of 5 cumecs reduction would be an appropriate and precautionary target at these times and flows.

2.14 We have decided that the objective and the rule should be primarily directed at the area from Cross Bank downstream. This is the area where most novice jet boating and a lot of kayak training occurs and is 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.

2.15 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. We have 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 have now tentatively reached the view that in view of the impacts on CPW it should only apply on week days from 21 December to 15 February. The latter will capture the summer holiday period, the Coast to Coast training period and the peak salmon angling period in the Cross Bank 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. We note that kayaking interests did seek that the restriction apply on weekdays beyond this period, we accept that there is a case for that but on balance we think that what we have suggested above will be sufficient.

- 2.16** We do not think that the restriction needs 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 Cross Bank area**. Accordingly the restrictions on take could apply from, say, 7am to 4 pm or whatever start and finish times will result in the “wave” reaching Cross Bank by noon and the effects of the resumed CPW take reaching the Cross Bank area by no earlier than 8pm.
- 2.17** This approach would allow CPW to take on a normal (one to one) basis for the remaining 14 to 15 hours per day. Again, we acknowledge that this is a compromise. 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 boatees. 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.
- 2.18** So far as what the restriction should be to achieve the objectives and targets set out above, we will leave that to the ECan officers, and in particular Mr Duncan, to develop a recommendation in consultation with Mr Tipler, a kayaking representative and (if Fish and Game wish to be involved) Mr de Joux.
- 2.19** One option, which was favoured by Mr Duncan, would be a 20 cumec gap before one to one flow sharing commences. However that may go further than is required to achieve the objectives and targets above.
- 2.20** Another option may be for there to be no more than a 5 cumec take when modified flows are at or below 60 cumecs at these times, but for CPW to be able to take all of the flow above 60 cumecs on the balance of the target days. (i.e. no 1 to 1 flow sharing on these days outside of the restricted period). However that approach may be detrimental to angling amenity unless the restricted period commences earlier (say 3 hours earlier) to allow for the “wave” to reach the Cross Bank area. We can not see any case for dispensing with the one to one sharing on days when the holiday rule does not apply.
- 2.21** As will be apparent from the above, we fully appreciate 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 economic benefit). We have done the best we can, based on the evidence we have heard. CPW considers that our previous approach as signalled in Minute 12 was too restrictive and in-stream users considered that it would provide inadequate mitigation. We will review the balance once we have a final recommendation from officers and have heard from CPW and relevant submitters on that.
- 2.22** We leave it to the officers and relevant parties to develop an appropriate condition. Ideally that would be on an agreed basis, however if we end up with alternative proposals we will decide between them. We will consider further brief written submissions from CPW, ECan officers, Fish and Game and kayak interest before we finalise this condition. Given that CPW is entitled to have the final reply on the matter, the following timetable will apply:

- Officers to consult and provide a recommended condition by 16 April.
- Any submissions from Fish and Game, and boating interests by 23 April.
- CPW reply to officers and others by 30 April at which point the hearing will be closed.

We note that this further step in the process will not delay our final decision, since can carry on working on other aspects in the meantime.

3. Waimakariri Condition 3 (a) (iv)

- 3.1 We note that Condition 3(a)(iv) does not reflect our views that the flat lining interval should be reduced from 21 to 14 days. The officers also need to review this condition to ensure it operates as we indicated in Minute 12, and in conjunction with the other parts of condition 3 (a) (including iii).

Winter Allocation

- 3.2 We are of the view the legal allocation under the take consents for each river 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.

- 3.3 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. If there are different versions of that rule proposed to us then we will need to know the associated storage for each.

4. Waimakariri A Band Protection

- 4.1 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 would be if Plan Change 1 is adopted.

- 4.2 In this regard Mr Callendar's suggestion for the following sub clause (vi) to condition 3 seemed to have some merit:

(vi) 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.

5. Fish Screen Conditions

- 5.1 There has been ongoing 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 (**DOC**) along with Dr Meredith for ECan

favoured specification. We note Dr Meredith's memo, following the hearing, commenting on the difficulty of monitoring the achievement of a stated objective as a further reason for supporting specification in the consents.

- 5.2** We do not have a difficulty with an approach which provides flexibility as to final design, provided that the objective of the design can be set out clearly in the condition. There would also need to be a process of independent certification either by ECan or an independent certifier to confirm that the design objectives will be achieved by the final design.
- 5.3** The difficulty is that there is insufficient evidence for us to be able to set a clear design objective in the condition. The draft condition proposed by Mr Lewthwaite requires the design to exclude the "*majority*" of smelt from the canal. That could allow up to 50% of smelt to pass the screen and clearly that would not be sustainable.
- 5.4** At the other end of the spectrum we accept that total exclusion of smelt and juvenile native fish is neither practical nor necessary. In terms of the salmon fishery, there is already considerable seasonal variability in the salmon run. It is unlikely that the loss of say 5% of smelt to this intake and another unknown percentage to the other intakes is likely to have any significant effect on the size of future runs.
- 5.5** In view of the national, if not international, significance of the Waimakariri and Rakaia salmonid fisheries, and the fact that longfin eels and upland longjaw galaxiids are already in "gradual decline" (J Hay evidence for DOC), we think that an appropriately precautionary approach would be to set a design objective of no more than 5% loss. However, that is not a matter that could be the subject of an enforceable standard since it would be impossible to verify.
- 5.6** The other alternative would be an objective of utilising the "best practicable option" (**BPO**) to minimise loss of smelt and native fish to the system. However the Resource Management Act 1991 (**RMA**) does not provide for BPO except in relation to discharges. In any event such an objective is rather unclear.
- 5.7** 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.
- 5.8** Based on Figures 19-22 of the NIWA 2007 Fish Screening Guidelines, and to achieve an entrainment risk for salmonid, eel 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.
- 5.9** We leave it to the officers to propose an amended condition after further discussions with CPW.
- 6. Telemetry**

6.1 It is up to ECan officers to confirm what they consider is required in relation to each river to ensure adequate monitoring of compliance with Rakaia Water Conservation Order, the Waimakariri River Regional Plan consent conditions and the non derogation principle. We are not sure why there should be a difference in metering requirements between the two rivers, but it may be that this is being addressed for the Waimakariri in Plan Change 1.

6.2 Discussion at last week's hearing indicated that on/off telemetry will be sufficient for the Rakaia condition 5(b) takes. Indeed it may be sufficient that there be a requirement that those takes have tamper proof data loggers attached. In our view it would be sufficient if ECan has a means of confirming whether the total take has met the CPW conditions, even if that is not a real time basis. However, it may be preferable for there to be at least on/off telemetry.

7. Groundwater Technical Review Panel (GTRP)

7.1 One of the GTRP roles should also be to advise on and recommend adoption of a monitoring and mitigation programme, which as far as possible achieves an integrated management approach to groundwater and drainage management (i.e. with ECan monitoring, Ngai Tahu objectives, consents for neighbouring activities etc). This approach will need to be consistent with implementation programmes to be developed by the Waihora/Ellesmere Water Management Zone committee under the Canterbury Water Management Strategy.

7.2 The members of this GTRP need to be approved by ECan.

7.3 We consider that condition 28 should not allow such a lengthy response time for complaints about breaches of 25(i)(iv) (exceedances of nitrate limit where an infant may be drinking that water). Immediate provision by CPW of an alternative water supply (eg bottled water for the infant) should be required, pending resolution of any dispute over liability.

8. Headrace and Distribution Network Group

8.1 We think that it would be useful for there to be a forum for affected landowners to discuss any issues that may arise before, during and after construction of the headrace and distribution network. We think that this should be separate from the community liaison group.

8.2 Although we appreciate that many issues can be left to access, ownership or easement agreements, there will be other issues which could usefully be discussed at such a forum. This group could also be utilised to assist consultation during the process of finalising the design details of the headrace and distribution network. The group should be activated before the outline plan for the headrace and final design for the distribution network are finalised.

8.3 The purpose of the group would be to facilitate consultation and information flow and make suggestions. There may need to be a committee, however we think it would be preferable for there to be an email group and periodic meetings with any of the headrace owners and the distribution network owners who wish to attend. The meetings of the two groups could be kept separate.

8.4 The forum should be set up in such a way that any final design, construction or post construction issues with individual landowners can be addressed, along with any long term operational issues. There should be a mechanism for ensuring that complaints/issues by landowners either as a group or individually can be passed on to CPW .

9. Community Liaison Group

- 9.1 The community liaison group role should be extended so that there is meaningful consultation regarding final design where it affects residents; including construction management plans, and construction issues as well as operational matters (the current focus seems to be on the operational period).

10. Te Waihora Consultation

- 10.1 We understand the call by Ngai Tahu to be separately consulted and advise on CPW impacts and mitigation for Te Waihora, as that reflects their special status under the RMA. To avoid fragmented consultation with Ngai Tahu, and other parties such as the Waihora Ellesmere Trust, such consultation and advice should as far as possible be coordinated through both the GTRP and the Waihora/Ellesmere Water Management Zone committee being implemented by the Canterbury Water Management Strategy.

11. Mudfish Impact Assessment and Management Plan

- 11.1 There should be a specific process to identify any impacts of the scheme on mudfish habitat, and a management plan detailing mitigation or offset measures for any mudfish habitat which is affected. It may be that this is most efficiently carried out as part of an assessment of aquatic habitat mitigation within the Environmental Construction Management Plan (**ECMP**) and Scheme Environmental Management Plan. Such a plan should be prepared by a suitably qualified expert in consultation with DOC and certified by ECan. Any offsets in lieu of mitigation should be in addition to any work funded from the Environmental Management Fund.

12. Archaeology and Heritage

- 12.1 There needs to be a list or map of locations requiring specific survey along with a process for identifying any other sites which require survey prior to detailed design.

13. Terrestrial Ecology

- 13.1 We favour including a general condition on the construction consents 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 Ms de Jong, among others. We appreciate that it would not address the issue of habitat loss as a result of land use intensification, but that is a matter for the District Plan and/or the Protocol/farm plans.

14. Discharge diverted Rakaia and Waimak waters 061980 & 061982

- 14.1 We note conditions 3 and 2 respectively limit fish pass discharges to at least 2 cumecs, which is what was approved for Ashburton Community Water Trust (**ACWT**) but is contrary to Dr Glova's evidence supporting at least 5 cumecs. We are happy with 2 cumecs for the same reasons as for ACWT (see para 33.9 in our ACWT decision).

15. Divert water 061940 and 061943

- 15.1 These consents for diverting water towards intakes limit the diverted flow to 80 and 40 cumecs for the Rakaia and Waimak rivers respectively. River processes may increase flow rates to later cause breaches of these conditions unless reworded along the lines '*At the time of diversion works occurring, water may be diverted at a rate not exceeding 80/40 cubic metres per second*'.

16. Water Use 061973

- 16.1 Condition 3(a) could more clearly indicate that the 20% leakage loss includes both reticulation leakage and by wash.
- 16.2 Condition 5 limiting water application rate to 0.6 l/s/ha scheme-wide could be better expressed on a daily basis for compliance purposes (5.18mm/day) and mm applied is more meaningful to farmers.
- 16.3 Add to the first sentence of Condition 8 outlining Farm Management Plans '*and to minimise any loss of sediment, phosphorus or nitrogen to surface waters*'. Some farms will have drains, watercourses, wetlands or rivers adjacent and it is an absolute requirement to avoid any losses of phosphorus, which would reach lowland streams or Te Waihora.
- 16.4 Similarly, for Condition 9 add to Farm Management Plan objectives (e) and (f) not just fertilizer management but also good management of drains, buffer zones, stock exclusion, cultivation etc. That is to say, we consider the words after '*through*' need to be generalised beyond just fertilizer management.

17. Bond for Headrace Works

- 17.1 We note the legal advice from Mr Rodgers, for Selwyn District Council (SDC), that it is within our jurisdiction to recommend a bond. We also note that a bond was proposed by CPW in relation to the dam designation. In our view 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. The bond should also cover damage from flooding if culverts are inadequate.
- 17.2 A related matter is that the consent to dam for headrace and distribution channels may be necessary for 35 years, not just during the construction period if that has to be the mechanism to include the bond. However we would prefer to see the bond on the Designation.

18. Environmental Management Fund

- 18.1 We will be recommending that the fund be administered by a trust separate from CPW. 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. The Schedule 2 Administration Condition, currently numbered 9, should refer explicitly to a priority objective of minimising nutrient losses to lowland streams and Te Waihora as identified in our Minute 14.
- 18.2 The fund should 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.
- 18.3 We consider that the levies should commence 5 years before the projected commissioning of the scheme or at the time the outline plan is approved. This will

allow the fund to be built up in advance of the scheme. We still consider that the proposed \$150,000 per annum is modest in comparison to the predicted increases in profits. Nevertheless 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 cannot be mitigated. We appreciate that others may have a different view and ultimately we are constrained by the fact that we cannot require what is in essence a financial contribution, since that is not provided for in the Regional or District plans.

- 18.4 There needs to be an explicit means of inflation adjusting the levy commencing from 2011 (\$150,000 in 2010 terms will be significantly less in 10 to 15 years time when the scheme may be commissioned).

19. Sustainability Protocol (Schedule 2 Administration Conditions)

- 19.1 We consider a condition should be added to provide for reviews of the Protocol either 5 yearly or upon request by ECan, especially if a copy is to be attached to a 35 year consent. 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.

20. Lapse date

- 20.1 We included a lapse period of 8 years on the ACWT consents. We consider that the same period is appropriate for the CPW scheme. It seems to us that if CPW cannot make "substantial progress" within 8 years, then the scheme should not prevent consideration of other alternative options beyond that time.

- 20.2 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. We do not agree with submissions on behalf of CPW that there would be a degree of uncertainty regarding whether an extension could be granted on the basis of substantial progress. Provided it has made substantial progress (say to outline plan stage) within the 8 years it seems inconceivable that a further extension would not be granted. In any event CPW would have a right of objection and appeal if an extension was not granted.

21. Finalisation of the Designation Corridor

- 21.1 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.

- 21.2 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.

- 21.3 The Bulls, the three Deans families, Madeline de Jong, the Kimberley group and all other affected 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 when and if the designation is ultimately confirmed. Accordingly, we will be recommending that CPW finalise the 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.

- 21.4** 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.
- 21.5** In our view it is within our jurisdiction to make such a *recommendation*. It is then up to CPW's as to whether to accept it. If it does not do so, then it may end up being 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.

Concluding comments

We are conscious that we have not addressed every issue which was raised in relation to conditions. If the officers require any further guidance from us before submitting the final set of draft conditions they should seek that. Alternatively and additionally any remaining areas of debate should be clearly highlighted on the final draft conditions and outlined in the officers final comments. Where there is an area of debate we should be presented with the officers recommended wording and CPW can then provide it alternative wording either in the same document or in its reply. So far as submitters have suggested other changes, those should be addressed by CPW in its reply.

Philip Milne
Andrew Fenemor
Bob Nixon
Ray O'Callaghan
Independent Commissioners 31 March 2010