

25 April 2010

Ref: CO6C/18965

MEMORANDUM

FROM: ANGELA DEAN
TO: THE COMMISSIONERS
SUBJECT: CENTRAL PLAINS WATER RESOURCE CONSENT APPLICATIONS – COMMENTS ON CONDITIONS

A Permits and unmodified flows (CRC061972 - take water from the Waimakariri River)

1. I met with Rachel Dunningham (on behalf of the applicant), Leo Fietje (Principal Consents Advisor at the Canterbury Regional Council (CRC)) and Marie Dysart (solicitor at the CRC) to discuss the derogation of A Permit holders' rights on the Waimakariri River through the use of the term "unmodified flow" in the conditions for CRC061972.
2. We agreed that there are two options for the conditions of this consent:
 - (a) include condition 7 (as proposed by Peter Calendar) with the knowledge that the condition will restrict the applicant from taking B Permit water (as defined in the Waimakariri River Regional Plan (WRRP)) as it has effectively been allocated to "A permit" holders. I note that this condition will no longer apply if the monitoring point in the Plan is changed from Old Highway Bridge to Otarama as part of the WRRP Plan Change 1 (PC1); or
 - (b) be consistent with the wording of the WRRP in order to allow the applicant to take water under the conditions that they applied for pursuant to the WRRP. This will allow the abstraction of water under CRC061972 to detract from A Permit holders. In the event that the consent is granted without this condition, however, it will be done so with the knowledge that PC1 is currently going through the process to address these issues (and is likely to be resolved prior to CPW being able to take water).

Allocation of winter water (CRC021091 – take water from the Rakaia River and CRC061972 – take water from the Waimakariri River)

3. In paragraphs 3.2 and 3.3 of Minute 15, the Commissioners state that the legal allocation under the "take" consents for each river needs to be clear to ensure that other potential applicants can ascertain the limits of the CPW allocation.
4. The CRC allocates surface water by the maximum rate of abstraction rather than volumetric limits. Volumetric limits are used to allocate water from stored systems such as groundwater or where there is an in-stream dam.

5. 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;*
- (e) *where a surface water body is dammed and water is stored, the limit for each allocation block may also be set to include an annual volume. Where the annual volume is used, the effective allocation shall be determined in the same way as set out for allocation zones...*”

6. Given the policies above, and that the applicant is proposing to store water out of the river, I consider that a volumetric limit may not be necessary. In the event that the Commissioners still seek to include a volumetric limit on each of the consents, I recommend that the applicant proposes the volumes to be abstracted from each river in relation to their requirements. I am available to audit the volumes proposed by the applicant.

TrustPower conditions

7. There is substantial agreement between the applicant, TrustPower (the submitter) and the CRC regarding the conditions to address TrustPower’s concerns at Highbank.
8. I note that the applicant has raised issue with using the term “hinder” when describing the effects on fish passage, particularly in relation to TrustPower’s concerns. Mr Lewthwaite, on behalf of the applicant, suggested that an alternative to this term could be “shall minimise hindrance to” or “shall not prevent” fish passage.
9. In response to Mr Lewthwaite’s suggestion, Ms Lara Burkhardt (on behalf of TrustPower) stated that changes to the condition in this respect are not supported as this term was agreed to previously.
10. I have taken into consideration the points raised by TrustPower and the applicant. I consider that the term “hinder” may be difficult to monitor, and a suitable alternative could be “shall not prevent”.

Environment Management Fund

11. Section 18 of Minute 15 states that the Commissioners will recommend that the Environment Management Fund is administered by a Trust separate to CPW.
12. The applicant has advised that they do not think a separate Trust is necessary as the Central Plains Water Trust (CPWT) is a Controlled Organisation required to report annually to the Christchurch City Council and the Selwyn District Council (the Settlers of the Trust). They also state that the Settlers appoint the Trustees, and that this establishes CPWT as independent of Central Plains Water Limited’s (CPWL) control. They argue that this should allow CPWT to exercise the fund management without undue influence from CPWL.
13. 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.

14. 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.
15. I am available to draft an alternative condition which requires a separate Trust to administer, manage and distribute the fund if requested by the Commissioners.

Environment Management Fund levies

16. The Commissioners consider that the levies should commence either five years prior to the projected commissioning of the scheme, or at the time the outline plan is approved. This is to allow the fund to be built up in advance of the scheme. The applicant has indicated that they will oppose these restrictions as 1) the scheme commissioning date is difficult to define five years in advance; and 2) the provision needs to account for the fact that the scheme may progress in stages.
17. I have taken into account both Minute 15 and the concerns outlined by the applicant. I consider that it is appropriate for the levy payment to begin prior to the commissioning of the scheme so as to allow the fund to build up in advance. However I also agree with the applicant that only those using the water should be required to contribute to the fund.
18. CPW has proposed that the commencement of the levy is the date on which a property owner enters into a Water Users Agreement with the company.
19. I recommend that the payment of the levies begin on the day each share holder enters into a Water Users Agreement with Central Plains Water Limited. This means that it will be the water users who contribute to the Environmental Management Fund, and not those who have purchased shares and do not intend to join the scheme.
20. I am aware that the water users may not sign an agreement until just prior to the taking of water for irrigation. As such, this will not allow for funds to accrue prior to the commissioning of the scheme. I have therefore recommended a condition which requires there to be a minimum amount in the Environmental Management Fund once a certain trigger has been reached.
21. I have suggested that the trigger could be the area of land irrigated by the scheme. Mr Lewthwaite advises that the scheme could take and use water soon after consent is granted (albeit on a smaller scale) and that the commissioning of the scheme could be considered to be the date the headrace is used to distribute water to the farms.
22. Given that the applicant may take and use water prior to the use of the headrace, I consider that the option requiring a minimum amount to be in the Environmental Management Fund once 10,000 hectares is one way to address the issues raised by the Commissioners and the applicant.

Signed: _____

Angela Dean
Consents Investigating Officer