

IN THE MATTER OF the Resource Management Act
1991

AND

IN THE MATTER OF Applications for resource
consent by the Central Plains
Water Trust and a notice of
requirement for the designation
of land by Central Plains Water
Limited associated with the
construction and operation of the
Central Plains Water Scheme

**SUMMARY OF SUPPLEMENTARY SUBMISSIONS ON CONDITIONS ON BEHALF OF
THE DIRECTOR-GENERAL OF CONSERVATION**

Dated: 12 March 2010

Director-General of Conservation
Department of Conservation

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SUMMARY OF SUPPLEMENTARY SUBMISSIONS ON CONDITIONS ON BEHALF OF THE DIRECTOR-GENERAL OF CONSERVATION (THE DEPARTMENT)

1. INTRODUCTION

- 1.1 In a series of Minutes commencing with Number 11 dated 30 October 2009 the Commissioners advised the Parties of their views that the revised proposal is sustainable (para 1.3) and attention could turn to finalising the conditions of consent and Notice of Requirement (NOR). Submitters have been given until the 12 March 2010 to file evidence and legal submissions in respect of these matters with a resumed hearing to deal with any issues on the 24/5 March.
- 1.2 Counsel advises that a prior commitment precludes attendance at any revised hearings and apologises for that. However the matters raised in these submissions in respect of conditions and other consents have been traversed previously in either the Central Plains (CPW) or Ashburton Community Water Trust (ACWT) hearings so they are not new. These submissions focus on the requirement for approvals that will be required in addition to resource consents. It is acknowledged that such comments are not, strictly speaking, about resource consent conditions per se. However they are provided to assist the Commissioners and the Parties by clarifying that the consent conditions do not preclude the need for further approvals.
- 1.3 In respect to the conditions themselves and the case law Counsel agrees with the analysis set out in Minute 14. In particular in respect of management plan conditions, adaptive management and mitigation/offset. Mr Newey's evidence addresses those issues in more detail but in respect of the Canterbury mudfish I would point to Associate Professor McIntosh's supplementary evidence dated 20 August 2008 section 5. The evidence highlighted the vulnerability of the Hororata populations and the need for "*The measures proposed require some quantifiable goals (e.g., number of km of habitat covenanted) backed by resources to ensure those goals are achieved*". The Supplementary Submissions of 25 August 2008 addressed the need for the conditions to provide protection for the mudfish habitat (see section 3) both in the Wainiwaniwa Valley and elsewhere.
- 1.4 It is acknowledged that the subsequent decision to delete the proposed Wainiwaniwa Valley dam addressed the major impact of the proposal on mudfish. However there still remain mudfish which may be affected by the revised scheme. Given the threat status of the mudfish their remaining habitat outside the Wainiwaniwa Valley is still significant in terms of section 6(c). Therefore the consent

authority must be satisfied that, if the mitigation of adverse effects on the mudfish populations is to be left to management plans, adverse effects can be adequately avoided, remedied or mitigated (Minute no 14 para 4.7) and, given the significance of the mudfish, that will require specified bottom line conditions. Finally the conditions should clearly set out the management plan objectives in respect of the mudfish and the requirements for survey and monitoring.

- 1.5 As the Department was not one of the parties consulted by either the Canterbury Regional Council (S42A Report Angela Dean 5 March 2010 para 4) or the applicant during the development of conditions the Department is providing its comments by way of planning evidence. Mr Newey will comment on how the current conditions address the concerns raised earlier by the expert witnesses.
- 1.6 Turning to matter of additional approvals required, the Department's Summary of Submissions of 20 May 2008 section 4 identified public lands that were affected by the NOR. The revised proposal would still seem to affect the Selwyn riverbed Stoneydale Conservation area.
- 1.7 The Supplementary Submissions also identified (section 20) the need for approvals under the Freshwater Fisheries regulations.
- 1.8 Finally as discussed in the Supplementary Submissions of 22 April 2009 in respect to ACWT (para 1.11) and proposals to disturb or relocate protected wildlife (e.g lizards) .These will require separate permits under the Wildlife Act (see *Royal Forest and Bird Protection Society of New Zealand Inc v The Minister of Conservation* [2006] NZAR 265 and *Solid Energy v Minister of Energy & Ors* HC Wellington CIV 2007-485-00381 Mallon J 10 December 2008).

P. N. Rutledge
Counsel for the Director General

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