

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.

**SUPPLEMENTARY STATEMENT OF EVIDENCE OF DAVID MICHAEL NEWHEY ON
BEHALF OF THE DIRECTOR GENERAL OF CONSERVATION**

**DIRECTOR GENERAL OF
CONSERVATION**
DEPARTMENT OF CONSERVATION

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1. INTRODUCTION

Qualifications and Experience

- 1.1 My name is David Michael Newey. My qualifications and experience and the basis on which I have prepared this supplementary statement of evidence are outlined in my evidence in chief prepared for this hearing, dated May 2008.
- 1.2 The Hearing Commissioners have invited evidence from relevant submitters in relation to particular consent conditions through their Minute 13 (28 January 2010).

2. Scope of Evidence

- 2.1 My evidence provides a review of issues with the draft conditions prepared by Selwyn District Council (SDC) and the Canterbury Regional Council (ECan) for the Central Plains Limited/Trust applications (CPW). In particular I have focused on conditions (or the lack of conditions) relating to topic areas previously addressed by experts appearing for the Department of Conservation, namely;
 - Canterbury mudfish
 - Significant vegetation and habitat survey and protection
 - Fish screen design

3. Issues

3.1 General – consent conditions

- 3.1.1 As the Commissioners have outlined in their Minute 14 at section 4.1, there are some general principles which apply to consent and designation conditions. In summary, such conditions should be:
 - Necessary to achieve a resource management purpose
 - Reasonable
 - Not require third party approval
 - Clear, certain and enforceable
 - Provide sufficient detail so that it is clear the effects they address will be avoided, remedied or mitigated
- 3.1.2 It is also acknowledged that there is a tension between the level of detail required for certainty and clarity and the flexibility the applicant may require to

refine design or methods of dealing with a particular effect. This is particularly the case when management plans are used as a condition of consent.

3.1.3 Resource consent conditions prepared by both the SDC and ECan require the Applicant to prepare management plans to oversee constructions works, erosion during and after construction, landscape rehabilitation amongst other topics. By requesting this information by way of a condition rather than prior to a decision being made suggests both that a decision is being made with insufficient information and that the effects of the proposed activity can be mitigated and/or remedied.

3.1.4 In my opinion, the Management plan approach adopted in these consent conditions, particularly for the specific management plans I discuss below, the weight has been placed too heavily on the side of flexibility at the expense of certainty, clarity and knowing whether the effects they are designed to address will be avoided, remedied or mitigated. There are also some management plans not listed which have been prominent throughout the hearing and applicant's case, in particular the Canterbury Mudfish plan, which are still required to deal with adverse effects.

3.2 **Management Plans – Environment Canterbury**

3.2.1 Schedule 1: General Conditions is the primary place where reference to management plans is made in the Environment Canterbury proposed conditions. That schedule provides no detail, clarity nor certainty, whether the overarching Environmental Construction Management Plan or any of its sub plans will adequately deal with adverse effects. The condition simply states that the plans will outline how consent conditions will be complied with and effects will be mitigated and minimised where practicable. This approach places great weight onto the specific consent conditions and the level of detail they contain.

3.2.2 Examining those specific consents reveals that some management plan parameters are outlined and specified in great detail, such as the Erosion and Sediment Control Plan linked to discharge and land use consents. Those conditions specify the minimum framework of the plan (map of works, outline of control measures with a list of specific types to be used, programme of

works and monitoring) along with a certification and amendment condition. The level of detail contained in relation to this plan, in my opinion, strikes a balance between dealing with effects while allowing flexibility as to what specific measures will be used in differing circumstances.

3.2.3 On the other hand, the Landscape and Rehabilitation Plan linked to land use consents contains only administration parameters dealing with certification and lodging of the plan. No framework is provided as to why the plan is required, what specific effects it is to address nor conditions to mitigate or remedy those effects. I do however support the proposed changes being put forward by Ms Dean in her s42A report which will provide greater certainty around the robustness of the certification of this plan.

3.2.4 In order to make this plan specific, measurable and clearly address effects, it should contain a similar framework to that outlined for the Landscape and Rehabilitation Plan at condition 5.2 of the SDC proposed conditions, containing concept plans, identification of significant values and protection , weed and pest control and staging of works.

3.3 **Canterbury Mudfish Plan**

3.3.1 Much debate was had during the Hearing over the protection of the threatened Canterbury mudfish. However this debate has not been carried through with the inclusion of appropriate consent conditions relating to the protection of the mudfish. ECan have imposed a general condition under the 'Environmental Management Fund' section which refers to mudfish generally, but there are no specific conditions within the water take consents, works within the waterways consent or the discharge consents. There are no conditions requiring methods be put in place to identify mudfish habitat, protect it or monitoring of mudfish numbers within the area.

3.3.2 While the Wainiwaniwa mudfish population is now no longer affected by the proposed Central Plains scheme, the evidence of Dr McIntosh and Ms Charteris, clearly identified that Canterbury Mudfish are also known from the Hororata and Selwyn catchments and are suspected to occur in other locations within the command and irrigation network area of the proposed scheme. Dr Allibone, in his supplementary evidence (9 July 2008) states that

individual Farm Management Plans will address mudfish protection and would include such mechanisms as planting, predator removal, protection and enhancement of habitat and creation of habitat. The applicant has also lodged as part of their application a Canterbury Mudfish plan which addressed similar issues.

3.3.3 The current consent conditions contain no reference to the applicants Mudfish Plan, nor does the limited framework of the Farm Management Plans contain any ecological monitoring/ surveying or enhancement related to Mudfish, as outlined by Dr Allibone.

3.3.4 This would appear to be a significant gap in the proposed conditions. One possible way to address this gap could be to reinstate the proposed Mudfish Plan (excluding the Wainiwaniwa), implementing those measures outlined in Dr Allibone and Dr McIntosh's evidence along with a pre construction survey of the Headrace and canal areas. This process could be implemented along similar lines to that used for the ACWT consents. That process entailed the applicants surveying sites, submitting a management/mitigation plan in consultation with the department and discussion on that plan with the Hearings panel prior to consents being granted.

3.3.5 Such a process would provide more certainty for all parties along with clarity as to methodology, offsets being proposed and where avoidance may be more appropriate.

3.4 **Farm Management Plans**

3.4.1 The primary focus of these plans seems to be nutrient management to protect water quality. Given that focus, the proposed assessor looking at these plans would most likely be a Farm management consultant who would not be qualified to assess the aspects of the plan requiring identification and protection of sites of moderate or high biodiversity value.

3.4.2 In addition, the condition provides no criteria or guidance on neither how to protect the sites nor how they should be assessed given the lack of definition of "moderate or high" value.

3.4.3 In order to make this part of the FMP's clear and enforceable, pre construction surveys are required across the command area using recognised and acceptable criteria to define values and appropriate protection mechanisms. This could either be done through ecological input to each FMP or an overarching Ecological Protection Plan which could feed into the FMP's. Selwyn District Council has included the framework for such a plan attached to their proposed land use consents.

3.5 **Management Plans – Selwyn District Council**

3.5.1 The primary issue of interest to the department to be addressed with the proposed Selwyn District Council consents is the detail of the Terrestrial Ecology Plan, Condition 8. Apart from the need to include a condition specifying that this condition does not negate or override the need for the applicant to obtain all other relevant authorisations under the Wildlife Act, there are some issues with the review, input to and content of the proposed plan.

3.5.2 Condition 8 requires the consent holder to establish a Terrestrial Ecological Protection Plan (TEPP) in consultation with SDC and the department prior to construction occurring. This condition does not outline/explain what the department's role is during this process and whether technical input is required for the completion of the plan. The condition also provides no definition of "consultation" nor any feedback loop if the department's advice is not adopted by the applicant. Due to the vagueness of the condition, it is questioned whether the condition needs to be rewritten to clearly stipulate what is required.

3.5.3 Objective (b) talks about mitigating the loss of indigenous vegetation and habitats destroyed, removed or disturbed. I understand from ecological advice that once indigenous vegetation and habitats are disturbed they are effectively destroyed. An alternative wording may read along the lines of: "Compensate and ensure that effects of the scheme on indigenous habitats and species are minimised through the uses of buffers, fences and enhancement."

3.5.4 Rob Jessop of Kingett Mitchell (Terrestrial Ecology) recommended in his original evidence that indigenous vegetation and habitats be protected from the construction works of the irrigation scheme through the use of fencing and buffer zones. Neither of these recommendations has been carried through to conditions.

3.5.5 The condition outlining what the TEPP will contain talks about mapping “known” significant indigenous vegetation and the calculation of ‘no net loss’. Issues with these conditions are:

- Use of the word “known” creates issue of uncertainty and whether actual effects will be addressed. Ecological evidence presented through the hearing, in addition to Mr Davis s42A report, all identified large information gaps in the applicants AEE, including lack of terrestrial surveys. Limiting the applicant to mapping what is currently known simply perpetuates that situation. The area of works, in particular riparian, braided river terrace risers and areas identified throughout the hearing need to be fully surveyed prior to works commencing in order that construction effects can be assessed and appropriately avoided, remedied or mitigated. I also note that significant habitats are a section 6(c) matter which the applicant must address through mapping and dealing with effects. These have been omitted from the current condition.
- Condition c regarding “no net loss” is unclear at best. An approach similar to that used for the ACWT consents would provide more certainty for all parties along with clarity as to methodology, offsets being proposed and where avoidance may be more appropriate. That process entailed the applicants surveying sites, submitting a management/mitigation plan in consultation with the department and discussion on that plan with the Hearings panel prior to consents being granted.

3.6 **Discharge consents**

3.6.1 Mixing of waters – Condition 2(c) of CRC102335 would allow for mixing of waters across catchments, yet the general conditions dealing with the effects of this do not address the potential fish barrier issues such discharges can create. Inclusion of a condition requiring that fish passage shall not be prevented would be appropriate to address the effect of the discharge.

3.6.2 In relation to this consent I also note that Mr Duncan in his s42A report suggests that monitoring of wetlands receiving discharge water is important to ascertain if they are performing as expected. He suggests that if they are found not to be, the wetlands should be enlarged and/or enhanced to address this. His recommendations are therefore supported.

3.7 **Water take consents**

3.7.1 Fish screen design – Consents for taking water from the Waimakariri (061972) and Rakaia (021091) rivers contain fish screen design parameters, conditions 6 and 7 respectively. As a partner in the formulation of the NIWA Fish Screen Guidelines, the department supports the implementation of the standards in those guidelines. The proposed consent conditions are appropriate, based on current information, to address effects and provide certainty, clarity and be monitored for dealing with effects on indigenous fish.

3.7.2 However an ongoing work stream coming from the guidelines is a proposal to ground truth the effectiveness of the proposed parameters (screen size, sweep and approach velocities) which may result in changes to best practice design for indigenous fish exclusion, in the future. It is therefore important to reinforce that the review of fish screen design parameters may be appropriate based on new information at some time within the term of the consent.

3.7.3 I also note that the applicant is not required to monitor the performance of the fish screens in terms of effect on fish nor exclusion rates. Without such monitoring their effectiveness at avoiding fish entrainment and entrapment will be unknown.

3.8 **Schedule 1 - General**

3.8.1 Condition 6 in Schedule 1 contains a general condition in relation to avoiding and mitigating effects on bird habitats. Condition 6(d) (i) A refers to recommended mitigation outlined by “the expert”. There is however no outlining of who this expert is, who they are employed by nor their qualifications.

4. **CONCLUSION**

- 4.1 I have presented evidence in support of the departments submissions.
- 4.2 I accept this is one component of the wider analysis of the proposed CPW scheme and its proposed conditions.
- 4.3 I consider that the consent conditions I have discussed above, in their current form are unclear, lack certainty and that the adverse effects of the proposed CPW scheme will not be avoided remedied or mitigated if they are adopted in their current form.
- 4.4 In particular, I am of the opinion that the proposed consent conditions do not adequately address the effects of the proposal on the section 6 (c) matters of identifying and protecting significant habitats (Canterbury Mudfish) nor significant vegetation.
- 4.5 I have put forward some alternatives to those consent conditions which I believe will address effects and provide greater clarity for all parties.

David Newey

12 March 2010