

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of applications for water permits to take and use water from the Hakataramea River and its tributaries

BY ROBERT HAY ROBERTSON
RPNZ PROPERTIES LIMITED
RG AND ZL PRINGLE
RW AND ME SUTTON
STAR HOLDINGS LIMITED
NJ SMALL
HAKATARAMEA STATION (1990) LIMITED

Applicants

TO ENVIRONMENT CANTERBURY

Local Authority

**SUPPLEMENTARY STATEMENT OF EVIDENCE BY KERI JOY JOHNSTON
IN REPLY TO COMMISSIONERS' MINUTE DATED 3 DECEMBER 2009**

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INTRODUCTION

1. This supplementary Brief of Evidence is to provide further information pertaining to applications to take and use water from the Hakataramea River and its tributaries.
2. I have been requested by these applicants to prepare evidence on the following topics:
 - A review of the WAB documentation relating to the Hakataramea Catchment as well as renewal applications; and
 - Reiteration of the MRNAG case for applicant's seeking "high flow" water from Hakataramea River and its tributaries.
3. I note for the sake of clarity my evidence on the above topics is also produced on behalf of Mr Bob Robertson. Although Mr Robertson's application to take 26 litres per second of water from the main stem of the Hakataramea is not a renewal application, it is my view that there is enough water within the A band allocation to meet this take.

A REVIEW OF WAB DOCUMENTATION

4. I have reviewed the following documents/reports in preparing this evidence:
 - 4.1 The Draft WCWARP
 - 4.2 *"Waitaki Catchment Water Allocation Regional Plan – Summary of Submissions May 2005"*¹
 - 4.3 Submission on the WCWARP by Central South Island Fish and Game Council
 - 4.4 Submission on the WCWARP by Hakataramea Water Society Inc
 - 4.5 Submission on the WCWARP by Mr RJ Hall on behalf of RG & ZL Pringle and RPNZ Properties Ltd
 - 4.6 *"Working Papers about the Natural and Physical Resources of the Waitaki Catchment by Locality"*
 - 4.7 *"Existing Resource Consents and Allocations for the Waitaki Catchment"* prepared by CRC in June 2005 and updated in November 2005
 - 4.8 WCWARP Annex 1 – Decision and principal reasons for adopting the Plan provisions
 - 4.9 WCWARP s32 report

¹ Pages 337-341

4.10 The final WCWARP

5. As a result of the Commissioners' minute dated 3 December 2009, there are several questions that arise. The first is did the WAB intend a "whole of catchment" approach for the Hakataramea. Secondly, how was the 0.5m³/s allocation figure arrived at thirdly, what is the impact of setting such an allocation for renewal applications, and the significance of Rule 2(1)b of the WCWARP for renewal applications.

Background

6. I think it is helpful to start at the beginning and assess the changes that resulted at each stage of the WCWARP process.
7. The Draft WCWARP was released for public submissions in February 2005. The Environmental Flow Regime (EFR) in Table 3 of the Draft WCWARP for the Hakataramea River looked very different to that in the operative WCWARP. The draft specified a minimum flow of 0.5m³/s and a flow sharing threshold of 0.5m³/s. There was no allocation limit.
8. Table 3 of the Draft WCWARP also listed some water bodies as catchments, such as "Qualiburn and tributaries" and others as rivers/streams/creeks on their own, such as "Hakataramea River".
9. Many submissions were received on the Draft WCWARP. An overview of the submissions relating to the Hakataramea are as follows:
- (a) Retain existing minimum flows.
 - (b) Increase the minimum flow in the Hakataramea River from 0.5m³/s to 0.75m³/s from 1st April to 1st October.
 - (c) Increase the minimum flow in the Hakataramea River to 0.75m³/s all year round.
 - (d) Increase the minimum flow in the Hakataramea River to 0.78m³/s all year round.²
 - (e) A primary allocation for the Hakataramea Including its tributaries of 0.3m³/s.³
 - (f) A flow sharing threshold of 1.1m³/s of which water taken under this is secondary allocation and in addition to the primary allocation limit.
 - (g) Include allowance for flushing flows.⁴

² Central South Island Fish and Game Council

³ Central South Island Fish and Game Council

- (h) The current minimum flow should apply to all takes in the catchment, but in terms of the tributaries, consideration be given as an alternative to allow an estimate of the 1 in 5 year 7 day low flow to be used.
- (i) Allow for water harvesting above $4.5\text{m}^3/\text{s}$.⁵
10. Submitters were then invited to present their submissions as evidence to the WAB during the latter part of 2005.
11. The following parties presented evidence to the WAB specifically in relation to the Hakataramea River EFR:
- Central South Island Fish and Game Council;
 - Hakataramea Water Society Inc; and
 - Mr RJ Hall on behalf of RPNZ Properties Ltd and RG & ZL Pringle.
12. Fish and Game presented evidence stating that their position was unchanged from that of their submission which is summarised in paragraphs (9)(d), (e) and (h).
13. Evidence for The Hakataramea Water Society Inc was given by Mr David Hamilton, a Water Resources Engineer and Hydrologist.
14. Mr Hamilton advised the WAB that some 2,000ha was irrigated in the catchment with allocation totalling 1,100L/s (whole of catchment). It was also a catchment of very high flows and very low flows and therefore, water harvesting was a real prospect for the catchment and any water allocation system that encouraged water harvesting was considered to have merit.
15. Mr Hamilton did not propose an allocation limit, but did propose the following EFR:
- September to March – minimum flow of $0.5\text{m}^3/\text{s}$, 50% flow sharing from $1.5\text{m}^3/\text{s}$ to $4.5\text{m}^3/\text{s}$, then full water harvesting above $4.5\text{m}^3/\text{s}$.
 - From April to August – minimum flow of $0.75\text{m}^3/\text{s}$, 50% flow sharing from $0.75\text{m}^3/\text{s}$ to $4.5\text{m}^3/\text{s}$, then full water harvesting above $4.5\text{m}^3/\text{s}$.
16. The April to August regime proposed by Mr Hamilton mirrors exactly what is in the operative WCWARP. This recognised the salmon spawning value of the river and the higher minimum flow was therefore proposed for the salmon spawning period.

⁴ Central South Island Fish and Game Council

⁵ Hakataramea Water Society Inc, plus other water users including the submission of RJ Hall on behalf of parties.

17. The September to March regime proposed by Mr Hamilton took into account that the minimum flow regime that current abstractors are subject to needed to be recognised. This was not taken into account by the WAB, and instead the EFR for this period reflects a mixture of the submissions received. No reason was given by the WAB for this.
18. Mr Hall presented evidence to the WAB on behalf of RPNZ Properties Ltd and RG & ZL Pringle (the two MRNAG renewal applicants'). Mr Hall did not present evidence on allocation.
19. Mr Hall's evidence detailed the difference in characteristics between the main river and its tributaries. He noted that:
 - The tributary catchments of the Hakataramea River are generally steep, gravel bed streams whose courses from where they exit their upland gorges are deeply incised into the high old gravel terraces through to the Hakataramea River valley floor.
 - Good flow occurs at the gorge exits but significant losses occur before the confluences with the Hakataramea River are reached.
 - As a consequence, most tributaries are ephemeral over a period of September to May with some persisting in this state all year round unless rainstorm or snow melt provide temporary continuous flow to the Hakataramea River.
20. Mr Hall had undertaken a significant analysis on the relationship between the tributary catchments of the Hakataramea River and the river itself on behalf of RPNZ Properties Ltd for Caberfeidh Station (the property now owned by Star Holdings Ltd). His analysis used Station Stream.
21. He concluded that while the reliability of flow in the areas of the tributaries where flow was good (near where it exits the gorge), it is still considerably less than comparable abstractions from the Hakataramea River proper or hydraulically connected groundwater. This is a result primarily of the fact that there is a greater abundance of water in the Hakataramea River than its tributaries because the Hakataramea has a far greater catchment area than any of its tributaries.
22. Mr Hall will address you on this evidence himself. His evidence is important, because it demonstrates that the tributaries of the Hakataramea do not supply any appreciable amount of water to the main stem throughout the year.
23. In terms of current and proposed allocation for the catchment, two reports were prepared for the WAB.

24. The first was titled "*Working Papers about the Natural and Physical Resources of the Waitaki Catchment by Locality*" prepared in February 2005. Section 8 of this report details the Hakataramea Catchment. This report did not deal with the river separately from the tributaries and in section 8.8 (page 68) the total surface water abstraction is said to be 1,108L/s with groundwater at 56L/s (a total of 1,164L/s). It is also noted in Section 8.9 that the Schedule to the Waitaki Act contains applications for a further 780L/s, and that new irrigation is likely to require large amounts of storage or transfer of water from another catchment.
25. The second report was titled "*Existing Resource Consents and Allocations for the Waitaki Catchment*" prepared by CRC in June 2005 and updated in November 2005.
26. In terms of current allocation, CRC provided the WAB with an inventory of current consents. The total allocation for the Hakataramea River was estimated at 584L/s at peak rate, or an average daily abstraction total of 308L/s. The total, with tributaries included was 907L/s.
27. The WAB had a significant volume of information to digest when making its final decisions. Annex 1 and the s32 report provide guidance into the WAB's reasoning for adopting plan provisions.
28. Policy 1 of the WCWARP takes a broad approach to the concept of a "Catchment Wide Approach". Paragraph 105 of Annex 1 states that the policy was included because the integrity and mauri of a braided river system depends on the integrated management of all constituent parts of the system including wetlands, riparian margins, backwaters and main channels.
29. The methodology developed for achieving this was Rule 2, Table 3. In paragraph 111 of Annex 1, the WAB noted that EFR's were generally set on the following basis:
 - A minimum flow or level as specified in existing consents, or set as the 5-year 7-day low flow.
 - Allocation limits are used where the removal of only a small proportion of water is considered appropriate, or where further allocation is considered inappropriate (small spring fed streams like Waikakahi Stream).
 - Flow sharing below the mean in those rivers that are important spawning tributaries of the Lower Waitaki River.
30. By setting an allocation limit for the Hakataramea River, the WAB considered that removal of only a small proportion of water was appropriate or further allocation was inappropriate, based on the evidence it had received.

31. The WAB also received many submissions requesting that other rivers and streams in addition to those listed in Table 3 be added to it. The WAB indicates in paragraph 171 of Annex 1 that it was not persuaded to do this as those requested are already included in provision for “all other rivers and streams”, or are tributaries of a sub-catchment already listed. No specific mention was made as to what additional water bodies were requested to be added to Table 3.
32. The WAB received a volume of evidence on the Draft WCWARP, and clear reasons are not always given for its determination on matters, but what can be concluded was that the WAB knew that the “Hakataramea Catchment” allocation was in the order of 1.1 m³/s, and that the tributaries of the Hakataramea River contributed very little to the main stem because of their ephemeral nature.
33. It is also clear that the methodology used to manage rivers and streams within the Waitaki Catchment was Rule 2, Table 3, and that WAB, despite being requested by submitters such as Fish and Game, did not change the row title of Table 3 from “Hakataramea River” to “Hakataramea River and tributaries” and it did not change the EFR wording to reflect a “whole of catchment” approach. Therefore, it was not persuaded to make those changes.

Renewal applications

34. Paragraph 173 of Annex 1 states as follows:

“Submitters requested that when existing resource consents expire and replacement consents are sought, applicants should not be restricted by the allocation limits in Table 3. The existing allocation exceeds the allocation limit in the Wairepo Creek, Mistake River and Waikakahi Stream. The Board’s intention for takes and diversions from these water bodies is to maintain their inclusion in allocation limits but expect consent holders to meet efficiency policies of the plan (refer Policy 28). The Board accepted that to exempt such consents from the allocation limits set in Table 3 would be consistent with its policy, and adjusted Rule 2(1)b accordingly.”

35. Rule 2(1)b states that (emphasis added):

*“**Except as** provided in (2) and (3), no person shall take, use, dam or divert surface water or groundwater unless the amount taken or diverted is for a replacement consent⁶ **OR** in combination with the amount of water authorised to be taken or diverted by existing consents does not exceed the allocation limits in Table 3.”*

⁶ With the same or lesser amounts of water to be taken.

36. The WAB specifically mentions three water bodies where allocation limits are already exceeded. Each of these has its own row in Table 3 with an allocation limit less than existing. The Hakataramea River and others such as the Maerewhenua River not are mentioned in Paragraph 173. If the Table is to be construed as a reference to the River and its tributaries, then these catchments are over-allocated as well.
37. The explanation to Policy 28 also states that the policy provides for maintaining an existing consent in the same allocation limit and priority band when it is replaced.
38. There is also one comment in the s32 report that stands out.⁷ This is as follows:

“The allocation limit and flow sharing does not restrict existing resource consents or replacement consents for the same or less amounts of water.”

39. This is important because it states very clearly that the WAB did not anticipate that replacement consents would be granted as anything other than A band consents because the allocation limit set allowed for that.

Allocation

40. In the explanation to Policies 23-27 in the WCWARP it is stated that in many sub-catchments of the Waitaki, the existing reliability is below the level set in Policy 26a. For those catchments, the policy recommends that a priority band is set that is equivalent to the existing peak allocation or to the size of the first priority band that has been used previously.
41. In the case of the Hakataramea, there was no first priority band used previously, therefore, the priority band is set that is equivalent to the existing peak allocation. However, an allocation of $0.5\text{m}^3/\text{s}$ does not equal the existing peak allocation for the entire catchment, which the WAB knew was in the order of $1.1\text{m}^3/\text{s}$.
42. However, it does if the allocation of $0.5\text{m}^3/\text{s}$ is restricted to Hakataramea River only.
43. Much of the allocation information given to the WAB was for the whole of catchment, but the CRC Inventory split out tributaries from the mainstem. On the spreadsheet that detailed the Hakataramea mainstem abstractions, there are 5 abstractions indicated by an (*) on the spreadsheet that are actually from tributaries. These abstractions total 163L/s. If this was subtracted from the total allocation, it would be 421L/s.
44. Whilst the WAB may have generally promoted a “whole of catchment” approach for management purposes as detailed in Mr Allan Cubitts evidence, I cannot find any justification for why it would set such an allocation limit for this ‘catchment’ if it intended

⁷ Page 93 in reference to the Hakataramea River.

to provide for replacement consents as it has – it can only be that the allocation limit was for the river only – it makes no sense to set an allocation limit where the allocation limit is knowingly exceeded by $0.6\text{m}^3/\text{s}$.

45. Based on current river only allocation figures, this means that there is also sufficient allocation for the Robertson application to be granted in Band A.

Conclusions on “whole of catchment” approach

46. My conclusions are as follows:
47. There are other streams in Table 3 where the words “and tributaries” are included in the row heading⁸. In this instance, it is clear that the allocation limit is for the river and its tributaries, and the allocation limits set reflect the entire catchment allocation. I consider that this was a deliberate action of the WAB.
48. There is no reference in any of the documentation I have reviewed as to the origins of the $0.5\text{m}^3/\text{s}$ allocation limit set. However, it is clear that the WAB intended for replacement consents to maintain inclusion in any allocation limit and priority band, and it knew that the total catchment allocation was at least double this.
49. In addition, the Hakataramea was not mentioned in the Annex as being one of the water bodies that the WAB knew the existing allocation exceeded the allocation limit being set in the WCWARP.
50. I cannot find any justification for why the WAB would set an allocation limit for this ‘catchment’ far less than the existing allocation if it intended to provide for replacement consents as it has – it can only be that the allocation limit was for the river only.
51. I am certain that the WAB intended that replacement applications for the same or lesser amounts of water would be provided for in the same priority band and allocation limit. Rule 2(1)b and Policy 28 were amended to reflect that intention.
52. I refer back now to Rule 2(1) b of the WCWARP. This rule was changed from that in the Draft WCWARP to make specific provision for replacement consents of equal or lesser amounts of water to maintain access to the same priority band of water and to not be affected by the allocation limits. Therefore, the renewal applications being sought by RPNZ Properties Ltd and RG & ZL Pringle, which are for equal amounts of water, should maintain their inclusion in Band A as the WAB intended.

⁸ Qualiburn and tributaries, Henburn and tributaries, Grays River and tributaries.

Disparity between WCWARP and current consent conditions

53. There is also the question of disparity between current A band consent holders and the EFR in Table 3 of the WCWARP. In my original evidence two options were given for addressing this.
54. The first is to grant these consents subject the WCWARP EFR and allow those consent holders and existing consent holders to effectively manage the disparity as current consent conditions allow for alternate flow sharing regimes to be implemented.
55. The second is to grant subject to the current minimum flow, with the exception of a 750L/s / 1500L/s minimum flow for the months of April to August.
56. Either of the options is acceptable to these applicants.

MRNAG CASE FOR WATER HARVESTING

57. This also supports the case presented by MRNAG in relation to the “water harvesting” proposals in which it is proposed to manage these abstractions at Main Highway Bridge in accordance with the EFR described in Table 3. I understand that Mr Robertson also supports this approach.
58. MRNAG had considered managing these abstractions on the tributaries from which they are proposed, however, Mr Stewart concluded and presented evidence to that effect , that determining appropriate flows on the tributaries at the time was not possible and there was very little long term flow information on the tributaries and any correlations established were poor (<0.7).
59. Mr Stewart has also prepared a Brief of Evidence for this hearing.

Keri Johnston

3 March 2010