

**Before The Canterbury
Regional Council**

In the Matter

Of: Applications
 associated with
 the take and use
 of water in the
 Hakataramea
 Catchment.

Minute to Parties

This Minute is issued to all the parties involved in the applications for water permits and associated consents in the Hakataramea Catchment. This includes all the applicants including Mr R H Roberston, and the submitter groups namely Meridian Energy Limited, the Director General of Conservation, The Central South Island Fish and Game Council, Te Runanga o Ngai Tahu and other Local Runanga and the Lower Waitaki River Management Society Inc.

In the course of preparing our decisions on these applications we (the Panel) have encountered some difficulties and concerns that we think should be raised with the parties before we proceed to finalise our decisions. In summary these relate to the adoption of a whole of catchment approach and the consequences of that for water allocation and limitations on water takes.

At the hearing of these applications there was an issue about whether Policies 43 and 44 in the Allocation Plan and Rule 2 Table 3 rows xix and xxii should be interpreted so as to apply a whole of catchment approach to the management of water resources in the Hakataramea Catchment or whether the Plan intends that there be separate management of the Hakataramea River water resource and the water resources of that River's tributaries.

We have reached the view that the whole of catchment approach is to be preferred. Our reasoning will be set out in the appropriate part of one of our decision which will be in two parts with Part A dealing with general matters such as this one and Part B dealing with individual applications. Mr Roberston's applications will be dealt with in a separate decision but common issues will be cross referenced

For present purposes the adoption of a whole of catchment approach raises questions for all these applications in the following ways:

(i) For the applications seeking replacement consents mainly R G and ZL Pringle and RPNZ Properties Limited (but Padkins Community Race could also be involved) the whole of catchment approach means that the "A" band in Table 3 row xix, that is to say, the allocation band of 0.5 cumecs is already over allocated. We think this is probably the case on any view of the relevant evidence on this topic but we are not clear about just what that evidence includes and excludes. Here we are referring mainly to the evidence of Ms Pringle for Fish and Game, Ms Johnston for the MRNAG applicants and Ms Penman the Section 42A reporter. The evidence of Mr Stewart for Mr Roberston could also be affected by this because he seems to have assumed that the application to take an additional 26 l/s is within in the "A" band.

If the "A" band is already over allocated what should happen to these applications? If we grant them this will mean that the "A" band continues to be over allocated and, despite Policy 28 of the Allocation Plan about maintaining them in the same band, this seems to be perpetuating an unsustainable situation contrary to section 5 of the RMA. They could be granted in the flow sharing "B" band but we would not want to do this without hearing from these two applicants.

Then still under the same heading we have to deal with Mr Roberston's application for 26l/s of "new" water from the Hakataramea River. On the whole of catchment approach this application should also be granted in the flow sharing "B" band but again we would not want to do this without hearing from the applicant.

(ii). Staying with the Hakataramea River applications we have been asked to consider two alternatives for the flow cut-off condition. The first is a 500l/s 1,500l/s regime that requires abstractors to reduce takes by 50% below 1,500 l/s and cease at 500l/s. Presumably, they can take their full allocation above 1,500l/s.

This, we were told, is the regime for existing consent holders and to maintain parity with them the applicants (including Mr Roberston) seek this regime also, but with one important difference to try to meet an objection from Fish and Game. The difference is to make the minimum flow cut off 750l/s in the period April to August each year to maintain fish passage.

This condition would, of course, make all these "main stem" applications non-complying applications for that reason alone and section 104D of the RMA would apply.

The second alternative is to adopt the Plan's regime for the "A" band. This too has its problems for the reasons set out above and it would also mean that existing consent holders would lose priority at flows below 1,500l/s.

The above problems would be solved if the present main stem applicants were prepared to accept grants in the "B" band provided for in the Plan and to come in above 1,500l/s instead of 1000l/s or 1cumec thus preserving existing consent holders priority.

(ii) The third matter we need to raise with the parties relates to the water harvesting proposals which involve all the applicants except the ones mentioned above and also includes one of Mr Roberston's applications.

As we understand these proposals they are to take water from various tributaries when the flow in the Hakataramea River is above 4.5 cumecs which is in effect the "C" band provided for in the Allocation Plan. No other controls are proposed for these abstractions. This is the MRNAG proposal. In the case of Mr Roberston we think he presently proposes simply providing for a residual minimum flow in the Homestead Stream and to not be controlled by the flow in the Hakataramea River at all.

Now, even with a whole of catchment approach we think the environmental flow regimes for the tributaries still apply. These are to be found in Table 3 row xxii of the Allocation Plan. This accords with the Plan's policies to protect the smaller streams and discourage water abstractions from them particularly at low flows. Then too, it seems to us to make no sense to say water can be abstracted from a tributary but that tributary's environmental flow regime can be ignored.


Row xxii provides a flow regime which, our view, contains a minimum flow, and a flow sharing provision above the mean flow only. It does not contain an allocation. Consequently, in the case of these applications for water harvesting from the tributaries of the Hakataramea River we consider that harvesting can only commence above the mean flow in the tributary and then only on a flow sharing basis with the tributary.

We are fairly confident the applicants have not considered this because the amended conditions proposed by Ms Johnston for MRNAG refer only to the 4.5 cumec flow in the Hakataramea River itself. Again therefore, we need to hear further from the parties on this matter and Mr Roberston should also address this matter so far as his water harvesting proposal from the Homestead Stream is concerned.

Having set out the matters that are of concern to us the next question is how to deal with them? It will be obvious that despite our best endeavours we have not yet reached a decision on any of these applications but that is now reasonably close. However we will be unable to finalise these decision before the end of this year. The present intention is to do so in January 2010.

In the meantime we await the parties' responses to the matters raised in this Minute which can, in the first instance, be made by written memorandum between now and the 15th of January 2010. If the hearing of these applications has to resumed arrangements will have to be made after that.

Dated at Christchurch this 3rd day of December 2009.



P. R. Skelton

Commissioner and Panel Chair