

Before the Canterbury Regional Council

In the Matter of:

Resource consent applications to take and use water from the Lower Waitaki River for the Hunter Downs Irrigation Scheme and other Lower Waitaki River mainstem cases.

Second Minute to Parties

1. On 11 December 2009 we issued a Minute to Parties in all the above proceedings. We sought written responses in the first instance by 15 January 2009. As at 19 January 2009 we have received written responses from the following parties:

Meridian Energy Limited and the South Canterbury Irrigation Trust

The Timaru District Council

The Lower Waitaki River Management Society Inc

The Central South Island Fish and Game Council

The South Canterbury Chamber of Commerce


Alison and Dugald MacTavish

2. We have also received a submission from the Opuha Water Partnership concerning the possible exclusion of part of the Timaru District from the HDI command area. In a covering letter the CEO Peter Scott acknowledges that this organisation has not hitherto been a submitter on any of the applications that are the subject of our first two Minutes. That being so we are unable to receive this submission now and we decline to do so accordingly. Our jurisdiction extends only to applicants and to submitters who lodged timely submissions on these applications under the Resource Management Act 1991.
3. In our First Minute we indicated that if the hearing of the Hunter Downs Irrigation application had to be resumed this would take place on 2 and 3 March 2010. In their response the applicants have asked for the hearing to be resumed and the necessary arrangements for that to take place on those dates will be made accordingly.
4. **We direct** that parties wishing to call further evidence at that resumed hearing are to exchange their further evidence with other parties seeking to be heard in terms of their responses to the First Minute by **23 February 2010** and provide **4** copies to Mr Donald Fraser at Environment Canterbury by the same date for the Commissioners and for the record. Mr Fraser will have this evidence posted on the Council's web site.

5. In our First Minute we also advised the other mainstem applicants that their decisions would be completed in January 2010 and that we did not need to hear from them any further. On reflection we have decided that it would be more procedurally helpful and indeed correct to delay issuing these decisions until we are in position to issue our complete decision on the Hunter Downs Irrigation application. In addition as a result of further recent consideration by us in the process of finalising these decisions some matters have arisen on which we now need the further advice of some of these applicants. Subject to receiving this advice we expect that these decisions and the complete Hunter Downs Irrigation decision will be ready for issuing by mid March.
6. The advice we are seeking concerns the alternative low flow regime for all the mainstem applicants above Black Point including the Clarksfield hydro electricity applications, and a matter to do with possible conditions for the Waihao Downs Irrigation Scheme. We turn to the first of these matters.
7. It will be recalled that in our First Minute we advised that we had decided to provide for a low flow cut-off of 152 cumecs with a ramping done commencing at 175.5 cumecs but with the proviso that in the case of those applicants above Black Point this regime would not apply if NBTC proceeds. There is an exception in the case of the joint application by Station Peak Limited and Wainui Station Limited.
8. The intention is that with consents above Black Point the NBTC regime should apply if that project proceeds and we intend to impose an alternative condition accordingly. However when we came to draft this condition we realised that in its decision on the NBTC appeal the Environment Court has carried out a revision of this regime and has proposed a different formulation from the one we used in our final decision in that case.
9. We have studied the Court's reformulation and we respectfully consider it may be in error in one or more respects. For example, it appears to us that the Court may not have appreciated that the Kurow recorder is some distance upstream of the town of Kurow. Then we think too that the Court has sought to include the maximum take for irrigation purposes throughout the irrigation season which, as we understand it, was never the intention of the parties.
10. This has placed us in a difficult position because we should not be imposing an NBTC flow regime condition that is at odds with the Environment Court decision. Meridian Energy Limited (MEL) does of course have a direct interest in this matter and we therefore seek its advice on this matter also. We notice that the Court's decision is interim and it may be that this matter has been or will be raised with the Court. In any event we would appreciate the advice of MEL and the affected applicants on this matter.
11. To avoid unnecessarily complicated directions having to be given we invite those parties with an interest in this matter (all of whom are represented by counsel) to attend the resumed hearing on 2 March 2010 (some or may be all counsel will be there anyway) and we will hear from them on this matter then.
12. As we said above the other matter concerns the Waihao Downs Irrigation Scheme. Here we have reached the point with our decision-making where again we are considering conditions and in particular conditions for the water consent. There is a potential issue concerning water quality and mitigation measures. In addition to a scheme management plan and farm management plans we have taken note of the Hunter Downs Irrigation proposals for a Scheme Environmental Management Fund and a financial contribution neither of which is offered by the applicant in this case.

13. We do not say now that they are necessary as mitigation measures or environmental compensation in this case, but we would appreciate the applicant's advice on whether it would be prepared to consider either or both measures and if so to what extent given the size of the project in area terms and the size of the abstraction and its effects on the Lower Waitaki River. Again, we invite counsel for this applicant to be present at the resumed hearing on 2 March 2010. We think other parties with a possible interest in this matter are already likely to be present. If evidence is to be called our direction in paragraph 4 applies.

Dated at Christchurch this ^{21st} day of January 2010



P R Skelton
Commissioner and Chair