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5 February 2010

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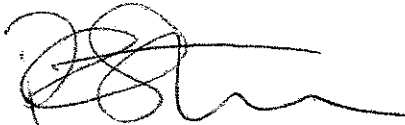
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Lower Waitaki Hearings – Applications for Water Permits – Hakataramea Catchment

I **enclose** Joint Reply by Robert Hay Robertson, RPNZ Properties Limited, RG and ZL Pringle, RW and ME Sutton, Star Holdings Limited, NJ Small and Hakataramea Station (1990) Limited to Commissioner Skelton's 3 December 2009 Minute.

Yours faithfully



Pru Steven

BEFORE THE CANTERBURY REGIONAL COUNCIL

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

JOINT REPLY TO MINUTE OF COMMISSIONER SKELTON

Dated 5 February 2010

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MAY IT PLEASE THE PANEL

1 We refer to the Joint Memorandum of Counsel for the parties dated 15 January 2010.

2 On the two issues, the position of the parties is set out below.

(a) Taking water from the main stem of the Hakataramea River under a “B” band flow regime

3 The Commissioners have indicated that their final decision will proceed on the basis that Rule 2, Table 3, Part xix takes a whole of catchment approach such that it will apply to the Hakataramea River and its tributaries.

4 The reasons for this approach will not be obvious to the parties until that final decision has issued, although the parties seek to be heard further on this question of law, before a formal decision is made. Counsel’s understanding is that this issue of plan interpretation was raised late in the hearing and was addressed with some parties at the conclusion of the hearing.

5 Ms Borthwick had also prepared legal submissions on this issue in her Submissions in Reply. However, at the direction of the Panel at the time, these submissions were not presented to the Hearings Panel. The Applicants now seek the opportunity for those submissions to be presented (and elaborated upon).

6 The consequences to the Applicants of having renewal consents issued in Band B are significant. There are also problems associated with the potential disadvantage of existing A Band consent holders if consents are granted in the B Band, about which the Applicants also wish to comment. If the ‘whole of catchment’ approach is to apply to the Hakataramea catchment, it has implications for other rivers and their tributary catchments that are the subject of Rule 2, Table 3.

7 The parties wish to present legal argument on this matter and although issues of Plan interpretation are legal, it is intended that some evidence will also be presented on the implications of this ‘whole of catchment’ approach.

8 Having presented the legal argument on Plan interpretation, the parties would invite the Panel to proceed to make a decision. They do not intend to present an evidential case as to the grant of consents under a B Band flow regime at any reconvened hearing.

(b) Imposing the requirement for a minimum flow of 4.5 cumecs in the main stem of the Hakataramea River and flow sharing within tributaries on water harvesting.

9 The parties intend to present legal submissions and further evidence on this matter. Mr David Stewart (in particular) had prepared supplementary evidence for the Applicants on this topic (dated 26 September 2008), although that evidence was struck out at a time in the hearing when the Panel decided (for whatever reason) that it did not want to

hear that evidence. Mr Stewart's evidence related directly to the question of what is the most practical method to administer minimum flows for takes from the tributaries, and in so doing, he considered:

- (a) Calculated 5 year return period 7 day mean annual low flows for each tributary;
- (b) Assessed the validity of the 5 year return period derived values;
- (c) Assessed the likely benefits of administering the tributary abstractions through either the 5 year return period 7 day low flows in the tributaries or administering through a minimum flow at the Hakataramea River recorder at the Main Highway Bridge.

10 The Minute suggests that the Applicants have not considered an approach to the interpretation of Row xxii applying to the applications because rather than proposing conditions containing a minimum flow and flow sharing provision above the mean flow, the amended conditions proposed for the MRNAG Group refer to the 4.5 cumecs flow in the Hakataramea River itself. However it is respectfully submitted that this is incorrect. The Applicants wish to present that 'struck out' (and further) evidence on these matters.

11 The Applicants are mindful that the dates of 2-3 March have now been allocated to deal with the issues arising out of the Second Minute to the parties on the resource consent applications to take and use water from the Lower Waitaki for the Hunter Downs Irrigation Scheme and other Lower Waitaki River main stem cases. (That Minute is dated 21 January 2010.) The Applicants will separately give notice that they wish to be heard on some of the matters raised in that Minute as well and it may be that the Panel requires more than two hearing days to address all issues arising out of both Minutes.

(c) Witnesses

12 Evidence will be called from:

- (a) Ms Johnston
- (b) Mr Stewart
- (c) Mr Cubitt

Dated this 5th day of February 2010.



P A Steven
Counsel for for RPNZ Properties Limited,
RG and ZL Pringle, RW and ME Sutton,
Star Holdings Limited, NJ Small and
Hakataramea Station (1990) Limited

(see attached)

Robert Makgill
Counsel for Robert Hay Robertson

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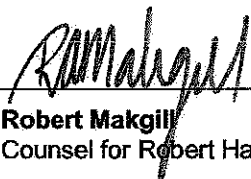
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