

BEFORE THE CANTERBURY REGIONAL COUNCIL

IN THE MATTER OF the Resource Management Act 1991

AND

IN THE MATTER OF an application for resource consent
CRC071029 by the South Canterbury Irrigation
Trust and Meridian Energy Limited to take and
use water from the Waitaki River.

APPLICANT Meridian Energy Limited and the South
Canterbury Irrigation Trust.

MEMORANDUM OF COUNSEL ON BEHALF OF
CENTRAL SOUTH ISLAND FISH AND GAME COUNCIL

15 January 2010

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May it please the Commissioners:

1. With regard to the two Minutes to Parties issued by Commissioner Skelton as follows:
 - 1.1 Applications associated with the take and use of water in the Hakataramea Catchment (dated 3 December 2009), and
 - 1.2 Application to take and use water for the Hunter Downs Irrigation Scheme and other Lower Waitaki mainstem cases (dated 11 December 2009);

the response of the Central South Island Fish and Game Council is set out below.

Hakataramea Catchment

2. The view reached that a whole of catchment approach is to be preferred (paragraph 4 page 1) is consistent with the submission presented on behalf of Fish and Game, and it is Counsel's understanding that this matter need not be further addressed, as the issue that arises from that approach are the three questions set out in the Minute.

(i) The "A" band allocation

3. Fish and Game submitted to the effect that the Hakataramea 'A' band is full, and accepts that it is in fact over allocated. Fish and Game accepts that, as the Minute states:

If we grant [these three applications] 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 band "B" but we would not want to do this without hearing from the applicant.

4. Thus Fish and Game's view is that a further grant in the same band is undesirable as it perpetuates and worsens an unsustainable situation, and thus submits the applications, if they are to be approved, must be 'B' band consents. It does not consider that there is any differentiation required between replacement consents and the application for 'new' water from the Hakataramea.
5. Fish and Game support a grant of consent in the "B" band, together with a proposed minimum flow of 1500 l/s for such consents (paragraph 1 page 3).

(ii) Hakataramea River alternative flow cut-off condition

6. The alternatives are:

6.1 a two-step reduction of 50% at flows below 1500 l/s, and ceasing at 500l/s except in the period April to August when the flow cut-off is 750l/s; or

6.2 adopt the Plan's regime for the "A" band.

7. Fish and Game assumes with the first option that irrigators can take their full allocation at flows above 1500 l/s.

8. For the reasons set out above in respect of question (i) Fish and Game does not consider it viable to adopt the second option as to do so would lead to further over allocation of the water resource and exacerbate the adverse effects on instream values. The first option, even though it results in the applications becoming non-complying, is therefore preferable.

(iii) Water harvesting proposals

9. Fish and Game agrees that the taking of water for water harvesting proposals must necessarily be linked to the hydrology of the subject tributary (paragraph 5 page 4), and considers that it makes sense that the environmental flow regimes apply even in the case of a whole of catchment approach.

10. Policy 8 allows for flows in excess of mean flow to be diverted into storage. Fish and Game defines the mean flow to be the naturalised mean flow, that is, the mean flow that would be registered taking into account any and all abstraction occurring upstream from the subject site. Harvesting and flow sharing can only occur above the mean flow of the respective tributary.

11. It therefore follows that, as presently expressed, controls upon the water harvesting consents proposed by the respective applicants are incorrect and need to be reassessed in light of the mean flow of the respective tributary, and the Plan's requirements for water sharing for that tributary.

Hunter Downs Irrigation Scheme

(i) Annual Volume

12. Fish and Game appreciates the opportunity to comment on the draft portion of the decision as contained in Appendix One to the second Minute to Parties. The following suggestions are proposed to assist in clarifying the process and conclusions reached by the Commissioners in these extracts, and were provided by Mr Frank Scarf on behalf of Fish and Game:

- Paragraph 10: A seasonal demand of 583mm over 4000ha calculates to be 131.7 (as opposed to 127) days at a peak demand rate of 20.5m³/s.
- Paragraph 19(ii). We note the errors found by the Commissioners. The Gross Scheme application (mm/month) shown in Table 1 for November and December should read 93mm and 110mm respectively, as opposed to the 113mm and 133mm shown. The total then becomes 541mm/yr instead of 583mm/yr.
- There is potential, with respect, when reading (ii) to find the context somewhat confusing. To meet a water deficit (plus losses) demand of 541mm/yr over 40,000ha requires an annual allocation of 216 million m³/yr. This is consistent with the Commissioners' conclusions shown in paragraph 20. The 17 million m³/yr referred to in subparagraph (iii) is the difference in annual volume between 541mm and 583mm. We suggest that (ii) could be amended to read *"... 541mm rather than 583mm; a difference equivalent to 17 million cubic metres per year."*

(ii) Area of Irrigation

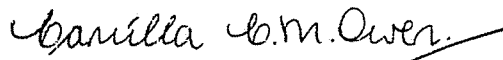
13. Fish and Game supports the cut off flow for HDI being set at 152l/s rather than at 100 l/s.
14. Regarding the evidence presented by Mr McKenzie and Irrigation North Otago (paragraphs 9-10 of the second Minute), Fish and Game submits that the *catchment* boundary as opposed to the *District Council* boundary should be used. Policy 14 requires the consenting authority to have regard to the extent to which granting of a consent application outside the Waitaki Catchment will reduce the availability of water to current and reasonably foreseeable in-catchment needs.
15. It contends that areas external to the catchment boundary within Waitaki District Council or Waimate District Council have no greater or lesser claim to the resources of the Waitaki

River than do areas within Timaru District Council. After all, the RMA allows for anyone to apply for a resource consent and does not discriminate with regard to specific location.

(iii) Lapse Period

16. With regard to the third matter of the lapse period (paragraph 11), Fish and Game are not opposed to a seven year term. However, we note that other consents relating to this project will be required, including works in river beds, discharge consents and possibly building consents and easements. These may take some time. For this reason, Fish and Game suggests the addition of an Advice Note to the effect that the 7-year lapse period was chosen notwithstanding that outstanding applications for secondary consents relating to the project are yet to be finalised. The reason for seeking this Advice Note (which we are aware has no legal effect) is that it is not possible to prevent an extension being sought for a longer period, but the lapse period specified in the consent for the application should not lightly be set aside.

17. Should the Panel decide to resume the Hearing to consider any or all of the matters referred to above, then Fish and Game would wish to be heard.



Camilla Owen

Solicitor for Central South Island Fish and Game Council

15 January 2010

To: Canterbury Regional Council

And to: The Applicants