

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.

Minute to Parties

1. This Minute is issued to all the parties in the above proceedings. This means all the applicants including Meridian Energy Limited and the South Canterbury Irrigation Trust, the MRNAG applicants, Waihao Downs Irrigation Limited, D D and V J Chalmers and Clarkesfield Holdings Ltd (Hydro). It also includes all the submitters who took an active part in the hearings relating to these applications including the Central South Island Fish and Game Council, the Director General of Conservation, Te Runanga o Ngai Tahu and other Local Runanga, Lower Waitaki River Management Society Inc, Waitaki First, The Royal Forest and Bird Protection Society and the large number of individuals who appeared and gave evidence particularly at the hearing of the Hunter Downs Irrigation application.
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2. We (the Panel) have been working hard to complete all our decisions in these matters before the end of 2009. Unfortunately this has not been possible and although all the decisions are almost complete in draft they are not yet in a state where they can be issued. It will not be possible to complete them until early 2010. However we are in a position to give the parties advice about the outcomes we are proposing. We wish to make clear that this advice does not constitute our decisions for the purposes of the Resource Management Act 1991. For the purposes of that Act our decisions are yet to come. We address first the Hunter Downs Irrigation Scheme (HDI).

The Hunter Downs Irrigations Scheme

3. We have concluded that consent should be granted to take and use water for this Scheme subject to three matters, which we will mention shortly, being satisfactorily resolved and also subject to a revised set of conditions. However, the take and use we propose will not be that sought by the applicants.
4. We have concluded, for reasons that will be given in our decision, that there is no need to provide for a low flow cut-off of 100 cumecs in order to provide the

applicants with a reliable irrigation scheme. We have also concluded for the same reasons that the low flow cut-off for this scheme should be 152 cumecs with a ramping down commencing at 175.5 cumecs.

5. The purpose is to protect the minimum flow for the Lower Waitaki River provided for in the Allocation Plan at 150 cumecs and also to protect the existing consent holders who are reliant on water from that River.
6. We have also concluded that for the purposes of managing this regime a 24 hour (midnight to midnight) average reading at the Kurow recorder should apply.
7. These findings also have implications for the other main stem applicants and we will refer to them under the next heading. Before we do this however we will now set out the three matters we referred to above.
8. The first is that we are not satisfied that the annual volume of 251 million cubic metres per annum sought by the applicants is necessary. We attach as Appendix 1 a composite of that part of our draft decision that relates to this matter. This includes a discussion of the evidence given by Mr Potts on this topic.
9. The second matter relates to an issue that was raised in evidence at the original hearing of this application but so far as we can find was not referred to by the applicants in their reply. It was addressed in the evidence of Mr Ernest McKenzie on behalf of Irrigation North Otago (INO).
10. In that evidence Mr McKenzie asserted that we should exclude the Timaru District component of the HDI command area and thus make the resulting water available for the proposed INO scheme which as we understand it is wholly within the Waitaki District. We will not go into any more detail here because it is all contained in Mr McKenzie's evidence. We are content to say that we think there is some force in this contention and in the absence of argument to the contrary we would be inclined to accept it. We note too that Mr McKenzie's evidence was supported by Dr Helen Brookes in her evidence on behalf of Waitaki First Inc.
11. Thirdly, Mr McKenzie also asserted that a lapsing period of 10 years was too long and again, in the absence of evidence to the contrary, we are inclined to agree. We draw attention to the finding of the Environment Court on the lapsing period for NBTC. Taking a lead from that finding it seems to us that we should adopt a similar approach with a reduced period of probably 7 years.
12. On these three matters we are prepared to hear further from the applicants and any other party including INO before making our decision final. We had intended to issue an interim decision in any event, but as we have been unable to complete that we take this opportunity to raise these matters in this way now. We add that the conditions for this consent will also have to be revised in the light of the conclusions we have now reached and may require further revision depending on the outcome of the matters referred to above.

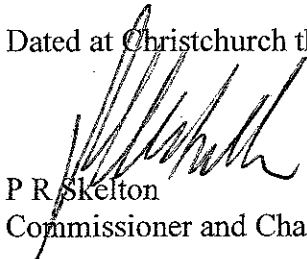
The Other Mainstem Applicants

13. Our findings about the low flow cut off and the ramping regime will also apply to these applicants, again for the reasons to be given in the HDI decision but, in the case of those applicants above Black Point, with the proviso that this regime will not apply if NBTC proceeds. We should add here that there is an exception to this in the case of the joint application by Station Peak Ltd and Wainui Station Limited for an additional take for the Lower Waitaki River. This will have the same regime as the existing consent and be for the same duration.
14. With this group of applications we are again sorry to say that we have simply run out of available time to complete these decisions. However we can also say that we have concluded that all these applications should be granted on various terms and conditions including the flow regimes referred to earlier. We have one reservation about the foregoing statement. This concerns the application by Haka Valley Irrigation Inc. The water take here is from the Lower Waitaki River but the use will be in the Hakataramea Valley. There are no problems about the take but we have not yet finalised our conclusion about the effects on water quality within the Hakataramea Valley, which also includes decisions on a number of other applications that are not the subject of this Minute, but are the subject of another Minute issued on 3 December 2009 raising other matters with the parties to those applications.
15. We expect to be able to complete our decisions on these applications in January. They need not be held up by the outstanding matters relating to HDI and we have no need to hear further from these applicants or from submitters on these applications.

Future Procedure

16. As we said above we do not expect any response to this Minute from the Other Mainstem Applicants but we do from the applicants for HDI and from any submitters who may wish to be heard on the three outstanding matters that we have raised. We emphasise that it is on those three matters **ONLY** that responses will be received.
17. In the first instance the parties to the HDI application may respond by memorandum by **15 January 2010**. If the hearing of this application is to be resumed arrangements have been made for this to take place on **2 and 3 March 2010** at a venue and time to be advised.
18. We confirm that at present the hearing of all the applications, the subject of this Minute, remain adjourned sine die on 21 days notice.

Dated at Christchurch this ¹¹ day of December 2009


P R Skelton
Commissioner and Chair