

**BEFORE THE CANTERBURY REGIONAL COUNCIL**

**IN THE MATTER OF** the Resource Management Act 1991

**AND**

**IN THE MATTER OF** Resource Consent Applications to Take and Use Water from  
the Hakataramea River and its tributaries

- A. RG & ZL Pringle  
CRC050940, CRC050957, CRC050960
- B. RPNZ Properties Ltd  
CRC051767, CRC051768, CRC051769
- C. Hakataramea Station (1990) Ltd  
CRC040999, CRC950464.2, CRC981376, CRC042653,  
CRC981377
- D. Star Holdings Ltd  
CRC021585, CRC072756, CRC021258, CRC084260,  
CRC951776.5
- E. RW & ME Sutton  
CRC071114
- F. NJ Small  
CRC040988, CRC040989, CRC051766, CRC071825

*Camilla  
Owen*

**TABLED AT HEARING** ..... *3/3/2010*

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**LEGAL SUBMISSIONS FOR RESUMED HEARING ON BEHALF OF  
CENTRAL SOUTH ISLAND FISH AND GAME COUNCIL  
3<sup>rd</sup> March 2010**

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May it please the Commissioners:

1. In the Minute to the Parties dated 3 December 2009 the Commissioners raised several items on which they sought the further views of the parties, prior to finalising the decision in respect of the applications for water permits and associated consents in the Hakataramea catchment.

### **Whole of Catchment Approach**

2. Submissions and evidence (particularly the evidence of Bridget Zoe Pringle) presented on behalf of Fish and Game at previous hearings of these applications have supported the whole of catchment approach, and the Commissioners have indicated the preliminary view that this approach is to be preferred. As the focus of the Commissioners' Minute did not appear to be a reassessment of whether a whole of catchment approach should apply, and rather the focus was on the practical questions of what happens if this approach is adopted, the matter is not readdressed in these submissions, and simply a summary of the Fish and Game position is attached to these submissions as Appendix One.

### **Over allocation of the 'A' band**

3. Fish and Game agrees that for replacement consents the whole of catchment approach means the 'A' band is over allocated. Ms Johnston's supplementary evidence at paragraph 41 puts the matter succinctly when she states: "*... an allocation of 0.5m<sup>3</sup>/s does not equal the existing peak allocation for the entire catchment, ...*". However Ms Johnston then goes on to assert that the WAB **knew** the peak allocation was in the order of 1.1m<sup>3</sup>/s. With respect, this last point is not accepted. It is far from clear that the Board knew that, and it is Mr Scarf's recollection that there was significant debate at the hearing over what the volumes were or should be. It was not until these sets of hearings, and in particular the evidence of Mr Potts, that there was a calculation of the amounts that the consents issued in the catchment equated to. Thus the basis of Ms Johnston's view of the rule and why it must be read as main stem only is not accepted.
4. In addition, there is a further reason why the Board may have set a figure lower than the consent allocations (if indeed it actually did that), and that is gains in efficiency, a matter on which much was heard yesterday with regard to changes in irrigation patterns. Thus it is indeed possible to have a lower figure and to still have consents retaining priority, if efficiency gains are sought. This approach matches that in the Plan, particularly in policies 15-20, and especially policies 18 and 19. Policy 28 explicitly links replacement consents with a consent holder having made all reasonable attempts to meet the efficiency expectations of the Plan.

5. Whilst not achieving the EFR sought, Fish and Game at least had some certainty that the provision of the 0.5 m<sup>3</sup>/s instantaneous allocation limit, and flow sharing, critical to maintaining flows and variability in the river as well as protecting existing reliability of supply to abstractors, could deliver benefits for the river by limiting the rate of take until higher flows were reached. The Board states in Annex 1 that the EFR was specifically designed to enable water harvesting, presumably in recognition of the current low reliability, with the flow sharing requirements being reduced from that originally proposed in the Draft Plan (the mean flow of 5.6m<sup>3</sup>/s) so as not to apply for any flows above 4.5 m<sup>3</sup>/s.
6. Fish and Game considers that the A allocation block for the Hakatamea River is already over allocated, the river experiences low flows and high water temperatures over much of the irrigation season and demonstrates declining fishery values. Any further allocation subject to a minimum flow of 500/1500 l/s (essentially the A block) would exacerbate this.
7. Fish and Game's position is that as the 'A' band is over allocated it is a fiction to grant consents, even though they are replacement consents, in this band in excess of the amount of water available. Mr Scarf's supplementary evidence is that 57% of the applications could come within this band, but the remaining 43% would of necessity come under band 'B'. We acknowledge that may well seem very unfair to those current consent holders who might find themselves in band 'B', but see no other way that a 'claw back' can occur such that the resource is sustainably managed. To grant means to perpetuate over allocation and thus to perpetuate the adverse effects of unsustainable abstraction on the Hakatamea and its tributaries.
8. Mr Scarf's evidence is that:

*20. Under the A/B band apportionment scenario, the full 880 l/s could be taken when flows were above 1760 l/s, compared to the existing conditions position that enables 880 l/s to be taken when flow exceeds 1500 l/s. However once the flow recedes below 1500, only 440 l/s is able to be taken under existing conditions, compared to 750 l/s available under a band apportionment.*

*21. In terms of water available for abstractive use, the apportionment scenario continues to offer marginally more down to 940 l/s. Between 940 l/s and 500 l/s, the minimum flow, the management regimes are the same.*

9. I also acknowledge that this approach causes an issue with Policy 28 c. However the policy as worded is very black and white, seeming to read that the consent authority must either grant or refuse, and if it is a grant it must be in the band and with the priority that the consent originally

enjoyed. This interpretation must be incorrect, with respect, if its corresponding meaning is that if the consent cannot be granted on the same terms and conditions as it currently exists it must be refused consent. It would seem that a more flexible approach to the application of this policy is preferable in the circumstances, in the interests of both the environment and the consent holders. That flexible approach is a pragmatic one – grant consent but in the ‘B’ band.

10. With regard to the “new” application for water by Mr Robertson, as described in the evidence of Mark Webb and Bridget Pringle, Fish and Game consider the river to be over allocated. Thus it is not appropriate to grant additional abstraction stacked on top of that already existing. Thus I submit that this consent if granted should also be granted in the B band.

#### **The alternatives for the flow cut off condition**

11. The Commissioners have been asked to consider two alternatives for this condition, and again this was something addressed in Ms Pringle’s evidence on behalf of Fish and Game. The applicants argue that they must propose minimum flows of 500/1500 l/s so as not to reduce reliability for existing users, or as the Commissioners expressed it, in order to maintain parity with existing users. In addition there would be a minimum flow cut off from April to August of 750l/s, which is something the Plan specifies in order to provide for adult fish passage during migration. Should the Commissioners grant any or all of these consents Fish and Game seek that the cut off higher minimum flow be applied to both renewals and new applications.
12. It is acknowledged this would make the main stem applications non-complying activities, but that obviously does not preclude the grant of consent upon appropriate terms as long as one or other of the threshold tests in section 104D are satisfied.
13. Fish and Game does not support the alternative approach of adopting the Plan’s regime in Table 3 row xix, unless there is a band approach also adopted. Not only would existing consent holders lose priority at flows below 1500 l/s, which is obviously of concern to them, but of more importance (with respect) to Fish and Game is that the one to one sharing regime that triggers at 1000 l/s (1 cumec) is important for maintaining the fisheries values for the river whilst maintaining variability of flow.

#### **Water harvesting proposals**

14. Whilst the Board designed the EFR for the Hakatamea River to better enable harvesting of water, any applicants still need to satisfy Policy 8 - that sufficient flow variability will be maintained.

15. Fish and Game acknowledges the attempts of applicants to address the water shortage problems in the Hakataramea River by developing storage. However on the basis of water quality impacts, the current state of the river and fishery, and the proposed EFR, Fish and Game remains opposed to these consents being granted.
16. In the case of applications to take water from the tributaries, if consents are granted Fish and Game has previously sought that the take is tied to the EFR for the sub-catchment main stem as well as the associated tributary (Table 3, row xxii), and takes it from the Commissioners' Minute that this is the current thinking of the Commissioners. The applicants consider many of the tributary streams are 'ephemeral' below the diversions. Fish and Game has in previous submissions asked the Commissioners to consider the naturalised flow patterns that might exist and the contribution of these waterways to the Hakataramea River, and their own values if all or the majority of the flow were not diverted.
17. Thus the concept of conditions for any consents granted having to specify a minimum flow in the tributary, and flow sharing regime that applies once the tributary is at or above its' mean flow, is exactly what Fish and Game sought. The 'C' band applying when the Hakataramea River is above 4.5 cumecs does not address Fish and Game's concerns, and it is clear the Commissioners appreciate that point already.
18. However, it is accepted that there are pragmatic reasons why the tributaries should not have a minimum flow specified in addition to that for the main tributary. The reasons set out in Mr Stewart's evidence relating to cost and to limitations on take are insufficient to warrant not having a tributary minimum flow. In contrast, the issues Mr Stewart pointed out with the measurement of minimum flows in tributaries are a real problem, and the cost of imposing this requirement on consent holders given the ultimate unreliability of the data gathered is simply not warranted. Therefore Fish and Game accepts, in the absence of the desirable best known data, that a minimum flow in the Hakataramea main stem, would be the appropriate control imposed by way of condition were consents to be granted.

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Camilla CM Owen

Counsel for Central South Island Fish and Game Council Incorporated

3<sup>rd</sup> March 2010

## APPENDIX ONE: summary of Fish and Game position on 'whole of catchment' approach

1. Fish and Game considers the intention of Rule 2, Table 3, row xix (for the Hakataramea River) and row xxii (for all other rivers and streams except those excluded or already covered) was to provide guidance to the Regional Council in how smaller waters be managed in the catchment to protect them, but that it was not an appropriate level of detail to list each and every last one in the Plan. Refer Annex 1, paragraph 156.
2. If only the 'xxii all other rivers and streams' section of Table 3 applies to tributaries of the sub-catchment rivers listed, then a false impression of current and future impacts on the river results.
3. The tributaries are the source of main inflows to the sub catchment main stem. Whilst it may be reasonable to assume, for example, that if a mean flow is being exceeded in the tributary, then the mean flow will also be being exceeded in the main stem, this is not necessarily true. For example, especially in the case of the Hakataramea River where the catchment is very long, with many tributaries that may respond to localised conditions, there is only evidence provided to support this in the case of Station Stream.
4. In order to predict impacts of abstraction on the Hakataramea River proper, it follows that assessments must consider the tributaries, including presenting a true picture of current commitment to allocation and linking any tributary takes to main stem triggers at the lower end of the catchment. The alternative 'narrow' approach results in conditions on any consents granted on tributaries having no link to the main stem river they contribute to. The reality is that a river system is the sum of its parts (rainfall in the catchment, groundwater, abstraction, tributaries, wetlands and so forth) and all the matters set out in Policy 4 are affected by what happens in the catchment as a whole. All those matters are inherently functions of the management of the waterway.
5. Fish and Game clearly stated in submissions that it had concerns that a 'whole of catchment approach' was not being considered, especially in the Hakataramea and Maerewhenua rivers, and the s42A Officers Reports specifically noted that concern. Ms Begley in her evidence also notes this concern, and states at paragraph 41:

*"... The WAP seeks to address such aspects of oversubscription by including an overarching allocation regime as set out in Rule 6, Table 5(v)..."*

and goes on to say that:

*"... all applications are consistent with the stem allocation regime for the*

*Hakataramea River as set out in Table 3 (xix) of Rule 2...*

and that because the applications might be within the 150M m<sup>3</sup>/yr limit depending on whose assessment you accepted "... that the activities can be consistent with Policy 4."

6. It is not clear how this addresses the concern of over-allocation in the Hakataramea River. Ms Pringle in her evidence stated that she was not aware that any evidence has been provided that assesses the impacts of the various tributary dams and diversions on the functioning of the river mainstem in addition to current commitment in the catchment, except insofar as assessing effects on other users. That is still the case.
7. In an over-arching sense, the Board was very clear that a 'whole catchment approach' was important (Policy 1). It is stated that this policy is included because the integrity and mauri of a braided river system (of which the Hakataramea River is one) depends on the integrated management of all constituent parts of the system, including wetlands, riparian margins, backwaters, tributaries and main channels.
8. Policy 6 specifically seeks to recognise the importance of the close connections between groundwater and surface water in the Hakataramea River. Inclusion of shallow groundwaters of this river and any hydraulically connected groundwater in the relevant EFR is required by Policy 6.
9. Further, the Board indicated in Policy 7 that, in recognising the sensitivity of smaller streams to abstraction, the taking, damming, diverting or using of water where the MALF is less than 100 l/s should be discouraged if there is a viable alternative. Excluding smaller tributary takes from instantaneous allocation limits and minimum flows for a sub-catchment main stem is in effect an incentive to do the opposite of what this policy seeks to achieve.
10. Fish and Game seeks that generally any consents granted from tributaries of sub catchments listed in Table 3 be subject to the EFR for that sub-catchment AND that the take be subject to rules for the tributary in addition to, not substitution of, the main stem flow. The Central South Island Fish and Game Council asked that the Panel consider the total current commitment to abstraction in a catchment sense, in order to gain a true picture of the pressure on these rivers, regardless of whether the Plan states 'and tributaries' or not.
11. Fish and Game does not accept that the Water Allocation Board (WAB) considered only main stem allocation when defining volumetric limits. The catchment wide approach is a common theme of the Plan and specific references to 'all parts of the catchment' are made in Objective 1 and Policies 1 and 4 particularly.

## STORAGE AND ENVIRONMENTAL FLOW REGIMES

12. Most of the applications to take from tributaries of sub-catchment main stems are generally with the intention of storing water, although in these cases not necessarily at times of high flows. Policy 8 promotes harvesting above the mean and is intended to provide for this activity while allowing natural variations in the waterway to be mimicked. This policy is implemented by Rule 2.
13. Rule 2 is given effect to by the EFR's. Specific reference is made in the Annex 1 report at paragraph 121, to some practical issues surrounding implementation and economic costs to abstractors to only allow harvesting at flows above the mean, particularly in the case of the Hakataramea and Maerewhenua rivers. In these cases, the Board was satisfied that the requirement for flow sharing above the mean in these rivers could be reduced, because:

*There was evidence that the economic cost of the proposed EFR for the Hakataramea River [in the Draft] particularly the requirement for flow sharing at high flows, would be very high (Annex 1, paragraph 151), but that ... applicants would still need to ensure sufficient flow variability is maintained. [Annex 1, paragraph 152]*

14. The associated Section 32 Report refers to policies and rules in relation to the Hakataramea River (which specifically refer to the catchment) and states:

*"...opportunity is provided for water to be harvested during times of high river flow to supplement the water taken by activities during times of flow restriction."*

15. Table 82 Benefits and Costs of the Environmental Flow Regime set for the Hakataramea Catchment states that the EFR for the catchment: *Provides opportunity to derive economic benefit from new activities through water harvesting and storage.*
16. It is thus Fish and Game's view that the Board envisaged the relevant rules would apply to the catchment, especially in relation to harvesting, and that harvesting was expected to be undertaken during times of high flow to offset stress at times of lower flows. Fish and Game is concerned that whilst many of these applications seek to take for storage, they still want run-of-river rules, where additional allocation is stacked on existing allocation and where the tributaries are considered distinctly from the mainstem in relation to allocation limits.

17. Fish and Game does agree that storing of water during times of high flow can reduce abstraction demand at times of low flow and ecological stress, and can increase reliability of supply for abstractors.
18. Without careful planning, however, storage can impact on flow variability, water quality and fish passage. Flow sharing regimes have been defined in the Plan to provide for environmental values. It is therefore very important that the catchment approach is employed.
19. The river already suffers extreme low flows and dry reaches during most summers. Fish and Game usually advocates for an 'A' allocation block that equals 50-60% of the MALF in alpine/hill catchments (which is what the Board set for the Hakataramea River), with flow sharing above this. Current allocation in the catchment is already 90% of MALF. Coupled with a minimum flow for most consents allowing continued abstraction down to 500 l/s (about a 1:20yr LF naturally) the river is undoubtedly induced to dryness from abstraction in most years and those with existing consents do not currently enjoy high reliability. This is recognised by the reduced flow sharing requirement provided in the final Plan to facilitate taking water to storage during 'higher' (albeit still below the mean) flows compared with that in the Draft, in order to increase reliability during times of low flow.
20. The applicants are arguing that current allocation in the Hakataramea River 'A' block is 407 l/s with a further 93 l/s available as per the Plan. Fish and Game considers the adverse effects already experienced in the Hakataramea River, and the overall intent of the Board to provide for a catchment wide approach, warrant very careful consideration of what such an assessment means.
21. Whilst an assessment that looks at the main stem only may be the exact literal interpretation of the Plan (and Fish and Game does not agree for the reasons previously discussed), it is not considered appropriate to consider current allocation in the Hakataramea River to be 407 l/s.

**References:** Bridget Pringle evidence in chief, paragraphs 46, 47, 49-58, 62-69, 111-112 and 129-132.