

**BEFORE A HEARINGS PANEL OF THE CANTERBURY REGIONAL COUNCIL**

**Under** the Resource Management Act 1991

**In the matter** of resource consent applications by various parties to take and use water in the Upper Waitaki Catchment

---

**SYNOPSIS OF CLOSING SUBMISSIONS**

**26<sup>TH</sup> APRIL 2010**

---

---

**Duncan Cotterill**

Solicitor acting: Ewan Chapman  
PO Box 5, Christchurch

Phone +64 3 379 2430  
Fax +64 3 379 7097  
e.chapman@duncancotterill.com

The nature and extent of these closing submissions will cover the following:

1. Introduction
2. Redefining the UWAG applicant groups
3. Legal issues arising: the plan and status of activities
4. Defining the existing environment and extent of change associated with UWAG applicants
5. Commentary on general conditions
6. Issues specific to individual UWAG applicants
7. Proposed conditions of consent

### **Introduction**

1. These closing submissions may cover matters which have already been clarified by further officer reporting during the course of the hearing. Time and the cost associated with a 15 week hearing have prevented attendance through the whole of the hearing.
2. For the UWAG farmer applicants, attendance at the hearing has been difficult, principally for two reasons:
  - 2.1 They have been physically separated from the hearing process (to which they agreed for cost saving reasons); and
  - 2.2 Much of the evidence has not related to specific on-farm issues. Non-attendance at the hearing, however, does not underscore the value of these consents being granted in the Mackenzie environment and they accept that these consents, if granted, will need to be the subject of controls which affect the whole of their property.
3. The MWRL evidence and responses by submitters and s42A officers have been difficult for individual property holders to relate to – other than to say that as people living in the environment they do not wish to see their water quality irrevocably affected Their belief is that the UWAG applications when carefully managed will not cause any demonstrable lowering of water quality.

4. Site visits to the various UWAG properties have been appreciated. It is only through this process that the scale of irrigation in relation to the whole of their properties can be appreciated.
5. UWAG applicants accept the need for management of water use through conditions. They are used to management over a long history of run plans run plans. They are used to the concept of husbandry resources to farm in this environment to manage stock through long winters and harsh droughts.
6. Their aim is to achieve more sustainable farming systems. They are the ones who have experienced the effects of heiracium and soil loss due to wind erosion. With irrigation of a small proportion of their property their objective is to increase sustainability in an overall sense. This aspiration is consistent with the purposes of the RMA.

#### **Other issues associated with the hearing process**

7. The issues raised by UWAG in opening relating to the difficulties in combining widely different aspirant groups under one umbrella hearing have been borne out during the hearing process. UWAG applicants have felt "dragged in" to effluent consenting issues which are not part of the actual or potential effects of their applications. This has created considerable uncertainty, particularly for those UWAG applicants downstream of some of the larger applicants as to what is actually going to be undertaken on certain properties. UWAG applicants have been clear from the outset of the type of farming they proposed to undertake by irrigating a small part of their larger property. In contrast the development of "scenarios" which may result in "cut and carry"; cartage of effluent off-farm; or other improbable stock management regimes in the Mackenzie does not, in UWAG's view, lead to an easy understanding of the actual and potential effects of the activity on the environment. Accordingly many of the UWAG farmers have had to oscillate between being an applicant in their own right, and a concerned downstream farmer seeking to fully understand applications in the catchment above them.
8. Also, in UWAG's case, the management of the properties through the FEMPs has provided greater detail of the farming system and on-farm management controls. In the case of other applicants their proposals

appear to leave open the possibility of widely different options and continues to be unsettling and upsetting for those farmers in immediate proximity to these large scale operations. Again, it goes back to this Panel's obligations when assessing applications to balance the certainty of the UWAG applicants' proposals based on existing farm management practices against a level of uncertainty associated with a rapid change in farming practice albeit that on the evidence it may be shown that nutrient management can be controlled.

### **Redefining the UWAG Applicants Group**

#### Dr Freeman's traffic light report

9. Dr Freeman's first addendum report included a "traffic light report" breaking applicants into red, amber and green categories.
  
10. The UWAG applicants submit that that table fails to take into account the obligations on replacement consent holders. It is submitted that Dr Freeman's table is compiled solely on the basis that status quo irrigation practices continue. In the context of the "red" categorisation there is no recognition that an obligation to undertake a conversion within 5 years of grant will improve overall nutrient management. Applicants in this category are:
  - 10.1 Dunstan Peaks
  - 10.2 Otematata Station
  - 10.3 Aviemore Limited
  - 10.4 Bellfield Land Company
  - 10.5 Anderson/Rostriever
  - 10.6 Ellis-Lea
  
11. By the same token those replacement consents coloured amber are also under obligations within five years to improve their river system and should be accorded the benefit of those improvements in their classification. Applicants in this category are:
  - 11.1 Irishman Creek
  - 11.2 Otamatapaio

### **Re-categorisation of applicants**

12. At the outset of these closing submissions it is submitted that for the purposes of assessing the actual and potential effects of the applications the UWAG applicants can be divided into the following sub-groups. Some sub-groups overlap. The overall purpose of the sub-groups is to define the actual and potential effects on the environment in terms of the s104 test. The sub-groups are:

**Renewal applications where the previous consent was exercised. The applicants in that category are:**

- 12.1 Dunstan Peaks (CRC011361)
- 12.2 Bellfield Land Company (CRC011987)
- 12.3 Ellis-Lea Farms – Government Race (CRC991473)
- 12.4 Anderson (Bog Roy) (CRC012017) and (CRC012019)
- 12.5 Irishman Creek (CRC011845)
- 12.6 Otamatapaio Station (CRC012047)
- 12.7 Glenmore (CRC052502)
- 12.8 Birchwood Run Limited (CRC012291)
- 12.9 McAughtrie at Willowburn CRC011940

**Renewals, where the original consent was never fully exercised:**

- 12.10 Otematata Station and Aviemore Limited (CRC041033 and CRC012017)
- 12.11 McAughtrie - Government Race (CRC991473)
- 12.12 Greenfields – Government Race (CRC991473)
- 12.13 Rostriever CRC012017

**Hybrids Properties (renewals plus new area) followed by new irrigation area:**

- 12.14 Bellfield Land Company
- 12.15 Haldon Station

**Note:** The consents for renewal and new are separate. Two entirely separate consents will issue – based on separate irrigation systems and management – but the farm will be run under one FEMP and one set of Nutrient allocations

**New UWAG applicants:**

- 12.16 Twin Peaks
- 12.17 Glentanner (Catherine Fields)
- 12.18 The Grampians (Hope)
- 12.19 Grays Hill Station
- 12.20 Classic Properties
- 12.21 Lilybank
- 12.22 Mr Graham (Te Akatarawa)
- 12.23 Waitangi

**Note** in the case of Classic Properties, Grays Hill, Twin Peaks, Otamatapaio irrigation consents are already held for other areas on their property which are not scheduled for replacement but the FEMPs apply to whole of property.

**New Consents (where a previous consent had expired and not subject to s124 renewal rights):**

- 12.24 Totara Farming Company
- 12.25 Ribbonwood (M Horo)

**Consents discharging partly or wholly into the Aviemore or Waitaki Catchments:**

- 12.26 Otematata Station
- 12.27 Aviemore Limited
- 12.28 Rostriever
- 12.29 Waitangi
- 12.30 Te Akatarawa

**Applicants where more than 10% of whole farm will be irrigated:**

- 12.31 Ellis-Lea – Government Race (existing dairy farm) (renewal) CRC991473.

13. The purpose of these re-categorisations is to direct the Commissioners' focus of these hearings on the actual and potential effects on the environment and to recognise that in many of the above mentioned categories enhancement to the environment will occur as a result of a conversion process for more efficient irrigation being undertaken.

14. It is submitted that much of the officer reporting has failed to give credit to the UWAG applicants who are making substantial improvements to their overall nutrient system for the benefit of the catchment in their renewal applications, particularly in the Ahuriri arm. It is the release of available nutrients from conversion to more efficient irrigation systems that is enabling for those "entering" the irrigation club within the catchment. I will come back to this point when discussing priority.
15. In addition, the officer reporting and cumulative effects studies have lost sight of the issue that whilst a small irrigation area is being introduced into some properties the whole of farm is entering into a management regime controlled by FEMP reviews and consent conditions. The issue for UWAG clients is for overall farm sustainability rather than a rapid change to completely modify their farming regime. The issue is in respect of sustaining stock numbers to deal with the vagaries of weather patterns rather than the introduction of completely new stocking regimes. Again, the whole of farm improvements proffered by the UWAG applicants is in my submission a matter underrated by the reporting officers.
16. The issue of assessing the effects on the environment in my submission must arise directly from a substantial shift in a stocking regime or to a new farming enterprise. In many cases the introduction of irrigation for UWAG clients simply balances out land taken (for tenure review and conservation purposes so as to provide overall sustainability of these vulnerable landscapes).

## **Legal Issues**

### Existing environment

17. Dr Freeman's Table 5 (First Addendum Report) 12 January 2010 attempts to categorise individual consents into red, amber and green based on his view of the effect that the grant of a particular consent will have on the environment. In my submission the list is flawed and the consents are placed in the red category solely by virtue of their location within the Ahuriri catchment.

18. It is submitted that the more correct approach for the "ranking" of applications is to determine where they sit in relation to the existing environment. See *Queenstown Lakes District Council v Hawthornden Estate Limited* [2006] NZRMA at 424. The existing environment includes:
- 18.1 Existing permitted activities
  - 18.2 The future state of the environment as it might be modified by permitted activities;
  - 18.3 Modification through the implementation of resource consents;
  - 18.4 Excluding fanciful projects.
19. We understand the MWRL modelling to have been predicated on that test.
20. At paragraph 53 of the decision the Court records:
- "Future potential effects cannot be considered unless there is a genuine attempt, at the same time, to envisage the environment in which such future effects or effects arising over time, will be operating. The environment inevitably changes and in many cases future effects will not be effects on the environment as it exists on the day but that the Council or the Environment Court on appeal makes its decision on the resource consent application ..."*
21. It is submitted that the Freeman evaluation has not made any attempt to "envisage the environment". Applying this principle to the UWAG applicant, Dunstan Peaks, in the "Red Zone" under the Freeman report should have evaluated:
- 21.1 This consent is already being exercised without the apparent "red" indicator effects on Lake Benmore.
  - 21.2 That the grant of a renewal consent will change the environment for the better;
  - 21.3 That the past inefficient irrigation practices will cease following conversion of irrigation proposals;
  - 21.4 The better management of irrigation systems will be for the benefit of the wider catchment.

### **Issues of enhancement**

22. It is submitted that all of the reporting officers have given scant regard to the enhancement issues arising out of the UWAG applications. The beneficial effects are distinguished from mitigating factors where under these scenarios, catchment-wide benefits result from the grant of a particular application requiring conversion to a new irrigation type within a five year period.
23. It is understood that it is the conversion from border dyking applications and wild flooding irrigation methods to more efficient spray systems which “release” N and particularly P contributions for the benefit of the overall catchment. Each applicant converting their system as a condition of consent in my submission is entitled to have the benefit of nutrient management within the catchment assessed as part of the “actual and potential effects of the application on the environment”. The “enhancement effects” go much wider than simply the irrigation area.
24. That other applicants may seek to “claim” this benefit as an enhancement associated with their applications is an anathema. Such enhancements on the environment should only apply to those properties paying for the conversion which achieves the end result.
25. In the case of UWAG applicants conversions provide the springboard for further applications to be granted. Secondly, whilst the UWAG application area for renewals and new applications totals approximately 4,800 hectares the enhancement solely with respect to UWAG clients occurs over 210,000 hectares. The FEMPs are “whole of farm” farm management plans. The enhancement to modes of fertiliser application; setbacks from streams; management of riparian and swamp areas have not been factored in, in a broad overall judgement of the actual and potential effects of the applications. Even in the Ahuriri context the benefits to the lakes from the large areas managed in accordance with the FEMPs in my submission have been completely ignored.

#### **Sustainability issues: The s5 purpose**

26. It is submitted that the reporting officers' and submitters' focus has been directed too heavily towards issues of nutrient management on the waters of the Upper Waitaki Basin. I accept that that may be a

function of the presentation of the applicants' evidence, but this Panel's focus must address overall sustainability issues to meet the purpose of the Act. Sustainability of the erosion prone and fragile soils must be accorded weight when assessing the actual and potential effects on the environment. The issues raised by UWAG applicants are that these applications will cumulatively sustain 210,000 hectares of Mackenzie farmland. As indicated by Batty and others the District Plans encourage farming (including irrigation) in these environments and tenure review as undertaken by the Crown encourages intensification of land retained in freehold ownership in order to "release" more vulnerable pastures to be set aside under Crown ownership. In the context of the Maryburn flats e.g. one half of the flats on the Murray property will be protected through tenure review. Only a small percentage has been applied for as part of these consents.

27. Again in this area, it is submitted that the officers' approach has been "adverse effects" driven. The corollary of not granting these applications as set out in the farmer and farm consultant evidence, has, in my submission, borne little weight in the officers' broad overall judgement. Economic implications on the survival of these farms, given their investment in infrastructure is a factor – and is highlighted in the renewal applications where to lose irrigation rights would severely undermine the survival of that enterprise. The ramifications of not managing the land in light of weed and pest problems – in my submission would be more far reaching than the grant of the UWAG applications before you. Little or no evaluation of the on farm economics and land management practices on 210,000 hectares has been brought into the audit process.

### **Actual and potential effects**

28. It is submitted that the UWAG applicants have provided certainty in terms of their proposed stock management regimes. These applications do not rely on a modelled farm environment. It is submitted that the effects on the environment only arise from these applications in response to the following questions:

28.1 What is the increase in stock carrying capacity?

28.2 Where does the increase (if any) occur on the farm?

28.3 How is it achieved?

29. In my submission too much weight in the hearing process has been centred on nutrient budgets, compliance mechanisms and cross checks (Overseer). I do not doubt they introduce a degree of rigor to ensure NDA's are met on an on-farm basis – but the more critical aspect is to identify where and by whom the stock numbers are increasing dramatically. The fact that UWAG members in many cases are sailing close to the wind in terms of their NDA's is because they are not proposing a great deal of change between current and proposed operations.

30. UWAG applicants are not advocating a radical change in farm management practices. In many cases stock numbers do not vary and secondly in the context of the overall farm size the increase is minor. The application of the precautionary principle should only apply if it is submitted in circumstances where there is scientific uncertainty or ignorance about the nature or scope of environmental harm (*Telecom New Zealand Limited v Christchurch City Council*). In the context of renewals you have certainty as to the extent of improvements. In the context of new applicants you have certainty that farming practices already occur on that property.

31. The refinement of the applicants can be seen by:

31.1 Introduction of detailed site specific FEMPs; and

31.2 Overseer modelling as a cross check on the implications for nutrient management achieve greater certainty provided conditions incorporate an adaptive management regime.

### **Issues of interpretation – Waitaki Catchment Water Allocation Regional Plan - Rule 2 and Table 3**

Applicability of Table 3 to all other rivers (xxii): The issue of assessment.

32. Rule 15 of the WAP makes activities complying with Rule 2 a discretionary activity. In Rule 16 it makes any activity which contravenes Rule 2 a non-complying activity. The Canterbury Regional Council has made an assessment of minimum flows and flow

sharing thresholds for a number of other river streams dated August 2009. It is clear that these "other rivers" do not have an allocation limit. I agree with Ms Penman's summary set out in her clarification report dated 12<sup>th</sup> February 2010.

33. The wording of the rule requires the minimum flow and flow sharing threshold to be "assessed by the Canterbury Regional Council". The Plan is now operative. The wording of the flow regime rule pertaining to other rivers on its plain and ordinary meaning does not exclude multiple assessments by the Canterbury Regional Council from time to time as further information comes to hand relating to minimum flows or flow sharing thresholds applying to those streams and rivers. Your role is to apply the wording of the plan as it stands – however much you may wish to amend it. (*Love v Porirua City Council*)
34. The plain and ordinary meaning of the rule does not imply that a one-off assessment by the Canterbury Regional Council occurs and neither does it imply that following assessment the minimum flow and flow sharing regimes are "set in stone" to only be varied by a plan change process.
35. The interpretation of the whole table implies that where sufficient information was available to set minimum flows/allocation limits and flow sharing regimes, that occurred "in the Plan", but that for other rivers further information needed to be gathered and that process could be set on a case by case basis as further information came to hand either via a resource consent process or following further individual stream/river monitoring. By way of practical example the Stony River has a minimum flow set in accordance with this process at 200 l/s and a flow sharing threshold at 1200 l/s. The further collection from this resource consent process appears to suggest that the minimum flow is set too high based on 2009/2010 summer information. It is open to the Canterbury Regional Council to assess that minimum flow in light of this summer's data collection and that any reassessment will apply to consents lodged from that point onwards. Any condition which you impose should allow for that process during the consent's life (i.e. by not specifying a flow but referencing the flow back to the parameters set in Table 3 xxii. Other flows which are specified in the plan are "set in stone".

36. The impact of the rule is that any application which seeks to introduce a minimum flow condition (such as Haldon) which is below that set in August 2009 would become a non-complying activity but for s 88A. Mr Batty has already set out in his evidence that an application for irrigation which is in the allocation threshold having regard to the objectives and policies in the round could not be said to be contrary to the objectives and policies of the plan.
37. That application meets one of the threshold tests and then falls to be considered under the 104(1) process.
38. On the evidence the applicants would be required to justify the reasons why a lower minimum flow regime was acceptable having regard to both the actual and potential effects and the precedent issue associated with that condition.
39. Again, with respect to the Stony River example it is submitted that there is no precedent effect associated with a revised minimum flow because Haldon is the only party taking from Stony River and secondly the revision is justified following analysis of the new information provided over the last irrigation summer. With respect to minimum flows and allocation limits which are set under Table 3 (for example Grays River), any application which seeks takes below the limits (which is not a replacement consent) will be regarded as a non-complying activity.
40. Lastly, for applications made prior to minimum flows and flow sharing thresholds being set under (xxii) the status of the application is preserved pursuant to s88A.

**Table 3 xxii Applications to take water between the flow sharing threshold (mean flow) and the 5yr/7day flow (minimum flow)**

41. Rule 2 is the rule governing the taking of water. Were no water permitted to be taken below between the mean flow and the 5yr/7day low flow then the mean flow would have aligned itself with the minimum flow. The definition of minimum flow makes it clear that this defines the flows when a take must cease. Rule 2(1) (c) governs compliance with flow sharing regimes and specifies that “*not more*

than half of the water above or between the thresholds in Table 3 can be taken ...”.

42. The circumstances of other specified flow sharing limits in the plan impose the “above and between” parameters. In the case of other rivers only the 5yr/7 day low flow is specified. There is no “between” in this instance. The substantial difference between the limits set in row xii must be given their ordinary meaning. It does not mean that as a discretionary activity that you cannot have regard to the degree that any one application is approaching the minimum flow – or that you can have regard to the degree of reliability of the waters to the particular applicant – but in my submission the interpretation does not lead you to a non complying status for all applications below the mean flow. This approach appears to be consistent with Ms Penman’s interpretation dated 10<sup>th</sup> February 2010.

**Have all resource consents been applied for?**

43. Counsel for Meridian in opening submissions raised issues as to the applicability of Rule WQL18 of the PNRRP. UWAG accepts that Rule WQL18 would apply in circumstances where the PNRRP is operative and a regional land use consent would be required in those circumstances.
44. Rule WQL19 requires a land use consent within an inland basin where a contaminant may enter ground water **and** the use of water is authorised by WQN26.
45. In this instance, use of water is governed by the WAP and in our submission Rule WQL19 does not apply.
46. The default rule is WQL59. That Rule states that the use of land is a discretionary activity where the land use activity:
- 46.1 Does not comply with WQL18; or
  - 46.2 A consent has not been gained pursuant to WQL19.
47. Claire Penman’s view expressed in her report is that WQL59 may apply. It is submitted that Rule WQL59 only comes into operation where an activity is unable to comply with WQL18. The current situation is that

WQL18 is not operative until the plan is operative. Accordingly, the issue is not one of ability to comply with WQL18 but put more simply the default rule of WQL59 can only apply when the provisions of WQL18 are able to be applied to any given consent scenario.

48. The last potential rule under the PNRRP is Rule WQL62. Again, this Rule defers to the use of water being authorised by WQN26. In the case of the Waitaki Allocation Plan, use of water is controlled by the WAP, not WQN26 and accordingly this Rule does not apply either. It is submitted that on this basis all of the consents have been applied for, for consideration by this Panel.
49. For the avoidance of doubt, even were any of the above mentioned rules applicable it is submitted that there would be no further evidential burden on the applicant, ie, no lack of information to support consideration of the consent and no further notification process to other affected parties that would trigger any prejudice in terms of your overall consideration of the activities.

#### **Landscape issues**

50. A number of the officers' addendum reports have considered the focus on landscape issues as an issue requiring further comment from the applicants in closing.
51. Mr Craig has given further evidence in these proceedings to clarify particular issues relating to the applications by:
  - 51.1 Grampians Hope;
  - 51.2 Classic Properties;
  - 51.3 Lilybank;
  - 51.4 Haldon and others;
52. Mr Glasson's position in oral evidence to the Panel (February 2010) in response to a question relating to his basis as a landscape architect for imposition of landscape controls on the fundamental decision as to whether an application should be granted or declined, Mr Glasson indicated that the introduction of controls on buffers was a "trade-off" for the continued right to irrigate. He referred to the situation where irrigation needed to be pulled back from a lake margin or river as a

trade off that an applicant might have to make. He also applied his own professional judgement of what might be appropriate for the environment. It is submitted that this shows a fundamental misunderstanding of the concept of existing environment whereby the introduction of exotic grasses has been introduced as a fully permitted activity and can continue to do so by the three applicable territorial plans. It is submitted that on this basis the evidence of Mr Craig for UWAG is to be preferred – principally on the basis that development can, as a permitted activity, result in the greening of the landscape and textural changes in the landscape patterns.

53. Policy 12 of the WAP which makes reference to “landscape” is a policy without any rule to support it in the WAP and that approach is consistent with territorial authority plans which do not have rules limiting ground cover or irrigation (other than in Outstanding Natural Landscape areas).
54. Be that as it may, the FEMPs of all UWAG's clients have suggested minimum buffer provisions on riparian margins. UWAG applicants are happy that those FEMP provisions could be incorporated as conditions of consent.

#### **Conditions of consent**

55. Refer to separate conditions being circulated by UWAG.

#### **The position of renewals**

##### Priority Issues

56. I have read the memorandum of Ms Dysart dated 19<sup>th</sup> April 2010 and generally agree with its conclusions but make the following comments:
57. The law with respect to priority is uncertain with contrary decisions at both High Court and Court of Appeal. The Supreme Court has yet to make a final determination on the issue but in Ngāi Tahu (prior to its withdrawal) it was exploring issues of fairness.
58. UWAG and all applicants only get to the point where priority is an issue if there is a nutrient over-allocation issue – and we rely on the MWRL case in support of the fact that this is not the case.

59. The context of these applications with the application process spanning 10 years is unusual.
60. The issue of priority is not priority to the resource but only priority to a hearing – with respect to the merits there are other matters which may permit the Committee to override any priority to a hearing applicant. Namely:
- 60.1 The certainty of outcome from renewal applications
  - 60.2 The wider benefits to the community of improvements to catchment nutrient management
  - 60.3 FEMPS which apply across whole of farm property.
  - 60.4 The minor nature of effects
61. In addition the provisions of 124(1) (c) allow any other relevant matter to be considered in determining the application, and in this regard:
- 61.1 The purpose of the legislative change and the issue that it was attempting to cure (that of leapfrogging consent holders) is relevant.
  - 61.2 The infrastructure associated with renewals is not a mandatory consideration under 104(2A) but it is another matter – particularly when viewing landscapes which have been contoured for irrigation and where there has been a long pattern of irrigation.
  - 61.3 Ms Dysart does refer to the issue of fairness as an issue for you to consider and undoubtedly the evidence adduced supported by the officers given on the existing environment would allow consideration of fairness on the merits of whether to grant one application in advance of another.

#### Renewals conditions

62. Renewal applicant's where the current form of irrigation is border dyke or wild flood have proffered conditions as to conversion of inefficient systems within 5 years of grant. That is an arduous condition. Undoubtedly some will convert in the first year –while others may take more time allowing for intergenerational farm ownership issues to be resolved etc.
63. Whilst the staging of these conversions provides the platform for nutrient savings to allow other new applicants to commence, the proposed 5 year period is reasonable.
64. Renewals wish to continue to irrigate. Any lock step requiring them to switch off; monitor for a season and then resume is unpalatable given the state of Lake Benmore currently. The FEMP conditions as far as best agricultural practice would apply immediately. This process is consistent with other decisions in Canterbury – notably Rakaia Selwyn where the requirement for aquifer testing did not apply to renewals as a precursor to irrigation commencement.
65. Nutrient benchmarking and overseer testing has the presumption that the conversion will take place. There will be a lag time as old systems are phased out and new systems introduced – consent conditions need to factor in these lag times so that a renewal applicant is not immediately caught by Overseer modelling.
66. Applying these policies is consistent with fairness for applicants who have had long standing irrigation availability and whose stock management policies cannot change overnight in this environment.
67. Renewal applicants would be accepting of conditions which require advice to ECan on conversion timeframes.

#### Telemetry and water monitoring conditions

68. Most farmers are accepting the practical implications of telemetry and requirements for installation of water metering. For renewals there must be practical measures to allow for the progressive introduction of

metering while the consent is being exercised. In addition Ms Vesey in her report indicates that telemetry will not always be available.

69. Introduction of metering to existing consents will require calibration. A condition allowing a choice of what is practical and a six month period after the commencement of the replacement consent would remedy the issue.

#### Meridian arrangements Renewals

70. Renewal applications are not subject to the MIC / Meridian agreement. They do not own shares in MIC. Those conditions relating to the MIC agreement should not be applied to renewals and if submitted there is no resource management purpose in so doing. Care needs to be exercised in the case of hybrid type consents to ensure that the MIC agreement conditions only apply to the areas for which shares are held.
71. For the same reasons, the term of the consent applied for is 35 years. Given that these consents often predate Meridian's Waitaki project there is no resource management basis to align renewal to any particular operator's consent – provided they fulfil the allocative regime set out in the WAP.

#### **Separate consent decisions**

72. Every application has been separately filed. Every application is entitled to a decision on the application (s 113). Given the different factual circumstances of the UWAG applicants, separate decisions are requested from the Committee.
73. The emotive media debate is an issue that has dogged this hearing. UWAG wishes to avoid the issues that are associated with other applicants still requesting that applications be judged on the ability to undertake dairying in this environment.

#### **Specific issues on individual consent applications**

74. The purpose of this section is to address matters raised in the reporting officers' addendum reports relating to individual applications:

**74.1 McAughtrie CRC011940**

74.1.1 The Claire Penman conditions regarding specifying 5 mm mesh size on the fish screens are accepted.

**74.2 Table 3 and Table 5 – WAP**

74.2.1 This take has not been included in Table 3 allocation as it is water that is diverted by the Sutherlands' consent on Benmore Station at a rate not exceeding 90 l/s. McAughtrie's take is from the residual flows required to be left as part of that consent. However, it is still included in Table 5.

74.2.2 It is accepted that McAughtrie has no ability to control the rate of take or volume taken and that counting both McAughtrie and the Sutherlands' take under Table 5 would effectively be double counting.

**74.3 Classic Properties**

74.3.1 The landscape issues have been addressed in reply by Andrew Craig (as for other applicants).

74.3.2 Several submitters have expressed concern about the irrigation of the Mary Burn Flats. Classic Properties' application represents a very minor part of the irrigation proposed for this area (7%). This land has been through tenure review. It has been accepted by the Department of Conservation that this land is able to be irrigated. They have not submitted with respect to this proposal.

**74.4 Glenmore Station**

74.4.1 The report with respect to feasibility of converting to spray irrigation has been provided.

74.4.2 Maria Bartlett has requested that annual volume is reduced once conversion to spray is complete but that is based entirely on the whole conveyance system being piped. For Glenmore that is a future option but the feasibility report on conversion is not based solely on a piped system. That will depend on the financial costs of piping.

#### 74.5 **Cass River – Table 3**

74.5.1 The Cass River is classed as a high natural character water body. The flow regime is categorised in (i) Table 3 which has an allocation limit but no minimum flow. This take is within 10% of MALF. The allocation limit in Table 3 is cumulative. This application will not set a precedent for the Cass. Essentially, any new take which would push the allocation above 10% of MALF would become non-complying but this take is complying with the plan's limits.

#### 74.6 **A N Hope**

74.6.1 This application needs to be seen in its historical setting. The application for an annual volume was based solely on the consumptive part of the proposal. Water is taken via a race system from the Grays River with a volume of 29 l/s being continuously discharged following the irrigation takes into the same water body. The need for the continuous discharge is to ensure there is a continuous volume, not less than 29 l/s in the race system to stop the pump cavitating. The continuous "divert" flow was not included but the overall irrigation proposal has fully outlined the need for residual "non-consumptive flows" to be taken and diverted for the proposed irrigation system to be

implemented. The applicant requests that any consent issued takes account of the additional 29 l/s required for this proposal.

#### 74.7 **Bog Roy – CRC012017**

74.7.1 The issue relates to the irrigation area applied for. Ms Penman's report refers to an area of 105 hectares applied for but Ms Johnston's evidence to this hearing is for an application area of 270 hectares (60 for Bog Roy, 60 for Rostriever and the balance to Otematata). These details were initially provided to ECan in an RFI dated December 06. The following factors are critical:

74.7.2 Derogation approval has been given for 270 hectares.

74.7.3 There was no reference to an irrigation area in the notification wording. It was as follows:

*"To divert, take and use water from Corbys Creek to a maximum rate of 110 l/s with a volume not exceeding 9,504 m<sup>3</sup> per day and a volume not exceeding 2,987,848 m<sup>3</sup> per year for the spray irrigation of pasture and stock water supplied to Bog Roy Station, Otematata Station and Rostriever Station at or about Map Reference NZMS260H40:786-173 approximately 7.7 kilometres south of Lake Benmore for a term of 35 years".*

74.7.4 Maps were provided relating to CRC012017 on 4 June 2009. It appears the issue between irrigation areas may have arisen from:

- Either a "cut and paste" error in the preparation of reports; or
- An earlier derogation approval for 105 hectares.

- This application is a replacement application. The replacement consent (WTK691221A, B and C does not reference an area to be irrigated. It does not attach an irrigation plan. In effect the consents being replaced could be used to irrigate anywhere within the consent holder's property. On this basis the specified area to be irrigated by CRC012017 has not changed.

#### 74.8 **Anderson – CRC012019**

74.8.1 Confirmation that inefficiency of 80% for Irricalc was used. The 70% pointed out in Ms Penman's addendum report was a typo. Irricalc defaults to an efficiency value of 80%.

#### 74.9 **Otematata**

#### 74.10 **Dam filling issues**

#### 74.11 **Dunstan Peaks**

74.11.1 Conversion of wild flood to spray. Commissioner Rogers asked for UWAG to table information on feasibility. We have had a irrigation consultant look into this aspect and it is possible and feasible. We have attached an indicative budget etc associated with this conversion.

74.11.2 Minimum flows – Ms Penman in her addendum report acknowledged that this was a replacement, and as such the AWCO did not need to be higher than what is in the Order to protect existing users as they are an existing user. However, both Penman/Rodrigo are still recommending the AWCO **AND** a minimum flow of 160L/s upstream of Dunstan's intakes. The 160L/s is a 5 year 7 day low flow at that point (i.e. at the upstream end of the catchment rather than at the downstream end of the catchment as required by Table 3 row xxii.

Both Ms Penman and Ms Rodrigo seem to have failed to take into account policy 28 when recommending minimum flows. Policy 28 (c) states:

*“maintain the inclusion of the consent, if granted, in any allocation regimes and priority bands on the water body concerned”.*

74.11.3 Note that all other takes from the Omarama Stream have had the AWCO minimum flow imposed upon them. Thereby creating a priority band. By imposing a higher minimum flow, in this case requiring Dunstan Peaks to cease taking at 160L/s above the points of take, will put Dunstan Peaks to a different, less reliable priority band than:

74.11.3.1 a) they are currently in; and

74.11.3.2 b) than all other water users within the catchment.

74.11.4 Thus the minimum flow regime proposed by the Council Officers is inconsistent with Policy 28 (c). Whereas the minimum flow regime proposed by the applicant (which is the AWCO minimum flow regime) would ensure that they are included within the priority band that exists for the Omarama Stream.

## **74.12 Te Aka**

74.12.1 The Commissioners have asked questions as to why there is a command area. The main reason being that the main line associated with the existing irrigation scheme and the proposed irrigation scheme are linked. This enables the applicant to take water from two sources to irrigate an area which is side by side, rather than having two separate irrigation systems.

### **74.13 Grays Hills**

74.13.1 Landscape evidence proposed a condition that prohibited the planting of shelter belts. Firstly this is outside the scope of what the Commissioners are able to control. Secondly note that the Mackenzie District Plan, which I would submit is a more appropriate planning document to be controlling such aspects, permits the planting of shelter belts within this area, provided certain conditions are met.

74.13.2 Minimum flow site. Ms Penman is requiring Grays (and Hope) to install a minimum flow site at Days Bridge on the Grays River. This appears to be unnecessary as ECan already have a flow recorder at this site.

### **74.14 Haldon Station**

### **74.15 Fish Screen (Meredith, Vesey)**

74.15.1 Design details have been provided. The standard ECan condition will require design details to be sent to Environment Canterbury prior to installation.

### **74.16 Fish & Game (Mark Webb)**

74.16.1 Mark Webb's proposal for a fish screen at times when water is flowing over the weir, but no fish screen when it is not, will be difficult to manage.

74.16.2 This also raises the question that if Fish and Game want the irrigation system to act as a race for fish passage then the taking of water from the River must be allowed to continue unabated. If that is the case, we need some way of showing (and monitoring) whether the water is used for irrigation or not.

74.16.3 An option may be to pipe the section from the river to the top of the irrigation scheme. If that happened then the pipe can be screened and the need for discharges downstream to maintain fish passage are eliminated. The "down" side is that no water over and beyond the irrigation / stockwater component can be taken, so no "discount" for water discharged back to the River to maintain a minimum flow at Hinch Bend. The divert rate, as notified, was higher than the take rate for irrigation and stormwater.

#### Monitoring of discharges

74.17 Susannah Vesey proposes that the discharges of water are monitored and telemetered. We do not agree that it is necessary to monitor the discharges. There are no control systems to maintain or limit the discharges, which have occurred in their present state since the mid 1970's.

74.18 This will be expensive and we want to avoid doing this.

74.19 While it is in the applicant's interest to ensure that a discharge occurs from the settling ponds in order to maintain the River at Hinch Bend above its minimum, there is no benefit or mitigation attained by monitoring the discharge.

74.20 It is accepted that monitoring of the irrigation take, and the minimum flow site is required, however adding in the requirement to monitor the discharges imposes significant initial capital and on-going costs. (Conservatively, a single open race flow monitoring site will cost \$5000 with annual costs of up to \$4000 per site).

74.21 **Minimum flow** (Vesey, Fish and Game)

74.22 Clarification is required if the intention is that the taking of any water into the intake ceases at the minimum flow, or whether the take can continue but no irrigation is allowed. This must be

allowed to happen if Mark Webb's proposal of letting fish travel right through the system is accepted.

74.23 Stony River is on "other rivers" as set out in Table 3 xxii. The August 2009 resolution of ECan fixed the minimum flow at 200 l/s.

74.24 Estimation of flow statistics for Stony River were prepared and reported by de Joux (2009). The estimated 1:5 year 7DMALF at the downstream end of the catchment (Hinch Bend) was estimated to be 120 l/s. Given the fact that little flow information has been collected within the Stony River catchment in recent times, a conservative minimum flow of 200 l/s was made by agreement between Environment Canterbury, Fish and Game and the applicant's representative.

74.25 Following a site visit to Haldon Station on 16<sup>th</sup> February, it was noted that the flow in Stony River at Hinch Bend was well below the agreed minimum flow of 200 l/s. The weather within the Tekapo Basin had been settled for at least the previous three weeks, therefore it is reasonable to expect that the various rivers throughout the basin would be at similar flow frequencies. If one river was at or about a specified return period flow frequency, then it is reasonable to expect that other rivers within the basin would be at similar flow frequencies.

74.26 According to Haldon Station Manager, Mr Paddy Boyd, the flows within Stony River were not unusually low for the time of year.

74.27 Surface flows were measured at Stony River on 18 February 2009. The recorded flow rates at various other rivers within the Tekapo Basin were obtained from the Environment Canterbury web site and from the NIWA Lake Tekapo field party. The measurements are summarised in the following table:

Site	Flow	1:5yr	Comments
------	------	-------	----------

		7DMALF	
Forks @ Balmoral <sup>1</sup>	2500	1080	
Mary Burn at Mt McDonald <sup>1</sup>	349	240	
Mary Burn at SH8 <sup>1</sup>	365	365	Upstream abstractions
Hakataramea @ MHB <sup>1</sup>	820 <sup>4</sup>	780	Recorded flow = 637 l/s
Grays @ Days Bridge <sup>2</sup>	2028	1500	
Stony River @ Slip Panels Corner <sup>3</sup>	309	265	
Stony River at Hinch Bend <sup>3</sup>	59	120	Minimum set at 200 l/s
Rocky Gully @ Rockburn <sup>1</sup>	109	64	

74.28 <sup>1</sup> 1:5 year 7DMALF information obtained from Gabites & Horrell (2005)

74.29 <sup>2</sup> Agreed modified flow presented to Upper Waitaki Consent Hearing

74.30 <sup>3</sup> Estimated by de Joux (May 2009).

74.31 <sup>4</sup> "Naturalised flow" using the methodology of Gabites & Horrell (2005)

75. The flow shown for Forks, Mary Burn at Mt McDonald, Grays River at Days Bridge and Stony River at Slip Panel Corner represent natural flows with no upstream abstractions.

76. The flow shown for Mary Burn at SH8 is the residual flow after upstream abstractions.

77. The flow shown for Hakataramea at MHB is the "naturalised" flow after adding 183 l/s back to the recorded flow of 637 l/s.

78. From the above table, it is clear that all the other rivers in the basin, including Stony River at Slip Panel Corner) are above their 1:5 year 7DMALF flows, and that the flow rate at Hinch Bend is significantly less than the proposed minimum flow. It is obvious that the minimum flow of 200 l/s is well above the 1:5 year 7DMALF required by the WCWARP, and will cause extreme hardship on the pastoral activities of Haldon Station.

79. Paragraphs 5 to 9 of the Environment Canterbury staff report dated 12 February 2010 refers to the ability of Environment Canterbury to review or amend minimum flows "as more information becomes available".
80. Any minimum flow condition for Stony River should be reworded to the effect that it only refers to a "1:5 year 7DMALF" at the flow site "as assessed by the Canterbury Regional Council". This would allow periodic amendments to minimum flow assessments without the need to review individual resource consents.

### **Flow sharing**

81. Susannah Vesey (paragraph 28 of her supplementary S42A report) has agreed that flow sharing should not be required. This is supported by Haldon.
82. ECan staff have responded to a number of questions from the Commissioners dated 12 February 2010, and concluded that an activity would be non-complying if no flow sharing occurred.
83. Paragraph 111 of Annex 1 of the WCWARP states that the environmental flow and level regimes were set on the basis that "flow sharing below the mean flow in rivers that are important spawning tributaries of the Lower Waitaki River".
84. Evidence presented to the Commissioners shows that Stony River is not considered to be an important spawning river and more importantly, the river dries naturally within its middle reaches and requires a flow rate in excess of the mean flow to maintain continuous flow throughout its length.

### **Water Quality (Freeman, Meredith, Vesey)**

85. Freeman classifies Haldon as being in the "Amber" class because of the potential effects on Stony River water quality.
86. I understand that Dr Freeman has recently considered that some of the consents initially placed in the "Amber" class could be moved to the "Green" class because they are existing takes and the existing water quality includes those effects.

- 87. Haldon Station is also an “existing” effect.
- 88. The water quality sampling used in the MWRL report was carried out prior to the installation of the settling ponds. Any effects of the continued discharge on the existing water quality must therefore either not change or will improve. More monitoring of the ponds’ effectiveness is appropriate.
- 89. A Water quality sampling regime has been provided within the FEMP.
- 90. Overseer (NcNae)
- 91. Haldon Overseer Assessment Is probably one of the best carried out in the Mackenzie Basin.

**Otamatapaio**

FEMP compliance with overseer and nutrient modelling

- 92. It has already been explained in evidence that Otamatapaio is a property in transition undergoing conversion to spray irrigation of replacement consents. It is also a property with significant border dyke irrigation under a separately held consent.
- 93. In addition the overseer model has not accounted for the site specific mitigation options identified in the FEMP with respect to filter strip planting, fencing and settling basins.

OVERSEER proposed modelled outputs kg/year with existing Glenburn borderdykes	OVERSEER proposed modelled outputs kg/year with Glenburn borderdykes converted to spray	WQS threshold kg/year

Total N leaching/runoff	17771	16993	22466
Total P leaching/runoff	891	312	588

94. Within the FEMP, two OVP files have been generated based on borders and spray irrigation which have both been sent to Mike Freeman for audit. It has also included the irrigation area proposed within two lake consents which are outside this hearing process but which it is anticipated should be granted shortly.
95. The table below identifies that while the border dyke system still operates, P thresholds will be exceeded until they are converted to spray irrigation whereby P thresholds will be met.

## **Bellfield**

### FEMP compliance with overseer and nutrient modelling

96. It has already been explained in evidence that Bellfields replacement consent has been required to reduce the possible application rate from 820mm to 750mm in the Overseer modeling in order to meet N and P property thresholds.
97. Furthermore in the evidence of Graeme Spittle details were provided of the reduction in current stock numbers and exporting feed from the irrigation area in order to meet thresholds currently proposed.
98. However if property thresholds are reviewed we consider Bellfield threshold should be determined based on the higher application rate should this be granted and current land practices. It should not be based on N and P Overseer outputs that have already required extensive mitigation in order to meet the threshold currently proposed by MWRL.

## **Conditions general**

### **Site specific mandatory measures and the FEMPs being introduced as conditions of consent**

99. Dr Freeman has pointed out that the proposed conditions of consent ( MWRL version) do not impose mandatory measures contained in the FEMPs as conditions of consent.
100. UWAG has not provided site specific conditions relating to outlet points, set backs from streams and rivers, fertilizer bin placement, types of fertilizer applications. Time has not allowed for this. Its preference is that they continue to be contained in the FEMPS – but if ECan is suggesting that all mandatory FEMP measures need incorporation as conditions that the consent will be unwieldy to manage from an applicant perspective.

### **Overseer issues**

101. Freeman, McNae and others have focussed on Overseer modelling being the suitable cross check on nutrient management. Applicants are receptive to that approach – from their perspective of better overall farm management. However the following issues require clarification:
102. The evidence for UWAG farmers where the percentage of irrigable area is small (below 10%) that stock numbers and farming patterns vary well beyond an annual cycle. Evidence was provided that the effect of snowstorms or severe droughts on stock numbers can result in several recovery years. Flush spring conditions (evidence Ivey) can result in stock numbers rising above an annual norm – when more stock can be carried through the summer season.
103. The Trigger response mechanisms contemplated by Freeman seem to be based on a “flat line” stock number approach per property. For the above reasons this is problematic. Again it will be problematic to establish a base areal nutrient load. UWAG does not have a formed position on this issue – but wants a method which is robust having regard to the climatic cycles (over years) of their dryland operations.
104. Any suggestion that a 10 to 50% reduction in NDA's (Freeman 2<sup>nd</sup> Addendum para 34) will be completely punitive on UWAG applicants. Their NDA's are based on whole of farm operations – Glenmore, for example irrigates 1% of its total area. Any suggestion to reduce NDA's

by that magnitude would result in a complete stalling of all farm operations. There are little measures which can be taken with respect to dryland stock management of NDA's other than stock reduction.

105. UWAG has looked at other alternatives such as:

105.1 A cut off from application of trigger response if the irrigation area is less than 10 % of total property area:

105.2 A set hectare cut off point.

105.3 The percentage reduction applying to the percentage area of the farm in irrigation.

105.4 Each method has its own idiosyncrasies when applied to dryland properties with small irrigated areas –and these proportionality issues have implications for monitoring cost sharing approaches as amongst all applicants

105.5 Fundamental to these issues are that UWAG applicants have applied for a relatively small area of irrigation and that conditions which go to the heart of affecting their permitted dryland operations in a punitive manner will not find favour.

### **Needs plus a buffer approach**

106. MWRL has explored options of fixing nutrient allocations in the Ahuriri on a needs plus a buffer approach. UWAG has generally been supportive of the approach but has only late last week seen numbers adopting this approach. At the time of writing these closing submissions there has been little time for feedback from farm consultants – but it is anticipated that there may be some further comment for closing.

107. EWAN – this section is critical for those in the Ahuriri Arm, in particular Otamatapaio and Bellfield. Please see my evidence which I believe should be in here so you can explain why the numbers determined CANNOT be accepted.

### **Fish screen conditions**

108. It is submitted that the issues surrounding appropriate fish screens and approval of design will be a matter to be resolved when site specific conditions are formulated but taking account of the following factors:

108.1 DoC's indication to allow fish passage through some of the network of irrigation races.

108.2 The adjustment of the NIWA guidelines to non-river or stream takes via canals, lake takes, and the maintenance problems associated with glacial flour.

### **Issues for takes falling outside Benmore catchment**

109. The conditions framework has been developed by MWRL specifically addressing a suite of conditions appropriate to a whole of property irrigation system.

110. UWAG is tabling a suite of conditions relating to replacement consents and new consents where only a small proportion of the property is irrigated.

111. Other scenarios will need to apply for those consents whose catchment or subcatchment is below Benmore or a combination of Benmore/Aviemore and Waitaki. Those consents should revert back to the property specific monitoring arrangements with no trigger response or increased monitoring which relates to the condition or trends relating to Benmore.

112. Dr Freeman also suggests local lake water quality triggers for Tekapo for example. It is submitted in the context of the quality parameters for Tekapo there is no justification for the imposition of such conditions and little influence that such condition would have – given the number of irrigators in that catchment. It is submitted that any issue of changing water quality in Tekapo would be an issue for ECan to determine by the plan process - accepting at all times that localised discharges connected to a particular consent would be the subject of consent review conditions.

### **Other issues associated with trigger response conditions**

113. I understand that in opening that Mr Whata for MWRL may have suggested that all applicants before this Committee should take responsibility for water quality issues associated with all farming operations within the catchment/subcatchment. That is not an approach endorsed by UWAG – for pragmatic reasons alone.
114. During the course of this hearing it has become obvious that there are considerable irrigation interests outside these Upper Waitaki applicants and that to assume responsibility for all trigger response issues would be unduly burdensome on this group.
115. UWAG also suggests that some alternative to weekly monitoring needs to be introduced on grounds of reasonableness. The nature and extent of testing will be expensive – and the time lags associated with weather events in the catchment will inevitably produce spikes – but the issue for determination is the trend in the lake environment. A more practical approach is required.

### **Staging of Implementation**

116. It is accepted that the larger applicants may propose to progressively increase the irrigable area, based on passing certain thresholds in lake quality monitoring.
117. Undoubtedly some UWAG applicants may choose to stage introduction of new systems but the following cannot:
- 117.1 Replacement consents – they seek consent to continue irrigation at current take permitted levels.
- 117.2 Small consents where applications are based on the development of one take point
- 117.3 Consents with only one pivot operation.

117.4 Consents where there is a need for whole of farm conversion to maintain a sustainable farming unit – from an economic perspective. i.e these proposals will have the capacity to increase the numbers of staff based on these holdings but the increase in irrigation must have some logic in linking it back to "labour unit" increases associated with irrigation management.

### **Conclusion**

118. For the forgoing reasons it is submitted that all UWAG applications can be granted subject to conditions.

Dated 26<sup>th</sup> April 2010

---

Ewan Chapman  
Counsel for Upper Waitaki Applicants Group