

TABLED AT HEARING

Date 27/11/2009

BEFORE THE CANTERBURY REGIONAL COUNCIL

IN THE MATTER OF the Resource Management Act 1991

A N D

IN THE MATTER OF Water permit applications by Lone Star Farms Limited

OPENING SUBMISSIONS ON BEHALF OF LONE STAR FARMS LIMITED

DATED THIS 27 DAY OF NOVEMBER 2009

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MAY IT PLEASE THE COMMISSIONERS:

- 1 I represent Lone Star Farms Limited who is the applicant for two resource consents in respect of an expansion of the irrigation scheme on Godley Peaks Station, requiring a further take of water from the Mistake River.

Background

- 2 Godley Peaks Station ("the Station") is approximately 14,576 hectares of which 11,700 hectares are hill country, most situated above 1,100 metres above sea level. The remaining 2,876 hectares has been developed for stock grazing through over sowing and top dressing and forms the area that will benefit most from the proposed activity.
- 3 The Station currently winters approximately 13,390 stock units of sheep and cattle, including breeding cows. Extra fattening stock is brought onto the Station over the summer months.
- 4 Winter stock capacity has reached as high as 14,500 stock units in the past but capacity is restricted by reliability of feed and the ability to grow winter feed crops.
- 5 The Mistake River ("the River") runs through the Station into Lake Tekapo and is the proposed point of take. Details of river hydrology are set out in the evidence of Mr Ian McIndoe and further evidence has been provided by David Boraman, Hydrological Consultant, earlier in proceedings. The principal figure of note in respect of these reports is the agreed River Mean Annual Low Flow ("MALF") of 517 l/s.
- 6 The Station is situated within the Mackenzie Basin and suffers extreme climatic variations. The evidence of Mr Ian McIndoe sets the annual rainfall for the Station at 675 mm per year, based on NIWA calculations. There is some disagreement on the Potential Rate of Evapotranspiration ("PET") on the property, which by NIWA standards is 665 mm per year but is thought by Mr Ian McIndoe to be closer to 850 mm resulting in a net loss of moisture from the Station pastures. Detailed evidence on this point is provided by Mr McIndoe¹.
- 7 The Station has the benefit of an existing resource consent CRC012408.1 ("the Historic Consent"), held by Star Holdings Limited, which provides for a take of 85 l/s and use of 72l/s of water from the River. The Historic Consent dates from the early 1970's and expires on 1 January 2036.

¹ Statement of Evidence, Pg 8, Paragraphs 22 to 26

- 8 The use of the Historic Consent allows the irrigation of approximately 113 ha of flat land on the Station ("the Irrigation Area"), although the current irrigation hardware (a centre pivot and hard hose guns) has a command area of 225ha. 700ha surrounding the Irrigation Area has been intensively developed to improve grazing pastures.
- 9 Several water races flow through the Irrigation Area from the Mistake River and form part of the existing irrigation infrastructure. The system operates by diverting water from the River which is then conveyed via an open race to a holding pond.
- 10 The irrigation hardware is fed from the holding pond by a water delivery system that was installed in 2003. The evidence of Mr Glover contains further details about the historic and existing water delivery system and its associated monitoring devices². Overflow water from the holding pond is carried by the water races before discharging into the Cass River and Micks Lagoon.
- 11 The applicant proposes to use additional water from the Mistake River to increase the Irrigation Area by 447ha and has purchased 447 Mackenzie Irrigation Company ("MIC") shares to allow this increase.
- 12 The applicants considered other sources of water before lodging the applications; however an increased use of water from the River presented the most efficient and cost effective option.
- 13 The additional irrigation will be used to increase the reliability of summer stock feed and increase the area devoted to winter feed crops enabling an increase of per head performance of capital stock and an increase in summer trading stock. Summer stock capacity is intended to become static at 14,500 stock units while stock units held over winter will remain unaltered from current levels. Further detail on future management of the Station is contained in the evidence of Ms Melissa Robson and the Farm Environment Management Plan.
- 14 Originally when this consent application was notified in 2003, it included a micro-hydro proposal and some 250 l/s was applied for for this purpose. Following the abandonment of this project the proposed take was reduced to 290 l/s.
- 15 Various changes have been made to resource consent application CRC031175 since it was last notified on 4/8/2007. These changes include:

² Statement of Evidence, pages 2-3, paragraphs 9-13

- Removal of the proposed diversion of 290 l/s. Consent will now only refer to a take of 261 l/s, the reasons for which are discussed in Mr McIndoe's evidence³.
 - Reduction in the proposed new Irrigation Area from 450 ha to 447 ha.
 - Reduction in the proposed annual volume from 2,700,000 m³ to 2,682,000 m³, as a result of a reduction in the intended Irrigation Area.
 - Amendment to the proposed consent duration of 35 years to an expiry date of 2025, as per the MIC/MEL agreement.
- 16 In conjunction with the application to take 261 l/s from the River contained in CRC031175, the applicant also requires the grant of Consent CRC073236 to enable the installation of a pipeline under the riverbed of Mistake River from the gallery intake into the existing irrigation pipeline network.
- 17 The applicant has obtained resource consent CRC100842 authorising the installation of the gallery under the riverbed in the Mistake River. The applicant intends to link the application pipeline from the gallery intake to the existing irrigation pipe network. Following the grant of CRC100842, applications CRC031176 and CRC073235 have been withdrawn and no longer form part of the proposed irrigation activities.
- 18 The irrigation development proposed on the property will be fully piped, removing the need for the water races which will no longer continue to be used.
- 19 Stockwater will also be sourced from the River and reticulated around the property using polyethylene pipelines, it does not form part of the take requested under CRC031175. No discharge from the stockwater distribution system will occur.
- 20 A separate application will be lodged by the applicant for the take and use of water for stock and domestic supply, if the current application is granted and progressed. However, until the separate application is lodged and granted, the applicant will rely on provisions set out under Section 14(3)(b) of the Resource Management Act 1991 ("RMA").

Consultation with submitters

- 21 The applicant has sought to engage submitters and ECan in respect of the applications in order to address concerns and implement mitigation measures

³ Statement of Evidence, page 16, paragraph 55

where appropriate. It should be noted that the applications before you today are the result of a consultative process and these discussions are ongoing.

22 In particular, the applicant has engaged in discussions with the Central South Island Fish & Game Council ("Fish & Game"), the Department of Conservation ("DoC") and Te Rūnanga o Ngāi Tahu ("Ngāi Tahu"). Details of consultation with these parties can be found in the evidence of Mr Glover⁴ and is summarised below:

- (i) **Central South Island Fish & Game Council.** A copy of a letter from Fish & Game dating from 2003 is attached to the evidence of Mr Glover⁵. A number of the concerns raised have been satisfied as the application process has progressed and discussions have continued between Fish & Game and the applicant.
- (ii) **Department of Conservation.** Discussions with DoC have been important due to the symbiotic relationship between the Station water races and the ongoing water level of Mick's Lagoon. After discussions between the applicant and DoC, DoC withdrew their submission in 2003 and will lodge a separate application for the abstraction of sufficient water to supply Mick's Lagoon from Mistake River. The applicant has agreed that the Department of Conservation may use their irrigation infrastructure to arrange for the ongoing supply of water to Mick's Lagoon.
- (iii) **Ngāi Tahu.** Ngāi Tahu have advised the applicant they are principally concerned with protecting Micks and Rapuwai Lagoons. As a result of consultation it has been clarified that both Lagoons are fenced to prevent stock damage, the applicant has also agreed to take advice on appropriate riparian planting around Rapuwai Lagoon and implement a planting regime over a period of two years. As a result Ngāi Tahu have indicated that they will not be opposing the application.

23 Any agreed mitigation measures will be incorporated within the FEMP, presented by Ms Robson.

The evidence

⁴ Statement of Evidence, pages 10-11, paragraphs 56-59
⁵ Statement of Evidence, Appendix A

24 The case of the applicant will proceed as follows:

1. **David Boraman**, Hydrological Consultant, has given evidence earlier in proceedings in respect of the River MALF. The evidence he has produced will be relied upon in submissions for this application.
2. **Rob Glover**, Farm Manager, will present evidence on the history of irrigation on Godley Peaks Station and his practical experience in the management of the Station over the past eight years, including stock rates and pasture management.
3. **Ian McIndoe**, Water Engineer, from whom you have heard previously.
4. **Dr Dean Olsen**, Freshwater Scientist, will cover the existing ecological values of Mistake River, drawing on his 2008 report ("Mistake River Ecological Survey"). He will also cover the potential effects of the proposed development on the ecological values of the River.
5. **Dr Michael Steven** on the landscape effects.
6. **Melissa Robson** will present evidence on the FEMPs for the Station and provide an overview of monitoring systems in place.

Statutory and planning framework

Consent CRC031175 – "the Take Consent"

25 The following rules are applicable within the Waitaki Catchment Water Allocation Regional Plan ("WCWARP")

Rule 2

- (1) *Except as provided in (2) and (3), no person shall take, use... surface water or groundwater unless:*
 - (a) *The flow in the relevant river or stream... is above the minimum flow or level in Table 3; and*
 - (b) *The amount taken or diverted from the relevant river or stream.....in combination with the amount of water authorised to be taken or diverted by existing resource consents, does not exceed the allocation limits in Table 3; and*

(c) *The take or diversion complies with a flow sharing regime such that no more than half of the water above or between the thresholds in Table 3 can be taken or diverted; and*

(d) *...not applicable*

Rule 6

(1) *Except as provided in (2), no person shall take, use....water when, by itself in or in combinations with any other take, use...the sum of the annual volumes authorised by resource consent, exceeds the annual allocation to that activity in Table 5*

(2) *....not applicable*

Rule 16

Any activity which contravenes any of Rules 2, 6.....is a non-complying activity. In considering an application to which this rule applies the consent authority will have regards, among other matters, to all the policies of this Plan.

26 By virtue of the WCWARP Policy 2, the River, as a tributary of Lake Tekapo, is classified as a water body with high natural character and falls within the Rule 2 allocation limits contained in Table 3(i):

(i) An allocation limit of 10% of MALF of the water body as assessed by ECan.

(ii) No flow sharing regime is proposed.

27 I note that in itself the 10% of MALF criteria is an entirely arbitrary number.

28 The MALF of the Mistake River is agreed to be 517 ℓ /s. The applicant proposes to take 261 ℓ /s in addition to the existing consents of 72 ℓ /s, totaling a combined take of 333 ℓ /s. This is 64% of the agreed MALF and does not comply with Rule 2. Rule 16 stipulates that the activity is therefore non-complying.

29 The applicant proposes to take 2,682,000 m^3 per year from the River, Ian McIndoe confirms that all existing and proposed abstractions upstream of the Waitaki Dam comply with the 275,000,000 m^3 limit⁶. The proposed activity

⁶ Statement of Evidence, page 19, paragraph 68

complies with Rule 6 (allocation) and Rule 2 (environmental flow and level regime) remains the only issue on which application CRC031175 is heard.

Consent CRC073236 – “the Land Use Consent”

- 30 The following rules within the Proposed Natural Resources Regional Plan (“PNRRP”) are applicable to the proposed activity:

Rule BLR 2

- “1. *The erection or placement of a structure or part of any structure in, on, over or under the bed of a lake or river; or*
2. *Any excavating, drilling, tunnelling or other disturbance, planting or removal of any plant or part of any plant, depositing other substance or reclamation required to undertake the activities in (1 above) is:*
- (c) *A discretionary activity where Condition 1 is not complied with, and the activity does not comply with any conditions in Rule BLR 6, in which case the activity requires resource consent under BLR 8.”*

Condition 1

1. The activity shall not be undertaken within the beds of any natural state or high naturalness water bodies listed in Schedule WQN5

Schedule WQN5

Table WQN17: Natural state rivers

Godley and tributaries – outstanding and significant characteristics:

- (i) *High degree of naturalness*
- (ii) *Significant to outstanding natural features and landscapes*
- (iii) *Habitat of threatened/endangered indigenous birds*
- (iv) *High visual amenity value*

Rule BLR6

- (1) *The ...placement...of any structure or part of any structure;*
- in, on, over or under the bed of any natural state or high naturalness water bodies, listed in schedule WQN5; is*

- (b) *a discretionary activity where any conditions are not complied with, in which case the activity requires resource consent under rule BLR8*

Nb: conditions not reproduced here

Rule BLR8

Any:

- (a) *use...placement...of any structure or part of any structure;*
- (b) *excavating, drilling, tunnelling;*

...

in, on over or under the bed of any lake or river that is not classified as a permitted activity, a restricted discretionary activity or a prohibited activity in this chapter is a discretionary activity.

- 31 It is noted that the Mistake River is not caught by WQN17 but so it is not classified as High Natural State under the NRRP but is caught by BLR8 and is therefore discretionary.
- 32 It is agreed by the Consents Investigating Office, Ms Maria Bartlett, that applications CRC031175⁷ and CRC073236⁸ comprise a non-complying activity and discretionary activity respectively.

Part 6 RMA

- 33 Both applications require consideration of the matters contained in section 104 of the RMA.
- 34 Under section 104 the following matters, it is submitted, are particularly relevant.
- (i) Actual and potential effects of the activity on the environment.
 - (ii) The WCWARP.
 - (iii) The PNRRP.
- 35 Section 104D is also relevant in respect of CRC031175 are you should be satisfied that either:

⁷ s42A report, page 6, paragraphs 25 and 26

⁸ s42A report, page 5, paragraph 20

- (i) The effects of the activity are minor, or
- (ii) The activity is not contrary to the objectives and policies of the Plan.⁹

36 In my submission, both of these threshold tests are met.

Actual and potential effects

37 The definition of "effect" under section 3 of the Act is as follows:

"3 Meaning of "effect"

*In this Act, unless the context otherwise requires, the term **effect** includes -*

- (a) *Any positive or adverse effect; and*
- (b) *Any temporary or permanent effect; and*
- (c) *Any past, present, or future effect; and*
- (d) *Any cumulative effect which arises over time or in combination with other effects -*

regardless of the scale, intensity, duration, or frequency of the effect, and also includes -

- (e) *Any potential effect of high probability; and*
- (f) *Any potential effect of low probability which has a high potential impact."*

38 Both positive and adverse effects are relevant. For these applications:

1. There are positive effects which will be identified in evidence.
2. All potential adverse effects have been carefully identified, investigated, and mitigated if necessary. As a result, the effects of these proposals on the environment are, it is submitted, less than minor.

39 In considering the potential adverse effects of the activity on the environment, it is important to have regard to any mitigation of effects that may be achieved through conditions. In this case the application has implemented an extensive

⁹ Section 104D(1) of the Act.

system of monitoring, including soil sampling, since their purchase of the Station. Further monitoring systems will be installed within the approved gallery intake system with the result that the monitoring system as a whole achieves its purpose in ensuring compliance in consent conditions.¹⁰

- 40 Your enquiry is directed by section 104 towards effects on the *environment*. The RMA defines "*environment*" as follows.

Environment includes –

- (a) *Ecosystems and their constituent parts, including people and communities; and*
- (b) *All natural and physical resources; and*
- (c) *Amenity values; and*
- (d) *The social, economic, aesthetic, and cultural conditions which affect the matters stated in paragraphs (a) to (c) of this definition or which are affected by those matters."*

- 41 The meaning "*environment*" has been the subject of numerous decisions. The case law indicates that the concept of environment is dynamic. It includes the potential future environment as modified by the implementation of resource consents which have been granted and by non-fanciful (permitted activities), and by *changes that will inevitably occur*.¹¹

- 42 The Station environment is already highly developed as a result of ongoing irrigation and pasture management carried out on flat land since the early 1970s. Since the property has been in the applicant's ownership, significant fencing has been carried out and installation of more efficient irrigation measures utilising the current flow have resulted in increases in stocking capacity on the lower reaches of the Station¹².

Ecological effects

Terrestrial ecology

- 43 The area to be irrigated forms a small part of the 2800ha of flat land on the Station. These areas are already extensively modified in accordance with 'best practice', in particular an area of 700ha surrounding the current irrigation

¹⁰ *Bethwaite v Christchurch City Council*, C085/93 at p4 to 5.

¹¹ *Lower Waitaki Management Society v Canterbury Regional Council*, C80/2009.

¹² Mr Glover, Statement of Evidence

command area¹³. The proposed extra 447ha of irrigated land falls within this 700ha of intensively farmed area.

- 44 The irrigation and associated farming activities this will allow, do not extend beyond practices and cultivation that are already being carried out on the farm. The security of water will simply provide the opportunity to increase reliability of feed for stock, improve capital performance per head of stock and allow summer trading stock to level out at 14,500 stock units¹⁴.

Surface water ecology

- 45 There are a number of surface water bodies on or running through the Station as follows:

- (i) Mistake River;
- (ii) Cass River;
- (iii) Lake Tekapo;
- (iv) Micks Lagoon;
- (v) Rapuwai Lagoon;
- (vi) Internal farm races; and

- 46 Detailed information in respect of the above surface water bodies is contained within the evidence of Mr McIndoe.¹⁵

- 47 The River is already subject to an irrigation take pursuant to the Historic Consent. The irrigation system proposed by the applicants, including installation of a gallery intake, will replace the current, largely inefficient, system of holding ponds and water races¹⁶. The system is efficient; there is no longer any requirement for additional 'divert' water and the applicants only require the additional abstraction allowance of 261l/s.

- 48 The section 42A report has expressed concern¹⁷ on the following factors (summarised):

¹³ Mr Glover, Statement of Evidence, page 2, paragraph 6

¹⁴ Mr Glover, Statement of Evidence, page 2, paragraph 6; Ms Robson, Statement of Evidence, page 9, paragraph 31

¹⁵ Statement of Evidence, page 11, paragraphs 32-41

¹⁶ Mr McIndoe, Statement of Evidence, page 14, paragraph 48; Mr Glover, Statement of Evidence, page 3, paragraphs 10-13

¹⁷ s42A report, page 15, paragraph 61

- (i) potential reduction in flow variability in the River, in particular during February and March.
- (ii) uncertainty of effects Applications on native aquatic species
- (iii) likely reduction in water quality
- (iv) No fish exclusion at the point of diversion and uncertainty regarding fish passage or habitat in the race system.
- (v) Potential for increased stock numbers to damage unfenced riparian boundaries.

49 Some of these concerns are addressed by the proposed installation of a gallery intake system in the riverbed. The gallery system is discussed in detail in Mr McIndoe's evidence¹⁸ and its principle advantage lies in the fact that it is particularly efficient, will allow accurate monitoring, and will be buried within the riverbed to form part of the natural landscape.

50 Mr Olsen address habitat issues with respect to Mistake River.

Construction effects

51 The gallery intake will feed into the pipeline proposed by CRC07236, eliminating any loss from soil transfer around the holding pond and water races. Mr McIndoe has concluded that the construction effect of installation of the pipeline under the riverbed is minor.¹⁹

Flow Variability

52 Mr McIndoe²⁰ and Mr Olsen²¹ deal with flow variability within their evidence. In particular, they discuss the proposed system of stepped take reduction set out in Table 10 of Mr McIndoe's evidence and proposed as an alternative to the 1:1 sharing regime. The conclusion is that such a system, combined with the variability in take associated with farming activities, will maintain the natural variability in flow. In particular Mr Olsen concludes that the effects of abstraction on the ecosystem will be as follows:

- (i) Fish species-less than minor
- (ii) Periphyton-relatively low risk of nuisance growths

¹⁸ Statement of Evidence, pages 14-16, paragraphs 48-55
¹⁹ Statement of Evidence, page 30, paragraph 120
²⁰ Statement of Evidence, page 26, paragraphs 98-112
²¹ Statement of Evidence, page 16, paragraphs 31-49

(iii) Invertebrates – not significantly affected

53 Mr Olsen states in his evidence that there is limited holding water that is suitable for adult trout downstream of the intake²². As such, it is unlikely that recreational anglers will use the area of river below the abstraction point and it has been established elsewhere within Mr Olsen's evidence²³ that the effects on existing fish species within the River will be less than minor.

Water Quality

54 Dr Robson will give evidence concerning the MWRL proposed thresholds and OVERSEER modelling for the property. There are some complications with the way in which the WQS deals with this property which Ms Robson will explain. The upshot of her evidence is, however, that the development of irrigation on this property will have no adverse effect whatsoever on the environment and no relevant receiving environment has been identified in the WQS. The thresholds adopted by the WQS are for Godley Peaks entirely arbitrary.

55 Mr Olsen and Dr Robson deal with onsite water quality issues. Mr Olsen particularly with respect to Mistake River.

56 Mitigation measures include irrigation buffer zones of a minimum of 20 metres ranging to 600 metres proposed from the water bodies set out in paragraph 52 above, along with an expansion of fencing on the property²⁴. The flat areas of the Station are already extensively fenced, including the boundaries of the important wetlands at Mick's Lagoon and Rapuwai Lagoon. A further phase of fencing is proposed to cover any currently unfenced riparian boundaries.

57 The protection of Mick's Lagoon and Rapuwai Lagoon is of principal concern to both Ngāi Tahu and DoC. The applicant has engaged in consultation with both parties and proposes to take the mitigation measures set out in paragraph 21(ii) and (iii) above.

58 In addition to mitigation of any risks the applicant has already identified, the applicant proposes to carry out a Farm Environmental Risk Assessment (FERA) prior to starting any abstraction regime. Any risks highlighted by this assessment will be addressed by way of appropriate mitigation measures included within the Farm Environmental Management Plan (FEMP) discussed in the evidence of Ms Robson.

²² Statement of Evidence, page 15, paragraph 29

²³ Statement of Evidence, page 22, paragraph 43

²⁴ Mr Glover, Statement of Evidence

Landscape

59 Dr Michael Steven has made a detailed assessment of the landscape implications of the applications. The issue here is really about buffers. Key aspects of the assessment are:

- (i) The site of the proposed activities is highly modified from its original state and should be considered quasi-natural improved farmland. As such, the landscape cannot be considered an 'outstanding natural landscape'
- (ii) Lake Tekapo itself is itself a modified environment and no visual effects arise from the juxtaposition of lake and developed farmland.
- (iii) There is no basis for assuming that the visibility of intensive farm development, including irrigation, on the Station is associated with adverse visual effects, regardless of the location from which the site is viewed.
- (iv) There is no justification for the creation of a buffer as recommended by Ms Bartlett and Mr Christopher Glasson.

CRC031175 - s104D1(a)

60 Whether adverse effects of the proposed activity on the environment are minor is to be determined after having regards to any mitigation of effects that might be achieved by imposing conditions. Adverse effects are to be considered in light of the mitigation measures that are proposed²⁵

61 It is my submission that the adverse effects of the proposed irrigation scheme, addressed above, are minimal in the first instance and taking account of the mitigation measures proposed, can be considered less than minor.

CRC073236

62 The 42A report states the actual and potential effects of the activity proposed under CRC073236 to be minor, subject to the proposed conditions. It is my submission that consent to CRC073236 should be granted in view of proposed mitigation measures, the ability of ECan to impose conditions governing the construction period and the limited effects that the activity will have on the surrounding environment.

²⁵ *Stokes v Christchurch City Council* [1999] NZRMA 409 EnvC

Further considerations

- 63 I will also address the question of whether the activity proposed by CRC031175 is contrary to the objectives and policies of the relevant regional plan below.

Plan provisions

Policies for High Natural-Character Water Bodies

Policy 29

By recognising the high natural character of the water bodies listed in Policy 2 through restricting the cumulative allocation to activities from them.

Policy 31

By discouraging the taking, using, damming and diverting of water for irrigation purposes from the tributaries of Lakes Tekapo.....identified in Policy 2 as having a high natural character worthy of a high level of protection.

Policy 32

In considering whether to grant or refuse consents to take, use, dam or divert water from the High Natural-Character Water Bodies, the consent authority will ensure that any taking, using, damming or diverting of water does not, by itself, or in combination with any other take, use, dam or diversion in the same area, have a more than minor adverse effect on:

- a. *the natural flow variability*
- b. *mauri, and ecosystems of indigenous species, including mahinga kai species*
- c. *indigenous vegetation within and adjacent to the water body*
- d. *natural character and landscape*
- e. *sites of wahi tapu*
- f. *sites of wahi taonga*
- g. *habitats including those of invertebrates, birds and fish*

- h. passage and spawning areas for trout and salmon
(where these species are currently found)*
- i. amenity values, including wild and scenic values*
- j. existing water quality*

Policy 33

In considering whether to grant or refuse consents to take, use, dam or divert water from the High Natural-Character Water Bodies the consent authority will recognise the need for taking, using, damming and diverting of water to be distributed among High Natural-Character Water Bodies to avoid the concentration of effects on any one water body.

- 64 The River is a mountain stream characterised by its steep, swift-flowing and turbulent nature²⁶, this view is confirmed by Mr McIndoe in his evidence²⁷. Mr McIndoe states that the River experiences peak flows in spring and early summer and low flows within the River in mid to late winter with a high degree of variability between peak and low flows.
- 65 When considering whether the proposed activity is one which is not contrary to the Policies 29 to 33 of the WCWARP, particular note should be taken of:

River flow

- 66 The agreed MALF is 517 l/s, however this low figure is likely to be influenced by low flows during the winter 'freeze'. There is a very high variability between summer (when the abstraction will occur) and winter flows.
- 67 Even under the Historic Consent, water abstraction from the River rises above the 10% threshold²⁸ and in any case, it should be recorded that the proposed irrigation period – October to April each year – does not occur during the typical low flow months. Irrigation demand for pastoral-based crops is at its highest in December-January and significantly lower in the shoulder seasons²⁹.
- 68 Mr McIndoe provides further comment of the likelihood of the River being 'flat-lined' as a result of water abstraction. His conclusion is that a combination of the

²⁶ Dean Olsen, Statement of Evidence, page 13, paragraph 31
²⁷ Statement of Evidence, page 11, paragraphs 32-34
²⁸ Ian McIndoe Statement of Evidence, page 20, paragraph 70
²⁹ Ian McIndoe Statement of Evidence, page 27, paragraph 100

proposed stepped reduction in abstraction, combined with the time of year water is taken, will mean that this does not occur.³⁰

Instream ecology

69 Mr Olsen provides considerable evidence on the effect of the proposed activity on the ecology and water quality of the River. Of particular note are the following points:

- (i) The existing nutrient levels within the River are naturally high
- (ii) The proposed activity will have less than minor effects on the current ecology of the River
- (iii) It is not anticipated that the water quality will significantly alter as a result of abstraction

70 Mitigation measures are proposed by the applicant to address any potential effects of the abstraction in any case, comprising irrigation buffer zones, ongoing monitoring, fencing setbacks from riparian border. These measures are set out in more details within the FEMP prepared and discussed by Ms Robson.

Part 2 of the Resource Management Act

Section 5

71 The purpose of the RMA as set out in Section 5 of the Act is as follows:

"5 Purpose

- (1) *The purpose of this Act is to promote the sustainable management of natural and physical resources.*
- (2) *In this Act, **sustainable management** means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while -*
 - (a) *Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*

³⁰

Statement of Evidence, page 29, paragraph 112

- (b) *Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*
- (c) *Avoiding, remedying, or mitigating any adverse effects of activities on the environment.”*

- 72 Section 5 is not the starting point for your evaluation under the RMA, but rather the finishing point to be considered in the exercise of your overall judgment.³¹
- 73 Applying section 5 involves a broad overall judgment of whether the proposal would promote the sustainable management of natural and physical resources. Section 5 allows for the balancing of conflicting considerations in terms of their relative significance or proportion in the final outcome.³²
- 74 Standing back and looking at this project in the exercise of a broad overall judgment, it is submitted that the application clearly achieves the purpose of the Act.
- 75 The proposal will not result in an increase in overall stock carrying capacity. It is really an augmentation of the existing farming operation. It occurs on land that is already under irrigation or alternatively already cultivated. The applications represent a consultative approach in terms of consultation and there is no significant opposition from any of the main parties involved.
- 76 In relation to the key issue of Mistake River there is comprehensive evidence on instream aquatic ecology which shows that the effects will be no more than minor.

Summary

- 77 This applicant is attempting to create a more efficient irrigation structure in the Station within an area which is already highly modified and is expanding on an existing take, not creating a new abstraction right.
- 78 The Mistake River forms the only commercially viable and efficient source of water for further irrigation.
- 79 The applicant has undertaken detailed site specific investigations in order to support the current applications and ensure the availability of water through MIC.

³¹ *Hahei Development Ltd v Thames-Coromandel DC*, Environment Court C176/03.

³² *Trio Holdings Ltd v Marlborough DC* [1997] NZRMA 97.

80 In my submission these applications should be granted on the term proposed.

DATED at Christchurch this 27 day of November 2009.



KG Reid / PJ Newland
Counsel for Applicant, Lone Star Farms Limited