

BEFORE ENVIRONMENT CANTERBURY

**TABLED AT HEARING**  
Date 22/10/2009

**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

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**LEGAL SUBMISSIONS**

21 OCTOBER 2009

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**Duncan Cotterill**  
Solicitor acting: Ewan Chapman  
PO Box 5, Christchurch

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



1. The Commissioners have raised issues pertaining to the nature and extent of a renewal application. This issue was raised in the context of discussions on the renewal of the Government Race application on Monday 19 October 2009. Clarification was sought with respect to two particular issues:
  - 1.1 Where a renewal was not being fully exercised prior to renewal, is the renewal application limited to the scale and intensity of the existing operation prior to application for a new consent; and
  - 1.2 If a further land area is to be irrigated on renewal does that fall within a renewal application under s124.
2. For the purposes of clarifying these issues I shall refer to the Government Race application. I have attached to these submissions:
  - 2.1 A Certificate of Existing Use marked "A"; and
  - 2.2 A copy of the application marked "B".
3. Unlike a land use activity the consent held is a right to take water pursuant to s14 of the RMA.
4. In this case the take is defined by an instantaneous rate:
  - 4.1 170 l/s; and
  - 4.2 A volumetric rate 103 mega litres of water per week; and
  - 4.3 From a take point with a specific map reference (s108:620464 and s109:681512); and
  - 4.4 For the purposes of stock water and irrigation.
5. On the evidence before you it is clear that water has been taken for both stock water and irrigation purposes.
6. Question 1 – has the consent been given effect to? The High Court in *Goldfinch v Auckland City Council* [1997] NZRMA 117 considered the issue of when a consent is given effect to. Morris J stated at page 124

*"The answers to whether a consent has been given effect to must, in my view, be one of degree and will vary from case to case depending on the facts found by the Tribunal and the answers to*



*questions such as, 'what is the nature of the work authorised by the consent', 'what in fact has been done, 'why has it not been completed, 'why has it been discontinued', 'was this discontinuation voluntary or justified'?"*

7. It is clear on the evidence that both aspects of the consent have been implemented.
8. Does the consent need to be exercised in full to have renewal rights pursuant to s124 for the overall allocation? Once a consent is deemed to be implemented that consent runs (without lapse) for the consent duration. In this case the consent was deemed to have a renewal date of 2001 being 35 years from the grant date.
9. Resource consents are permissive. It is not necessary that every available land area is irrigated; nor is it necessary for the full volume to be taken at all times.
10. Notwithstanding that the take consent does not specifically define the whole irrigable area, any one of the properties identified in the consent could have commenced irrigation within the confines of the take limits at any point for the duration of the consent and the 124 renewal period.
11. Policy 28 of the Plan requires applicants to satisfy water efficiency expectations of the plan. It also requires the consent authority to recognise the value of the investment; and to maintain the inclusion of the consent in any allocation limits and priority bands on the water body concerned.
12. In my submission it is the take consent in volumetric terms which defines the scope of the renewal.
13. Were the applicant to require a higher rate of take or request that an area outside the original consent area be irrigated from the renewal application then there would clearly be an issue of scope relating to the renewal. In this case, however, the applicants neither seek to vary the rate of take nor do they intend to depart from using the water for stock water and irrigation on the named properties in the original grant. Accordingly, this application and others like it where water efficiency means that a further irrigable area within a property boundary is to be irrigated on renewal that it falls squarely within the renewal limits.
14. Are there further effects to be assessed on renewal? Clearly this will be a matter of fact and degree. In some cases where applicants are seeking to renew the consent on exactly the same terms and conditions (the Irishman Creek example) there are no further effects for your consideration. The Committee is, however, under no obligation to automatically consent to a renewal. Even in this case you are fully entitled to assess the effects of the take on the surrounding environment and overall catchment. You are also required to assess the efficiency levels of this renewal application.



15. With respect to the Glens application, whilst the application is a renewal of a water take it is clear that because further land is to be irrigated within the confines of the take that that will give rise to your ability to assess these effects both on the water body and in terms of the water efficiency criteria (WQN9 version 2).
16. All of the takes were assessed on their “paper” limits in the context of modelling the cumulative effects on the environment of the existing takes.

Dated 21 October 2009

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Ewan Chapman



WAITAKI REGIONAL WATER BOARD

WTK691641B "A"

RIGHT IN RESPECT OF NATURAL WATER

NOTIFIED RIGHT NO. WTK 691642

PURSUANT to Section 21 (2) of the Water and Soil Conservation Act 1967, a Notified Right is hereby authorised by the Waitaki Regional Water Board.

to McAUGHTRIE, BLACKSTOCK AND AUBREY, C/- W.H. McAUGHTRIE,  
(name)

of "WILLOWBURN", OMARAMA  
(address)

FARMERS  
(occupation)

To continue the using of water for which there was an existing lawful right, notified to the Board on (date) 29 May 1969 and which use had lawfully been happening during the period of 3 years that ended with the 9th day of September 1966.

This right is authorised for the following purpose:

To take up to 103 megalitres of water per week from a water race between Map Reference S108:620464 and S109:681512 at a rate of 170 litres per second for stock water and irrigation.

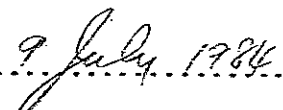
Notes For Guidance of Water Right Holders

1. This right is subject to all of the relevant provisions of the Water and Soil Conservation Act 1967, and any regulations made thereunder. It is the obligation of the grantee of this right to comply with all statutory requirements relating to the exercise thereof.
2. Only the holder of this right or his agent may operate this right and only for the actions specifically authorised by the right.
3. The holder may transfer this right to a new owner or occupier of the property on 14 days notice to the Authority, as provided for in Section 24A of the Water and Soil Conservation Act 1967.
4. The conditions of this right cannot be varied except as provided for in Section 24B of the Water and Soil Conservation Act 1967.
5. If the grantee fails to comply with the conditions of the right the Authority may require the grantee to cease exercising the right within 14 days notice, as provided for in Section 24G of the Water and Soil Conservation Act 1967.
6. The design and maintenance of any works relating to this right are to be to a standard adequate to meet all the conditions of this right. Construction standards shall be determined from time to time by the Chief Engineer, Waitaki Engineering Service. The grantee solely shall be responsible for the design and maintenance of such works.

For and on behalf of the Waitaki Catchment Commission  
and Regional Water Board

  
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L.A. PULLAR  
GENERAL MANAGER

  
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DATE

This Form must be returned before 1 APRIL, 1969.

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To: The Secretary  
Wadluki Catchment Commission  
P.O. Box 110,  
KURUY

NOTICE OF EXISTING DAMS, AND EXISTING USES  
AND DISCHARGES OF WATER

Pursuant to Section 21 (2) of the Water and Soil Conservation Act 1967, notice is hereby given that the following use/dischARGE of water was lawfully happening to the extent shown during the three year period that ended on 9 September, 1966. RONALD McNALLY BLACKSTOCK

Full Name of Applicant: William Hughes McLaughtrie Gordon Bue

Address: Inyanga

Occupation of Person giving Notice: FARMERS

Full legal Description (including an attached Locality and Site Plan) of land where dam is situated OR in respect of which the right is claimed:

DETAILED PLAN ATTACHED 3108 43459 79m 35cm

Date when Right Exercised: 1916/17

Extent to which Right was exercised during the period of three years that ended with the 9th day of September, 1966: USE LIMITED BY FLOOD AT INTAKE

Detail the legal right, and the duration, under which the water is taken or discharged: COMMISSIONER OF CROWN LANDS, PERMANENT

Source of Supply or Point of Discharge (Name of River or Stream, or Under-ground): UVAL BURN STREAM

Complete the following details where applicable:

Brief description of the use of water: STOCK WATER AND IRRIGATION

Period of year over which water used or discharged: From 1ST JAN. TO 31ST DEC To: \_\_\_\_\_

Maximum quantity of water used or discharged daily: \_\_\_\_\_

Maximum rate of draw off or discharge: 6 inches gals/hr.  
(Show capacity of pump, pipeline, intake or outlet) 6 inches cusecs.

Does your water use affect the quality of water remaining at the source of supply or elsewhere? NO

POLLUTED DISCHARGES

Type of Waste: N/A

Treatment before discharge (if any): N/A

If treated, state design capacity of treatment plant: N/A

Duration of Discharge: N/A hrs/daily.

Date: \_\_\_\_\_ Signature of Applicant: R.H.L. Blackstock  
or Authorised Agent: William Gordon Bue

NOTE: Declaration on reverse of form to be completed

