

TABLED AT HEARING

Date 18/11/2009

IN THE MATTER

of the Resource Management Act 1991

AND

IN THE MATTER

applications for resource consents to take and use
water in the Waitaki River Catchments

**MEMORANDUM OF COUNSEL ON BEHALF OF
MACKENZIE WATER RESEARCH LIMITED**

18 NOVEMBER 2009

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MAY IT PLEASE THE COMMISSIONERS:

1. The purpose of this memorandum is to address:
 - (a) Response to matters of clarification arising from the evidence of Dr Gamage
 - (b) Process from here and in particular dealing with:
 - (i) Further information sought by the Committee;
 - (ii) New information to be produced by submitters;
 - (iii) New information to be produced by Council officers;
 - (iv) Closing.

Clarification - Dr Gamage

2. A table of responses to matters of clarification sought by the Committee will be provided by the end of the week.
3. I wish to add that the answers given by Dr Gamage last week need to be understood in their proper context; a very inexperienced witness under intense interrogation in a 'foreign' language to him. A type of interrogation I have not seen before at a Council hearing (and not many Court hearings).
4. I do not complain about this. Indeed I look forward and expect this fulsome process continuing into the submitter cases.
5. But there does come a point where fairness dictates that answers in such circumstances must be properly contextualised; and where the materiality of perceived inadequacies taken into account.
6. I submit that the table to be provided should provide that context.

Preliminary Comment

7. Through no fault of any person, the presentation of the MWRL case has become fragmented, with the need to present rebuttal in advance of all the relevant material being presented or even considered by the experts for MWRL.

8. This fragmentation has been compounded by the need to address detailed criticism iteratively while at the same time endeavouring to establish the foundation for the WQS.
9. It was for this reason a request was made to have the senior experts for MWRL be available to respond to the queries that have arisen as the hearing progresses. You have rejected that request, but foreshadowed the possibility of such an opportunity in closing.
10. I acknowledge the indulgence of the Committee in allowing further time to present more information, but I apprehend MWRL may have been disadvantaged by giving its rebuttal prior to hearing the full case against it and without focusing on laying the foundation for its own case.
11. In short, MWRL is somewhat uncomfortably perched between two stools.
12. Accordingly I seek some clear directions for the process going forward.

Process Forward

13. In order to achieve clarity and fairness I seek the following orders:
 - (a) A full right of reply, including presentation of evidence by experts to matters raised in:
 - (i) The Spigel Review;
 - (ii) The Overseer Sensitivity Analysis and audit;
 - (iii) New evidence produced by submitters;
 - (iv) Updated reports of the Reporting Officers [I also repeat my submission that the Reporting Officers have a limited scope only to update their reports and that without leave, no new evidence may be produced];
 - (v) Any further information produced during the course of the hearing; and
 - (b) An opportunity for the Senior expert team to respond to questions of clarification at the conclusion of the hearing.
14. In relation to questions of fairness, MWRL has endeavoured on two occasions to provide a detailed response to issue raised by the s42A reports and the evidence (part only provided) of the submitters.

Accordingly submitters are well placed now to present their full cases, largely supported by s42A reports.

15. Given the sequential nature of evidence exchange (with more still to come) I submit there can be no prejudice by affording the Applicants a full right of reply with evidence as necessary to respond to new evidence or information.
16. In relation to timing I should indicate that I am involved in an Environment Court hearing in the first week of February.

Dated 18 November 2009

C N Whata

Counsel for Mackenzie Water Research Limited