

IN THE MATTER of the Resource
Management Act 1991

AND

IN THE MATTER of the Proposed
Canterbury Land & Water
Regional Plan

REBUTTAL STATEMENT OF EVIDENCE OF PHILIP HUNTER MITCHELL

13 February 2013

1. INTRODUCTION

Qualifications and Experience

- 1.1 I prepared a primary statement of evidence on behalf of Genesis Energy in respect of the Proposed Canterbury Land and Water Plan (“**Land and Water Plan**”). My qualifications and experience are set out in my primary statement.
- 1.2 I confirm that I have read the Code of Conduct for expert witnesses contained in the Environment Court Practice Note and that I agree to comply with it. I confirm that I have considered all the material facts that I am aware of that might alter or detract from the opinions I express. In particular, unless I state otherwise, this rebuttal evidence is within my sphere of expertise and I have not omitted to consider material facts known to me that might alter or detract from the opinions I express.

Scope of Evidence

- 1.3 In this statement of rebuttal evidence I address several matters raised in evidence of:
- Ms McIntyre on behalf of Nga Runanga of Canterbury, Te Runanga o Ngai Tahu and Ngai Tahu Property Ltd.
 - Mr Percy on behalf of Nelson Marlborough, North Canterbury and Central South Island Fish and Game Councils.
 - Mr Familton on behalf of the Director General of Conservation.
- 1.4 I have prepared this rebuttal evidence in accordance with the directions provided in Decision 4¹ of the Hearing Commissioners appointed to hear submissions on the Proposed Canterbury Land and Water Regional Plan (“**Proposed Plan**”). I have structured this statement by theme, and provide new material where a witness or witnesses have proposed relief which I do not agree with, and where I consider the reasons for my disagreement are not adequately covered by my primary statement.
- 1.5 The three matters I address are:

¹ Dated 16 November 2012.

- The mixing of waters;
- Prioritising specific objectives; and
- The National Policy Statement on Freshwater Management 2011.

2. THE MIXING OF WATERS (MS MCINTYRE)

2.1 Ms McIntyre has sought that Policy 4.52 read as follows (note: I have not included Ms McIntyre's changes in strikethrough as the proposed policy essentially requires the complete deletion and replacement of that contained in the Proposed Plan):²

The transfer of water from one catchment or water body to another, either directly or through the discharge of water onto land where it may enter water:

- (a) *Will be undertaken in locations and ways which are acceptable to Ngāi Tahu considering the whakapapa of the catchments involved, any potential effects of transferring or mixing waters on the natural character and ecology of the catchment and the effectiveness of any mitigation measures;*
- (b) *Will not result in the transfer of fish species, plant pests or unwanted organisms from one catchments to another; and*
- (c) *Will not result in any deterioration in water quality in the receiving catchment. [my emphasis added]*

2.2 I acknowledge that the mixing of waters between catchments is a matter of significant cultural concern. However, in my opinion the relief proposed by Ms McIntyre to address the matter is inappropriate as it requires approval for an activity from a non-statutory third party. It also doesn't account for the relevant considerations under the RMA when considering the activity being much broader than effects on cultural values, and it is inconsistent with the approach set out in the Canterbury Regional Policy Statement 2013 for managing the effects of infrastructure on cultural values ("RPS")³.

2.3 In paragraph 9.3 – 9.6 of my primary statement I proposed relief for Policy 4.52 which directs that the effects on cultural values of the transfer of water from one catchment or water body to another be avoided, and where that is not practicable, they be remedied or mitigated. This is consistent with the overall policy direction in the RPS.

² Statement of Evidence of S McIntyre, paragraph 4.26 – 4.29.
³ See for example Policy 5.3.9, 5.3.11 and 16.3.5 of the RPS.

3. **PRIORITISING SPECIFIC OBJECTIVES (Ms MCINTYRE; Mr FAMILTON)**

3.1 The evidence of Mr Familton and Ms McIntyre both seek to introduce provisions that specify the relative importance or weight that different objectives should be afforded⁴. I could not find specific wording in either statement of evidence as to how they considered these recommendations should be implemented.

3.2 I did not address the matter of “weight” in my primary statement, as in my opinion the approach proposed whereby no single objective is attributed any particular significance relative to another is the correct one. Because the circumstances of each of Canterbury’s catchments is different, it is not appropriate in my view to “pick winners”. It is appropriate that the objectives identify the environmental outcomes which are desired and in my view the proposed objectives do this.

4. **THE NATIONAL POLICY STATEMENT ON FRESHWATER MANAGEMENT 2011 (Mr PERCY)**

4.1 Mr Percy proposes a number of amendments to the Proposed Plan, which he considers are required to give effect to the National Policy Statement for Freshwater Management 2011 (“**NPSFW**”). I do not share Mr Percy’s concern, and consider the Proposed Plan (in combination with the Council’s other relevant regional plans which are cross referenced within it) gives effect to the NPSFW without the need for the changes proposed.

4.2 I do not consider it necessary to undertake a fine grained analysis of the alternative framework recommended by Mr Percy because in my opinion his methodology is incorrect. I have reached this conclusion because Mr Percy’s relief focusses exclusively on setting freshwater objectives and limits to provide for biophysical, cultural and recreational values, and ignores the important social and economic aspects of freshwater management.

4.3 For example, the “hierarchy of freshwater objectives specifying environmental outcomes” recommended by Mr Percy⁵ comprises the following:

⁴ Statement of Evidence of Herb Familton, paragraph 134; Statement of Evidence of Sandra McIntyre, paragraph 4.3.

⁵ Statement of Evidence of P H Percy, paragraph 59, and appendix 1, 4, 6 and 7.

- New Objective 3.5A which states:

Objective 3.5A

- (a) *Specific freshwater objectives and environmental outcomes for water bodies and their beds and margins:*
 - a. *Ensure diverse and abundant aquatic ecosystems of indigenous flora and fauna*
 - b. *protect habitat of salmonids (trout and salmon)*
 - c. *maintain amenity values*
 - d. *ensure water quality is safe for contact recreation*
 - e. *ensure water is suitable for secondary contact recreation*
 - f. *safe guard ngai tahu cultural values including mauri, mahniga kai, wahi tapu and wahi taonga*
 - g. *ensure water is suitable for stock drinking water supply*
 - h. *support the functioning and health of estuaries and coastal lagoons.*
 - (b) *In water bodies where the freshwater objectives and environmental outcomes in (a) are being achieved, the quality and quantity (including environmental flows) of the water, and the bed, are managed to at least maintain those values; and*
 - (c) *In water bodies where one or more of the freshwater objectives and environmental outcomes in (a) are not being achieved, further degradation of the water bodies is prevented and the quality and quantity (including environmental flows) of the water, and the bed, are progressively enhanced so that the freshwater objectives and environmental outcomes are restored and safeguarded within a defined timeframe.*
- The inclusion of amended versions of Tables 1a – 1c which specify water quality criteria for different management units. In addition to new water quality criteria, Mr Percy's amendments also introduce new columns which identify "critical values" and "purposes for management". Those new columns cross reference the matters listed in Objective 3.5A (a) above that Mr Percy considers to be applicable to each management unit.
 - A proposed new Schedule XX which lists the salmonid fishery, white water recreation, jet boating and game bird values considered by Mr Percy to be applicable to each of the region's water bodies.

4.4 No aspect of the freshwater objective hierarchy proposed by Mr Percy addresses provision for the use of water for social and economic wellbeing. Rather, Mr Percy's proposed approach is that consideration of the use of water only arises once limits providing for the biophysical, cultural and recreational values addressed in his

proposed hierarchy of freshwater objectives have been satisfied. Paragraph 59(g) of Mr Percy's evidence describes this approach using the following words:

Where the environmental outcomes are provided for and the limits are not exceeded, the balance of the freshwater resource may be available for consumptive use if all other RMA tests can be met. In this way, the limits define the amount of resource available.

- 4.5 In my opinion this approach is incorrect. The flow regime of, for example, an existing hydroelectricity generation scheme, or the importance of providing a specific reliability of irrigation water for existing primary industries are very important considerations when determining what the appropriate flow regime should be for a catchment. In the Waitaki Catchment for example, Mr Percy's framework would make the salmonid fishery of the hydro canals of the Tekapo Power Scheme a relevant consideration when setting the flow regime for the catchment but not the ongoing operation of the power scheme itself⁶. Provision for social and economic wellbeing is also an important part of setting freshwater objectives and limits themselves. They are not matters which are of secondary importance and only to be provided for once biophysical, cultural and recreational matters have been provided for.
- 4.6 The approach taken by Mr Percy to setting the freshwater objectives also cascades down to his recommended changes to the policies. For example, his proposed changes to Policy 4.43 (see below), in combination with his proposed inclusion of new Schedule XX expands significantly the water bodies in which the adverse effects of in-stream damming must be avoided. His proposal includes over a hundred water bodies considered to have recreational values worthy of such protection. The notified version of the Proposed Plan restricts this to selected "high naturalness" water bodies identified in Chapters 6 - 15. While I am not in a position to question the merits of the recreational values he attributes each water body in Schedule XX, the manner in which they are afforded the same high degree of protection as "high naturalness" water bodies is inappropriate in my opinion. For example, Mr Percy's recommended policy would direct that the adverse effects of damming water by the Tekapo Power Scheme must be managed to avoid adverse effects on the salmonid fishery in its

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Schedule XX contained in Appendix 7 of Mr Percy's evidence identifies the hydro canals of the Lake Benmore Catchment as "outstanding salmonid fishery" and the Tekapo River as "regional salmonid fishery."

hydro canals and / or the Tekapo River⁷. Policy 4.43 recommended by Mr Percy states (note: Mr Percy's changes in red, the Officers' Report changes in green):

4.43 The adverse effects of in-stream damming:

- (a) on high naturalness waterbodies identified in Sections 6-15 or in Schedule XX shall must be avoided; and
- ~~(a)~~(b) on the biodiversity values of wetlands must be avoided; and
- ~~(b)~~(c) on any other river complies with the environmental flow and allocation regime for that catchment and any adverse effects from the damming on flow variability in the river, sediment flows and nourishment of the coast, aquatic ecosystems, fish passage, indigenous flora and fauna, the habitats of trout and salmon, the habitat of nesting birds in braided rivers, any sites or values of significance to Ngāi Tahu, and any recreational or amenity values are, as a first priority, avoided or, where unable to be avoided, are remedied or mitigated.

4.7 Leaving aside the specific objectives, policies and methods proposed by Mr Percy, I also do not consider the relatively significant reconstructing of the Proposed Plan he recommends in Appendix 1 – 7 of his evidence is necessary, and in my opinion the current framework of the Proposed Plan is adequate to satisfy the requirements of the NPSFW.

P H MITCHELL

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Schedule XX contained in Appendix 7 of Mr Percy's evidence identifies the hydro canals of the Lake Benmore Catchment as "outstanding salmonid fishery" and the Tekapo River as "regional salmonid fishery".