

IN THE MATTER

of the Resource Management Act 1991

AND

IN THE MATTER

of submissions and further submissions by Rangitata Diversion Race Management Limited to the proposed Canterbury Land & Water Regional Plan

STATEMENT OF REBUTTAL EVIDENCE OF NIGEL ROLAND BRYCE

1.0 INTRODUCTION

1.1 My name is Nigel Roland Bryce. I am an Associate Director and Planner at Ryder Consulting Limited, an environmental consulting business. My qualifications and experience were outlined in my evidence in chief.¹

1.2 I repeat the confirmation given in my evidence in chief,² that I have read and agree to comply with, the Code of Conduct for Expert Witnesses, as set out in the Environment Court's Consolidated Practice Note.

2.0 SCOPE OF EVIDENCE

2.1 The purpose of this brief of evidence is to respond to the evidence of the following witnesses:

- Mr Phillip Percy on behalf of Nelson/Marlborough, North Canterbury, and Central South Island Fish and Game Councils ('**F&G**');
- Ms Sandra McIntyre on behalf of Nga Runanga of Canterbury, Te Runanga O Ngai Tahu and Ngai Tahu Property Limited ('**Ngai Tahu**'); and
- Mr Herbert Familton on behalf of the Director General of Conservation ('**DoC**').

2.2 I discuss various matters raised by these witnesses in turn below.

3.0 EVIDENCE OF MR PHILLIP PERCY

3.1 Mr Percy at his paragraph 165 of his statement of evidence dated 4th February 2013 addresses F&G's submission³ to Rule 5.96. The relief sought to this rule is set out in Appendix 4 of his statement of evidence. While I do not propose to address in detail the specific issue raised in paragraph 165 relating to the use of the Proposed National Environmental Standard for Environmental Flows⁴ (given that the Rangitata Diversion Race Management Limited⁵ will address this in Hearing 3 as this relates to Chapter 13), I do note that the pNESEF has no legal status and as such there is no requirement for the Hearings Committee to consider its contents. Notwithstanding this, my main concern with this part of Mr Percy's evidence and addressed in this rebuttal relates to the lack of specific analysis provided by Mr Percy in addressing the deletion of the first part of Rule 5.96 (as this relates

¹ Dated 4th February 2013.

² at paragraph 2.3 of my evidence in chief.

³ 347.154

⁴ Herein referred to as '**pNESEF**'

⁵ Herein referred to as '**the RDRML**'

to replacement consents affected by provisions of section 124 of the Resource Management Act 1991).

3.2 I note that this was not a matter addressed in any specific detail within F&G's original submission and Mr Percy provides no justification as to why he considers this change is appropriate (over and above the analysis already provided by the Reporting Officer). In my opinion, this is a notable weakness in his evidence, especially given the repercussions for those existing takes located within over-allocated catchments, should this part of F&G's relief be adopted by the Commissioners. Put another way, I think it is inappropriate to recommend an amendment with far reaching implications, and to not have explained why such an amendment is acceptable, and how it, better than any other approach, accords with the Act's purpose.

3.3 For their part, the Reporting Officers⁶ address this matter as it relates to a submission by EDS and states:

"EDS opposes referring to Section 124, as it is a provision to ensure abstractions can continue while an application for a replacement consent is processed. The submission notes that while Sections 124A – 124C gives such an application priority over other applications for the same resource, a plan can remove this priority. It is considered that this Rule does not assure the granting of replacement consents, as the activity is classified as a restricted discretionary activity and not permitted. Accordingly no change is recommended except that Section 124 is amended to 124 to 124C."

3.4 Mr Percy fails to address how this relief may impact upon any replacement take located within an over-allocated catchment. This is particularly important given that deleting reference to the front part of clause 1 to Rule 5.96 means that replacement consents would be caught by Rule 5.98 (and be provided for as a prohibited activity). Given the lack of assessment of this matter within Mr Percy's evidence, and the fact that the change is reflected within Appendix 4 to his evidence, I can only assume that he is aware of and supports this potential outcome.

3.5 In my opinion, the deletion of this sentence directly conflicts with higher order statutory planning documents such as the National Policy Statement for Renewable Electricity Generation 2011,⁷ and the Canterbury Regional Policy Statement 2013⁸, as well as the policy direction of the pL&WRP itself (as this relates to reconsement processes).

3.6 The NPS REG includes an Objective which seeks *"[t]o recognise the national significance of renewable electricity generation activities by providing for the development, operation, maintenance and upgrading of new and existing renewable electricity generation activities, such that the proportion of New Zealand's electricity generated from renewable energy sources increases to a level that meets or exceeds the New Zealand Government's national target for renewable electricity generation."*

3.7 Restricting the potential for hydroelectric power schemes to reconsement their associated takes would not give effect to the ongoing operation of these schemes. I reiterate, for completeness, the advice in my evidence in chief that the RDR supports a hydroelectric power scheme.

3.8 Policy 7.3.11 (Existing activities and infrastructure) of the RPS, states:

"In relation to existing activities and infrastructure:

- (1) to recognise and provide for the continuation of existing hydro-electricity generation and irrigation schemes, and other activities which involve substantial investment in infrastructure; but*
- (2) require improvements in water use efficiency and reductions in adverse environmental effects of these activities, where appropriate."*

⁶ at page 280.

⁷ Herein referred to as 'the NPS REG'

⁸ Herein referred to as 'the RPS'

- 3.9 I further note that the Principal reasons and explanation supporting Policy 7.3.11 states *“Policy 7.3.11 takes a pragmatic approach to existing hydro-electricity generation and irrigation schemes, and other activities which involve substantial investment and infrastructure, by recognising them and providing some certainty in regional plans that these activities can continue. This may include provision for these activities within environmental flow and water allocation regimes.”*
- 3.10 In my opinion, the proposed amendment suggested by Mr Percy does not give effect to the policy direction provided by Policy 7.3.11 of the RPS.
- 3.11 Further, as noted in paragraph 3.5 above, the relief sought by Mr Percy to Rule 5.96 does not reflect the intent of Section 1.2.6 of the pL&WRP (as amended by the Officers’ recommendations), which specifically recognises and provides for consenting of existing takes. Nor is it consistent with Policy 4.48 of the pL&WRP, which provides for the consenting of hydroelectric power generation and irrigation schemes and their associated water takes. Further, the relief sought would be contrary to the catchment specific policy provisions relating to the replacement of existing takes under Policy 13.4.2 of Section 13 (Ashburton). While Policy 13.4.2 specifically excludes any new takes until a minimum flow at the State Highway 1 recorder is raised to 10,000L/s, it still provides for the ability for existing water permits to be replaced.
- 3.12 It is important to reinforce here that the sentence sought to be deleted by Mr Percy, does not provide for existing consented takes simply to be ‘rolled over’. This is a point reinforced by the Reporting Officers. The sentence simply provides for an avenue for existing consented takes to be renewed as a restricted discretionary activity. Matters such as the amount of water taken and whether this is reasonable are key considerations over which the Council has restricted its discretion (clause 2). In my opinion, this does not mean that an application to renew the resource consents associated with an existing take will be ‘rubber stamped’, but rather, will be subject to an assessment that determines whether it is appropriate and is a sustainable use of this water resource.
- 3.13 Therefore, the relief sought by F&G and as reflected within the evidence of Mr Percy (Appendix 4) creates a clear policy conflict with those provisions within the pL&WRP, the NPS REG and the RPS that specifically address consenting processes and make provision for applications for 'replacement' water permits. I therefore do not support this specific change provided to Rule 5.96(1) as reflected within Appendix 4 of Mr Percy’s evidence in chief. Indeed, in my opinion, adopting the relief he recommends would lead to an outcome that is contrary to the Act’s purpose.

4.0 EVIDENCE OF MS SANDRA MCINTYRE

- 4.1 Ms McIntyre at Section 7 (paragraphs 7.1 to 7.2) of her statement of evidence dated 4th February 2013 addresses issues around protection of braided rivers and wetlands as provided for under Policy 4.41. I note that the RDRML made a specific submission to this policy and this is addressed in my evidence in chief.⁹
- 4.2 Ms McIntyre at paragraph 7.1 states *“Te Rūnanga supports rules 5.129 to 5.131 controlling damming of water bodies, but requests amendments to policies on damming and diversion of water bodies. In particular, the submitter requests that Policy 4.41 be replaced by a policy precluding damming on main stems or significant tributaries of all braided rivers, as well as on high naturalness water bodies. Mr Duncan’s evidence discusses the importance of braided river systems and the CRPS specifically provides for maintenance of the natural character of these rivers by avoiding damming (Policy 7.3.2). Policy 4.41 currently does not require that damming be avoided in any river. Although some of the matters listed in the policy address some components of the natural character of braided rivers, the policy does not clearly identify the full range of effects and does not give any prominence to braided rivers over other hill-fed rivers. This deficiency is not corrected by the amendments*

⁹ Section 8.0 of my evidence in chief.

recommended in the section 42A report (Recommendation R4.41) and I believe that the more directive policy requested by Te Rūnanga would be more consistent with the CRPS. In view of the degree of significance of braided river systems as expressed by Mr Duncan, I consider there would be justification in making damming of the main stem of a braided river or a significant contributing tributaries (as defined in the requested policy) a prohibited activity." (My emphasis added)

- 4.3 I note that the Reporting Officer, in addressing Ngai Tahu's and the submissions of others as this relates to Policy 4.41 states "*[i]t is considered the existing Policy strikes an appropriate balance by setting a high threshold if damming is to occur and that a new policy is not required.*"
- 4.4 I have addressed Policy 4.41 in my evidence in chief, and in particular the 'high threshold' established within Policy 4.41 (as amended).¹⁰ I do not repeat that evidence here, other than to reinforce that the policy establishes a particularly high threshold.
- 4.5 I also note that the definition of 'dam' has been amended to specifically include the damming of the 'full width' of a water body. Such an amendment assists to remove doubt as to whether intake structures, which may occupy only a part of the riverbed are included in the definition. As such, in relation to the relief sought by Ms McIntyre, I have assumed that she is referring only to activities encompassing the damming of the full width of a water body and not lesser activities that are not otherwise caught by Policy 4.41.
- 4.6 I note that Ms McIntyre provides specific reference to Policy 7.3.2 in supporting the inclusion of a policy that avoids damming of main stems of braided rivers. While I agree that Policy 7.3.2 is of particular relevance to this issue, the manner in which it is being used to argue the relief sought is, in my opinion, inaccurate and does not reflect the intent of Policy 7.3.2 or for that matter other relevant supporting policies of the RPS (including Policy 7.3.1 and 7.3.9).
- 4.7 Policy 7.3.2 (Natural character of braided rivers and lakes) of the RPS seeks "*[t]o maintain the natural character of braided rivers, and of natural lakes by:*
- (1) subject to clause (3), by prohibiting the damming of each of the main-stem of the Clarence, Waiau, Hurunui, Waimakariri, Rakaia, Rangitata and Waitaki rivers,*
 - (2) in respect of every other braided river in the region, by ensuring any damming of a braided river does not reduce the braided character of the main stem;*
 - (3) in respect of every natural lake by limiting any use of the lake for water storage so its level does not exceed or fall below the upper or lower levels of its natural operating range;*
 - (4) clauses 1 – 3 do not restrict continued operation, maintenance or upgrading of any water storage scheme, irrigation scheme or hydro - electricity generation scheme for which lawful consent was in effect when this regional policy statement becomes operative, subject to the activity:*
 - a) remaining a similar scale, intensity and character; and*
 - b) not resulting in any additional significant adverse effect on the natural character of the river or lake."*
- 4.8 Policy 7.3.2(1) only seeks to exclude damming on the main-stem of the listed rivers. Policy 7.3.2 does not seek to extend the prohibition further to cover the main stems of 'all' rivers or their tributaries as part of a catch all policy.
- 4.9 I note that the Principal reasons and explanation supporting Policy 7.3.2 states "*Policy 7.3.2 applies in addition to Policy 7.3.1. As such, it does not preclude a regional plan from prohibiting damming of any other river or stream in the region, where doing so is necessary to achieve the purpose of the RMA.*" I read this to mean that it may be appropriate for other rivers to have damming activities also excluded, however this would largely follow on from the identification of natural character values of fresh water bodies as prescribed within Policy 7.3.1 and Policy 7.3.9 and implemented through a Regional Plan (via supporting methods in the RPS).
- 4.10 In my opinion, avoiding damming activities on all main stem rivers or significant tributaries across the region has the potential to also cut across the intent of Policy 7.3.1 (which links to Policy 7.3.9) of the RPS. Policy 7.3.9 seeks to promote an integrated solution to fresh water

¹⁰ Section 8.0 of my evidence in chief.

management in a catchment or across catchments. Policy 7.3.9 implements all the fresh water objectives in the RPS, but in particular Objective 7.2.2. Objective 7.2.2 introduces the concept of parallel processes as a way to manage water resources in the region. In relation to pL&WRP, Schedule 16 (the Regional Concept Plan) seeks to provide an overview of this integrated management approach as currently reflected in the pL&WRP.

4.11 In giving effect to the RPS policy direction on achieving an integrated solutions approach, I fail to see the pL&WRP could give effect to the policy direction of this higher order statutory planning instrument through prohibiting damming on all main stem rivers or significant tributaries across the region. I see such an outcome potentially frustrating the ability to:

1. achieve an integrated approach by managing of the whole catchment (and possibly across catchments) using the development of additional irrigation or hydroelectric power generation, or improvements in reliability of supply of water, as catalysts that enable other water management issues in the catchment or across catchments to be addressed;
2. provide for the region's social and economic well-being by the development of infrastructure set out in (1). I expect that the development of such infrastructure would support the region's communities and associated industries; and
3. achieve the sustainable management of the region's freshwater by limiting the ability for outcomes in (1) to act as a catalyst for the development and implementation of mechanisms to address other existing environmental considerations that may be faced within or across catchments.

4.12 I note that the Principal reasons and explanation supporting Policy 7.3.1 states "*[i]t is also a fundamental part of achieving the purpose of the RMA that water is made available for abstraction for irrigation, hydro-electricity generation and other activities, to provide for our economic and social well-being. If we are to shift to using the alpine rivers as a more sustainable source of water for this activity, and relieve the effects current abstraction is having on foothill and lowland catchments; then it is likely that some catchments with relatively high natural character values or character which is modified but highly valued, will need to be modified through large-scale abstraction, diversion, damming or storage of water.*" As noted in paragraph 4.11 above, the relief sought by Ngai Tahu and supported by Ms McIntyre would not provide for the region's economic and social well-being.

4.13 As such, in my opinion the approach advanced by Ms McIntyre:

1. Cuts across the policy outcomes of a higher order statutory planning instrument (the RPS), or at the very least does not give effect to the RPS in accordance with section 67(3)(c) of the Act;
2. Has the potential to hinder important users, such as the RDR, which has commensurate flow on effects on the social and economic well-being of those communities (and industries) that rely upon the abstraction and use of water; and
3. Given (1) and (2) above, is not an approach that would give effect to the Act's purpose.

4.14 Therefore, in my opinion, the relief sought by Ngai Tahu and Ms McIntyre at paragraph 7.1 of her evidence should not be accepted.

5.0 EVIDENCE OF MR HERBERT FAMILTON

5.1 Mr Familton at paragraph 134 of his statement of evidence dated 4th February 2013 recommends changes to "...support some sort of reference to the first and second and order priorities of the CWMS in this section. This is a matter that Council must give particular regard to under section 63 of the ECan Act. I would recommend a reference to the principles of the CWMS..." Mr Familton notes that the submission by the Hamblett's (submission 350.2) provides the Council with scope to

include this relief. It therefore does not appear that this formed part of DoC's submission and further submission to the pL&WRP.

5.2 Mr Familton at page 64 (Appendix A) requests the following amendment to Section 3.0:

"The Objectives of this Plan must be read in their entirety and considered together. No single Objective has more importance than any other, but in any particular case some Objectives may be more relevant than others, as a consequence of, but not limited to, CWMS priorities. CWMS priorities give primary priority to the environment, customary uses, community supplies, and stock water and secondary priority considerations to irrigation, renewable electricity generation, recreation, tourism and amenity."

5.3 I note here that there are no specific objectives within the pL&WRP that include reference to the prioritisation of first and second order values in the same way provided for within Policy 4.4 of the pL&WRP. Therefore the proposed amendments adds little in providing further clarity to the issue of weight to be given to specific objectives.

5.4 As I stated in my evidence chief,¹¹ the amendments suggested by Genesis to Section 2.1¹² (which relate to the need for an overall broad judgement to be made as to how conflicting objectives fit within the overall scheme of the Regional Plan) is the most appropriate response to adopt when addressing competing objectives. In my opinion, this reinforces the approach adopted by the RPS, being a higher order statutory planning instrument to the pL&WRP, that "[i]f there is a perceived conflict between competing policies within the Canterbury Regional Policy Statement, the provisions of all the applicable chapters will be evaluated and applied on a case-by-case basis."¹³

5.5 Put another way, to single out those objectives that include reference to 'first order' priorities in the pL&WRP would not give effect to the way in which the policy framework of the RPS is to be considered (being the document that introduced the first and second priority order values from the Canterbury Water Management Strategy). In my opinion, it would be inappropriate to elevate specific objectives, in the manner proposed by Mr Familton, as this would not promote an overall broad judgment to be made in weighing these competing considerations as embodied within the RPS and included within amended Section 2.1 of the pL&WRP.

5.6 As such, it follows that the amendment advanced by Mr Familton should not, in my opinion, be accepted by the Hearings Panel.

Nigel Roland Bryce, B.REP, NZPI.

13th of February 2013

¹¹ Paragraph 12.5 of my evidence in chief.

¹² Further submission F623.25

¹³ The Introduction Section (1.3.1 Legislative context) of the RPS.