

**IN THE MATTER** of the Resource  
Management Act 1991

**AND**

**IN THE MATTER** of a submission and  
further submissions by  
**TrustPower Limited** on  
the **Proposed**  
**Canterbury Land and**  
**Water Regional Plan**

**STATEMENT OF REBUTTAL EVIDENCE OF RICHARD JONATHON TURNER  
ON BEHALF OF TRUSTPOWER LIMITED**

**1. INTRODUCTION**

1.1 My full name is Richard Jonathon Turner. My qualifications and experience are set out in my Evidence in Chief dated 4 February 2013.

1.2 I confirm that I agree to comply with the Environment Court's Code of Conduct for Expert Witnesses contained in the Practice Note 2011. I confirm that the issues addressed in this statement of rebuttal evidence are within my area of expertise (unless I state otherwise). I have not omitted to consider any material facts known to me that might alter or detract from the opinions I express in this evidence.

**2. SCOPE OF EVIDENCE**

2.1 In this statement of rebuttal evidence, I provide comment on matters raised in the evidence of:

- Ms McIntyre on behalf of Ngā Runanga of Canterbury, Te Runanga o Ngāi Tahu and Ngāi Tahu Property Limited ("**Ngāi Tahu**");
- Mr Familton on behalf of the Director-General of Conservation; and
- Mr Percy on behalf of the Nelson / Marlborough, North Canterbury and Central South Island Fish and Game Councils ("**Fish and Game**").

2.2 This rebuttal evidence has been prepared in accordance with the directions provided in Decision 4<sup>1</sup> of the Hearing Commissioners appointed to hear submissions on the Proposed Canterbury Land and Water Regional Plan ("**Proposed Plan**").

### 3. **MS MCINTYRE – NGAI TAHU**

#### ***Natural Character***

3.1 Ms McIntyre recommends<sup>2</sup> that Objective 3.9 be redrafted to focus on the natural character values of all waterbodies, rather than just the values of alpine rivers. In addition, Ms McIntyre recommends that the objective focusses on the "*retention or enhancement*" of natural character values as she considers this approach to be more consistent with Section 6(a) of the Resource Management Act 1991 ("**RMA**") and to better give effect to Policies 7.3.1 and 7.3.2 of the Canterbury Regional Policy Statement 2013 ("**RPS**").

3.2 As I have previously discussed,<sup>3</sup> I agree that it is generally appropriate for Objective 3.9 to apply to the natural character values of all waterbodies. However, I do not agree with the recommendation of Ms McIntyre that Objective 3.9 should seek the "*retention or enhancement*" of natural character values. In this respect, I consider the objectives and policies in Chapter 7 of the RPS concerning the management of natural character to have a much broader focus than just the protection, retention or enhancement of natural character values.<sup>4</sup> Indeed, the direction that natural character values be improved in the RPS is limited to those circumstances where degradation has occurred to unacceptable levels.<sup>5</sup>

3.3 In addition, the objectives and policies in the RPS<sup>6</sup> recognise that modifications to natural character values may be appropriate or necessary in certain circumstances. This approach should also be reflected in the relevant objectives of the Proposed Plan concerning the management of natural character values.

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<sup>1</sup> Dated 16 November 2012.

<sup>2</sup> Paragraph 4.14 of McIntyre Evidence in Chief – 4 February 2013.

<sup>3</sup> Paragraph 6.3 of Turner Evidence in Chief – 4 February 2013.

<sup>4</sup> Paragraphs 6.4 and 6.5 of Turner Evidence in Chief – 4 February 2013.

<sup>5</sup> Policy 7.3.1(3) of the RPS.

<sup>6</sup> Objective 7.2.1(2) and Policy 7.3.2(4) of the RPS.

- 3.4 In light of this, I do not support the relief proposed by Ms McIntyre with respect to the retention or enhancement of natural character values and do not agree that it "*better gives effect to*" Policies 7.3.1 and 7.3.2 of the RPS. Rather, I continue to believe that the amendments proposed to Objective 3.9 in **Annexure A** of my Evidence in Chief more appropriately reflect Section 6(a) of the RMA and the relevant objectives and policies of the RPS.

**Objective 3.16**

- 3.5 Ms McIntyre recommends<sup>7</sup> that Objective 3.16 be redrafted to focus solely on existing infrastructure, with reference to the need for ongoing improvements in water use efficiency and reductions in the adverse environmental effects of infrastructure. Ms McIntyre's justification for this recommendation is based on the need for an objective that 'reflects' Policy 7.3.11 of the RPS.
- 3.6 In my opinion, redrafting Objective 3.16 to solely focus on existing infrastructure would be inconsistent with the National Policy Statement on Renewable Electricity Generation 2011 ("**NPSREG**") and the RPS, both of which seek to provide for the development of new infrastructure.
- 3.7 A discussion on the relevant provisions of the NRSREG, including its directives for regional plans to provide for the development of renewable electricity generation infrastructure, is provided in my Evidence in Chief.<sup>8</sup> With respect to the RPS, a number of its objectives and policies<sup>9</sup> explicitly seek to provide for the development of various forms of new infrastructure. These provisions include methods directing regional plans to set out objectives and policies to provide for the establishment of new infrastructure.<sup>10</sup>
- 3.8 As such, I consider it entirely appropriate and consistent with the directives of the NPSREG and the RPS for Objective 3.16 to promote the operation, maintenance, upgrading and development of existing and new infrastructure in the Canterbury Region. Whilst Policy 7.3.11 of the RPS is relevant to Objective 3.16 (as identified by Ms McIntyre), it is only one of several provisions that need to be considered in formulating the objective statement concerning the management of infrastructure.

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<sup>7</sup> Paragraph 4.15 of McIntyre Evidence in Chief – 4 February 2013.

<sup>8</sup> Paragraphs 3.3 to 3.7 and 12.4 of Turner Evidence in Chief – 4 February 2013.

<sup>9</sup> Including Objective 5.2.2 and Policies 5.3.2, 5.3.6, 5.3.9, 5.3.10, 16.3.2, 16.3.4 and 16.3.5 of the RPS.

<sup>10</sup> Including Method (1)(a) under Policy 5.3.6 and Method (1)(d) under Policy 16.3.5 of the RPS.

Therefore, I consider the recommendation of the Reporting Officers with respect to the retention of Objective 3.16 (but with minor drafting edits as set out in **Annexure A** of my Evidence in Chief) to be entirely appropriate and necessary in order to give effect to the RPS and the NPSREG.

**Policy 4.52**

- 3.9 Ms McIntyre recommends<sup>11</sup> that Policy 4.52 be redrafted so that transfers of water from one catchment or waterbody to another only be undertaken in *"locations and ways which are acceptable to Ngāi Tahu considering the whakapapa of the catchments involved"*.
- 3.10 While I accept the evidence that the mixing of waters is a significant cultural concern to Ngāi Tahu, the recommended redrafting of Policy 4.52 could be interpreted as giving Ngāi Tahu a right of veto over any proposals involving the transfer of water (including the re-consenting of existing transfers of water). That is, the policy suggests that transfers of water not be undertaken or approved when the locations and conveyance mechanisms are not acceptable to Ngāi Tahu.
- 3.11 In my opinion, the recommended redrafting of Policy 4.52 is inconsistent with the approach to the management of adverse effects on cultural values specified in the RPS. Given that most inter-catchment transfers of water will likely involve medium to large scale hydro-electricity generation or irrigation infrastructure,<sup>12</sup> it is relevant to consider Policies 5.3.9, 5.3.11 and 16.3.5 of the RPS. These policies specify that the adverse effects of regionally significant infrastructure on significant natural and physical resources, along with cultural values, should be avoided. However, where adverse effects cannot practicably be avoided, the policies specify that effects should be remedied or mitigated.
- 3.12 Furthermore, Method (1)(c) under Policy 7.3.13 of the RPS details that Environment Canterbury ("**ECan**") will engage with Ngāi Tahu to resolve issues related to the unnatural mixing of water sourced from different water bodies. The method certainly does not suggest or imply that issues related to the mixing of water will be resolved in the manner recommend by Ms McIntyre with respect to Policy 4.52.

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<sup>11</sup> Paragraphs 4.26 to 4.29 of McIntyre Evidence in Chief – 4 February 2012.

<sup>12</sup> Such as the Coleridge Hydro-Electric Power Scheme, Waitaki Power Scheme or Rangitata Diversion Race.

- 3.13 In light of this, I consider that Clause (a) of Policy 4.52 should be redrafted to more appropriately reflect the approach to the management of adverse effects on cultural values specified in the RPS – as per the recommended relief set out in **Annexure A** to my Evidence in Chief.

***Point Source Discharges***

- 3.14 Ms McIntyre recommends<sup>13</sup> a new policy be inserted into the Proposed Plan before Policy 4.10 related to the management of point source discharges.
- 3.15 The drafting of the policy recommended by Ms McIntyre is difficult to understand. In this respect, the policy firstly suggests a preference for the land-based treatment of discharges – implying that other treatment options may be suitable depending on the particular circumstances. However, the policy then identifies only two exceptions to the requirement for land-based treatment (being treated stormwater and incidental contaminants). I have discussed this proposed policy with Ms McIntyre.<sup>14</sup> Based on my conversation with Ms McIntyre, I understand that the intent of the policy is for all discharges of contaminants to water to progressively transition to discharges to land over time – with the exceptions being treated stormwater and incidental contaminants. Given this understanding, it is my opinion that the recommended policy will have significant implications for a large number of existing discharges of water and contaminants, and infrastructure.
- 3.16 Notwithstanding the fact that no evidence has been provided by Ms McIntyre on the implications of her recommended policy, the policy appears to adopt a much stricter regime than that set out in Method (2) accompanying Policy 7.3.6 of the RPS – which states that ECan will engage with Ngāi Tahu in the setting of water quality standards to identify fresh water bodies with significant cultural values and the associated restrictions required on the discharge of contaminants. Neither Policy 7.3.6 nor its accompanying methods imply that effectively all discharges of contaminants (including water) to water will be prohibited.
- 3.17 Furthermore, I consider the drafting of the recommended policy has overlooked Policy 4.48 of the Proposed Plan and Policy 7.3.11 of the RPS – which both state that existing hydro-electricity generation and irrigation schemes (including their associated discharges) should be considered as part of the existing environment.

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<sup>13</sup> Paragraphs 5.12 – 5.17 of McIntyre Evidence in Chief – 4 February 2012.

<sup>14</sup> 13 February 2013.

While I accept that these provisions include caveats relating to improvements in water use efficiency and reductions in adverse environmental effects, it is difficult to conceive that large scale discharges associated with existing hydro-electricity generation and irrigation schemes should be restricted from directly discharging water to water – especially given such discharges are fundamental to the operation of such schemes.

- 3.18 In light of this, it is my opinion that the relief proposed by Ms McIntyre with respect to the management of discharges of contaminants goes well beyond the regime envisaged in the RPS. As such, I consider that the relief proposed by Ms McIntyre to be inappropriate and recommend that it not be accepted.

**Policy 4.41**

- 3.19 Ms McIntyre also recommends<sup>15</sup> the redrafting of Policy 4.41 to make the damming of the main stem of a braided river or a "*significant contributing tributary*" a prohibited activity. She observes that Policy 7.3.2 of the RPS specifically provides for the maintenance of the natural character of braided rivers by the avoidance of damming.
- 3.20 I agree with Ms McIntyre that Policy 7.3.2 of the RPS is directly relevant to Policy 4.41. However, Policy 7.3.2 only specifies that the damming of the main stem of the Clarence, Waiau, Hurunui, Waimakariri, Rakaia, Rangitata and Waitaki Rivers be prohibited.<sup>16</sup> For all other braided rivers, the focus of Policy 7.3.2 is on any damming proposals not reducing the braided character of the main stem. However, both of these directives in Policy 7.3.2 are subject to a qualification<sup>17</sup> that any prohibition or controls on damming activities should not restrict the continued operation, maintenance or upgrading of existing water storage, irrigation or hydro-electricity generation schemes (subject to controls on the scale and effects of the development).
- 3.21 In effect, Policy 7.3.2 of the RPS only proposes that a prohibition be imposed on new damming activities on the main stems of the Clarence, Waiau, Hurunui, Waimakariri, Rakaia, Rangitata and Waitaki Rivers. As such, it is my opinion that amending Policy 4.4.1 so that it seeks to manage all braided rivers in the same

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<sup>15</sup> Paragraph 7.1 of McIntyre Evidence in Chief – 4 February 2013.

<sup>16</sup> Policy 7.3.2(1) of the RPS.

<sup>17</sup> Policy 7.3.2(4) of the RPS.

manner as the main stems of the seven major rivers of the Canterbury Region directly contradicts the management expectations for braided rivers provided in Policy 7.3.2 of the RPS. Therefore, I do not support the relief recommended by Ms McIntyre with respect to Policy 4.41 and recommend that it not be accepted.

#### 4. MR FAMILTON – DIRECTOR-GENERAL OF CONSERVATION

##### ***Canterbury Water Management Strategy***

- 4.1 Mr Familton recommends<sup>18</sup> that further text be added to the explanatory paragraph above the objectives in Section 3 of the Proposed Plan. The recommended text suggests that some objectives in the Proposed Plan may be more relevant than others as a consequence of the priorities in the Canterbury Water Management Strategy ("**CWMS**"). The recommended text goes on to repeat the first and second priorities that form one part of the 'Regional Approach' principle in the CWMS.
- 4.2 I have already discussed my opinion on the relative weight to be given to the vision and principles of the CWMS in my Evidence in Chief.<sup>19</sup> In particular, I consider it important that the vision and principles of the CWMS are not unduly promoted above higher order policy documents that need to be given effect to in the Proposed Plan. Furthermore, I note that given the vision and principles of the CWMS are not a matter required to be taken into account or given particular regard in the consideration of resource consent applications under the RMA. That is, the Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010 does not provide weight to the vision and principles of the CWMS in determining resource consent applications. At best, the vision and principles of the CWMS are to be considered as "*any other matter*" in accordance with Section 104(1)(c) of the RMA.
- 4.3 As such, it is difficult to reconcile why reference should be made to one part of the principles of the CWMS in the explanatory paragraph ahead of reference to the provisions of the National Policy Statement on Fresh Water Management 2011 ("**NPSFM**"), NPSREG and the RPS. In practice, it is appropriate that the facts of the particular case should dictate the relative weight to be given to the competing objectives of the Proposed Plan.

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<sup>18</sup> Paragraph 134 of Familton Evidence in Chief – 4 February 2013.

<sup>19</sup> Paragraphs 3.8 to 3.11 of Turner Evidence in Chief – 4 February 2013.

- 4.4 On this basis, it is my opinion that the text recommended by Mr Familton is unnecessary and inappropriately skews how weight should be given to the objectives of the Proposed Plan. Therefore, I recommend that Mr Familton's relief not be accepted and that the explanatory paragraph recommended by the Reporting Officers be adopted.

## 5. MR PERCY – FISH AND GAME

### *Establishment of Freshwater Objectives*

- 5.1 Mr Percy proposes<sup>20</sup> the inclusion of a new objective (Objective 3.5A) in Section 3 of the Proposed Plan that defines the specific freshwater objectives for waterbodies in accordance with directives of the NPSFM.<sup>21</sup> Mr Percy also recommends<sup>22</sup> the inclusion of new policies and columns in Table 1A of the Proposed Plan related to the establishment of limits designed to ensure the achievement of the specific freshwater objectives.
- 5.2 I note that all of the recommended freshwater objectives specified in Objective 3.5A and Table 1A relate to the biophysical, amenity or cultural values of waterbodies. By way of example, the freshwater objectives / purposes of management footnoted under Table 1A relate to fauna and flora values, amenity values (including recreation values) or cultural values. None of the objectives relate to human use or economic values.
- 5.3 In my opinion, the establishment of freshwater objectives in accordance with the NPSFM should be cognisant of the fact that an intended environmental outcome needs to be determined in light of the definition of "*environment*" in Section 2 of the RMA. That is, consideration needs to be given to natural and physical resources, as well as the social, economic and cultural conditions that affect natural and physical resources. In effect, the establishment of freshwater objectives should also consider the value of waterbodies for social and economic wellbeing (including electricity generation, water supply or food production).

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<sup>20</sup> Paragraphs 59 and 97 of Percy Evidence in Chief – 4 February 2012.

<sup>21</sup> Policies A1 and B1 of the NPSFM.

<sup>22</sup> Paragraphs 104 and 116 of Percy Evidence in Chief – 4 February 2013.



- 5.4 Indeed, the implementation guide to the NPSFM<sup>23</sup> acknowledges that the setting of objectives must be made in the context of environmental, social, cultural and economic values and that the national values in the preamble to the NPSFM provide a useful reference for establishing objectives.<sup>24</sup>
- 5.5 In light of this, it is my opinion that the relief proposed by Mr Percy with respect to the inclusion of new freshwater objectives / purposes of management in the objectives, policies and Table 1A of the Proposed Plan fails to appropriately consider the social and economic values of waterbodies in the Canterbury Region (as acknowledged in Section 1.1.1 of the Proposed Plan) and would not promote the sustainable management of freshwater. Therefore, I recommend that Mr Percy's relief not be accepted.

**Schedule XX / Policy 4.43**

- 5.6 Mr Percy also recommends<sup>25</sup> the inclusion of a new schedule (Schedule XX) and amendments to Policy 4.43 that would require the adverse effects of any instream damming activities in rivers identified in Schedule XX to be avoided.
- 5.7 Schedule XX includes waterbodies such as the Harper and Wilberforce Rivers which form part of the Coleridge Hydro-Electric Power Scheme. As such, under the version of Policy 4.43 recommended by Mr Percy, the expectation would be that the adverse effects of existing damming activities on these rivers must be avoided at the time they are consented. The difficulties with this type of infrastructure avoiding all potential adverse effects is canvassed in my Evidence in Chief.<sup>26</sup> As such, I consider Mr Percy's recommended amendments to Policy 4.43 to be completely unworkable for existing damming activities.
- 5.8 In addition, the relief proposed by Mr Percy does not reflect Policy 7.3.2 of the RPS which I have discussed in my Evidence in Chief.<sup>27</sup>
- 5.9 Furthermore, and as discussed in Paragraph 3.17 of this rebuttal statement, Policy 7.3.11 of the RPS and 4.48 of the Proposed Plan acknowledge existing hydro-

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<sup>23</sup> Ministry for the Environment. 2011. *National Policy Statement for Freshwater Management 2011: Implementation Guide*. Wellington: Ministry for the Environment.

<sup>24</sup> Page 14 of *National Policy Statement for Freshwater Management 2011: Implementation Guide*.

<sup>25</sup> Paragraph 129 and Appendix 3 to Percy Evidence in Chief – 4 February 2013.

<sup>26</sup> Paragraph 10.3 of Turner Evidence in Chief – 4 February 2013.

<sup>27</sup> Paragraphs 6.4 and 6.5 of Turner Evidence in Chief – 4 February 2013.

electricity generation and irrigation infrastructure as part of the existing environment. While I acknowledge that these policies may drive reductions in the adverse effects of damming activities associated with existing hydro-electricity generation and irrigation infrastructure when they are reconsented, these policies do not suggest or imply that any reductions in adverse effects should result in all adverse effects from damming activities being avoided.

- 5.10 Given this, I consider the relief proposed by Mr Percy with respect to Policy 4.43 and the inclusion of Schedule XX to be inappropriate and contrary to the direction provided by the RPS with respect to the management of the adverse effects of damming activities. Therefore, I recommend that Mr Percy's relief not be accepted and continue to consider the recommended relief to Policy 4.43 in **Annexure A** of my Evidence in Chief to be appropriate.

**R J Turner**

**13 February 2013**