

**UNDER** the Environment Canterbury (Temporary  
Commissioners and Improved Water  
Management) Act 2010 and the Resource  
Management Act 1991

**AND**

**IN THE MATTER** of the Proposed Canterbury Land and Water  
Regional Plan

**BY** TRUSTPOWER LIMITED  
  
Submitter

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**MEMORANDUM OF COUNSEL ON BEHALF OF TRUSTPOWER LIMITED**

**13 FEBRUARY 2013**

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**RUSSELL McVEAGH**

B J Matheson / D J Minhinnick  
Phone 64 9 367 8000  
Fax 64 9 367 8163  
PO Box 8  
DX CX10085  
Auckland

**MAY IT PLEASE THE COMMISSIONERS:**

1. The evidence filed on behalf of TrustPower Limited ("**TrustPower**") on 4 February 2013 contained references to TrustPower's application to amend the National Water Conservation (Rakaia River) Order 1988 ("**Rakaia WCO**"). TrustPower's evidence indicated that at that stage TrustPower was awaiting confirmation of whether the Minister for the Environment would accept the Canterbury Regional Council's recommendation that the amendments be made to the Rakaia WCO.
2. Subsequent to the filing of that evidence, that recommendation was accepted and the National Water Conservation (Rakaia River) Amendment Order 2013 was gazetted on 7 February 2013. A copy of the relevant extract from the *New Zealand Gazette* is **attached**.

**Dated** 13 February 2013

A handwritten signature in blue ink, appearing to read 'Bal Matheson', with a long horizontal flourish extending to the right.

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**Bal Matheson / Daniel Minhinnick**  
Counsel for TrustPower Limited

## National Water Conservation (Rakaia River) Amendment Order 2013

HIS EXCELLENCY THE GOVERNOR-GENERAL

Order in Council

At Wellington this 4th day of February 2013

Present:

THE RT HON JOHN KEY

PRESIDING IN COUNCIL

Pursuant to section 58 of the Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010 and section 216 of the Resource Management Act 1991, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following Order.

### Order

1. **Title**—This order is the National Water Conservation (Rakaia River) Amendment Order 2013.
2. **Commencement**—This order comes into force 28 days after the date of its notification in the *New Zealand Gazette*.
3. **Principal order amended**—This order amends the National Water Conservation (Rakaia River) Order 1988.\*
4. **Interpretation**—The definition of “Act” is omitted and substituted with  
**Act** means the Resource Management Act 1991

The following definitions are inserted:

**Enhancement fund** means the fund established as part of the Lake Coleridge Project to contribute funding for projects within the Rakaia River and Selwyn River catchments that are designed to enhance the cultural, ecological, and biological health of, and recreational opportunities within, those catchments, and thereby contribute to the first order priorities set out in the Canterbury Water Management Strategy. The operator of the Lake Coleridge Project will, from the commencement of the first stage of the Lake Coleridge Project until 31 December 2031, contribute funding to the enhancement fund as follows: an initial payment of \$50,000 immediately upon establishment; \$100,000 per annum (CPI adjusted) from the commencement of the Lake Coleridge Project, and a further \$100,000 per annum (CPI adjusted) from the commissioning of any canal described in clause 9A(2) of this order.

**Hapua management fund** means the amount of \$2,250 plus GST (CPI adjusted) that the operator of the Lake Coleridge Project will pay to Canterbury Regional Council on 30 March of each year that the Lake Coleridge Project is in effect until 31 December 2031. This amount is to be used by Canterbury Regional Council to assist with the management of the Rakaia River hapua.

The definition of “Gorge flow” is omitted and substituted with:

**Gorge flow** means the mean daily flow of the Rakaia River as estimated for the preceding calendar day by the Canterbury Regional Council from measurements at—

- (a) the recorder site maintained by that Council at the Rakaia Gorge Bridge (map reference K35:014424 on Map series NZMS260); or
- (b) the recorder site maintained by the National Institute of Water and Atmospheric Research Limited at Fighting Hill (map reference K35:997437 on Map series NZMS260),

and including the mean daily flow of non-Stored Water diverted or discharged into any canal from Lake Coleridge, but minus the mean daily flow of Stored Water discharged from Lake Coleridge into the Rakaia River above the Rakaia Gorge.

The following definitions are inserted:

**Lake Coleridge Project** means

- (a) Discharge from the Lake Coleridge Hydroelectric Power Scheme and conveyance by the Rakaia River of Stored Water for use for irrigation and/or electricity generation;
- (b) Discharge, damming, diversion and taking from Lake Coleridge of water (including Stored Water) via conveyance infrastructure connected to the Lake Coleridge Hydroelectric Power Scheme conveyance infrastructure for use for irrigation and/or electricity generation;
- (c) Discharge of water (including Stored Water) from the conveyance infrastructure into the Rakaia River downstream of its confluence with the Wilberforce River;
- (d) Taking or diverting of Stored Water from the Rakaia River or from any conveyance infrastructure constructed as part of the Lake Coleridge Project in accordance with clause 7(5);

provided that the Lake Coleridge Project excludes any damming of the Rakaia River.

**Register** means the register administered by the Canterbury Regional Council which lists the holders of resource consents to abstract or divert water from the Rakaia River downstream of the Rakaia Gorge Bridge

who have obtained the written approval of the holder of the consents for the Lake Coleridge Hydroelectric Power Scheme to take or divert Stored Water.

**Stored Water** means water that has been taken or diverted into Lake Coleridge which is no greater than:

- (a) half of the excess gorge flow (the excess gorge flow is that part of the gorge flow that exceeds the minimum gorge flow specified in clause 7 of this order by more than 140 cubic metres per second); plus
- (b) any water that could have been taken or diverted from that part of the Rakaia River between the Rakaia Gorge Bridge and the sea by the holders of resource consents listed on the Register and subject to the conditions of those resource consents listed on the Register, but which was not taken or diverted.

## **5. Retention of natural waters in a natural state**

Clause 4 is amended as follows:

- (1) Clause 4(1)(a) is amended by deleting the phrase “Subject to subclauses (2) and (3)” and replacing it with “Subject to subclause (2)”.
- (2) Clause 4(2) is deleted and replaced with:
  - (2) A resource consent under the Act may be granted or renewed in respect of the natural waters referred to in subclause (1)(a) of this clause if—
    - (a) in the case of a grant, the purpose is to replace a resource consent in force on the commencement of this order; or
    - (b) in the case of a renewal, the purpose is to renew a resource consent in force on the commencement of this order—

and the new resource consent or renewed resource consent is made subject to similar terms and conditions to which the former resource consent was subject.

- (3) Clause 4(3) is revoked.

## **6. Partial retention of natural waters**

Clause 5 is amended as follows:

- (2) Clause 5(1) is amended by deleting the phrase “Subject to subclauses (2) and (3)” and replacing it with “Subject to subclause (2)”.
- (3) Clause 5(2) is deleted and replaced with:
  - (2) A resource consent under the Act may be granted or renewed in respect of the natural waters referred to in subclause (1) of this clause if—
    - (a) in the case of a grant, the purpose is to replace a resource consent in force on the commencement of this order; or
    - (b) in the case of a renewal, the purpose is to renew a resource consent in force on the commencement of this order—and the new resource consent or renewed resource consent is made subject to similar terms and conditions to which the former resource consent was subject.
- (4) Clause 5(3) is revoked.

## **7. Further partial retention of natural waters**

Clause 6 is amended as follows:

- (1) In clause 6(1), “Subject to subclauses (2) and (3)” is deleted and replaced with “Subject to subclause (2)” and “North Canterbury Catchment Board’s recorder site” is deleted and replaced with “Rakaia Gorge Bridge”.
- (2) Clause 6(2) is deleted and replaced with:
  - (2) A resource consent under the Act may be granted or renewed in respect of the natural waters referred to in subclause (1) of this clause if—
    - (a) in the case of a grant, the purpose is to replace a resource consent in force on the commencement of this order; or
    - (b) in the case of a renewal, the purpose is to renew a resource consent in force on the commencement of this order—and the new resource consent or renewed resource consent is made subject to similar terms and conditions to which the former resource consent was subject.
- (3) Clause 6(3) is revoked.

## **8. Further partial retention of natural waters**

Clause 7 is amended as follows:

- (1) In clause 7(2) “North Canterbury Catchment Board’s recorder site” is deleted and replaced with “Rakaia Gorge Bridge”.
- (2) The following clause is added after Clause 7(4) as Clause 7(5):
  - (5) Nothing in this clause 7 restricts the abstraction or diversion of Stored Water from the Rakaia River, or from any conveyance infrastructure constructed as part of the Lake Coleridge Project, by the holders of resource consents listed on the Register and subject to the conditions of the resource consents listed on the Register, provided that the flow in the river and in the canal shall not be reduced by abstraction or diversion by more than 70 cubic metres per second.

## 9. Right to dam not to be granted

Clause 8 is amended as follows:

- (1) In the title of clause 8 the word “Right” is deleted and replaced with “Resource consent”.
- (2) In clause 8(1) “A right” is deleted and replaced with “Resource consents” and “section 21 of” is deleted.
- (3) Clause 8(2) is amended by:
  - (a) Deleting “A right” and replacing it with “Resource consents”; and
  - (b) Deleting “section 21 of; and
  - (c) Deleting “grant” and replacing it with “resource consent”.

## 10. Water rights and general authorisations

Clause 9 is amended as follows:

- (1) The title of clause 9 is deleted and replaced with “Resource consents”.
- (2) Clause 9(1) is amended by:
  - (a) Deleting “Water rights” and replacing it with “Resource consents”; and
  - (b) Deleting “section 21 of”; and
  - (c) Deleting “, and general authorisations under section 22 of the Act shall not be made,”.
- (3) In clause 9(2) “Water rights” is deleted and replaced with “Resource consents under the Act” and “and general authorisations shall not be so made” is deleted.
- (4) Clause 9(3) is amended by:
  - (a) Deleting “water rights” and substituting “resource consents”.
  - (b) Deleting “section 21 of”.
  - (c) Deleting “, and general authorisations under section 22 of the Act shall not be made,”.
  - (d) Deleting “rights or authorisations” and substituting “resource consents”.
- (5) Clause 9(4) is amended by:
  - (a) Deleting “Water rights” and replacing it with “Resource consents under the Act”; and
  - (b) Deleting “so”; and
  - (c) In subclause (c) inserting the words “or the Act” after “1941”; and
  - (d) In subclause (d) deleting “Ellesmere County” and replacing it with “Selwyn District”; and
  - (e) Inserting the following as subclause (f); and
  - (f) the Lake Coleridge Project, as provided for in clause 9A(1).

## 11. New clause 9A

The following is inserted as clause 9A:

### 9A Lake Coleridge Project

- (1) Nothing in this order shall restrict the granting of resource consents, or variation of existing resource consents, to enable the Lake Coleridge Project as defined in clause 2 of this order, provided that the outstanding characteristics and features recorded in clause 3 of the order are recognised and sustained and provided that:
  - (a) the Coleridge HEPS continues to operate,
  - (b) the Lake Coleridge project be operated such that the discharge from the Lake into the Rakaia River at or above the Coleridge HEPS shall not fall below 45% of the inflows to Lake Coleridge, both inflows and outflows being calculated as the 2-yearly rolling average of daily flows; and
  - (c) whenever the Coleridge HEPS ceases to discharge water to the Rakaia River for more than 24 hours and the Rakaia River flow is within 30 cumecs of the minimum gorge flow prescribed in this order, the operator shall take immediate steps to shut off the Harper and Wilberforce diversions
- (2) Subject to clause 2A, the maximum rate at which water can be discharged from Lake Coleridge through any canal constructed as part of the Lake Coleridge Project is 25 cubic metres per second, and the total maximum discharge rate from Lake Coleridge through the Lake Coleridge Hydroelectric Power Scheme and any canal constructed as part of the Lake Coleridge Project is 65 cubic metres per second.
- (2A) If the flow as measured at the recorder site maintained by the National Institute of Water and Atmospheric Research Limited at Fighting Hill (map reference K35:997437 on Map series NZMS260 for the preceding day is more than 10 cubic metres per second below the minimum flow set out in clause 7 of this order then, during the next calendar day, only Stored Water may be released from Lake Coleridge along the canal referred to in clause 9A(2) above.
- (2B) Prior to applying for any resource consents pursuant to clause 9A(1), the enhancement fund must be established and an agreement must have been concluded with Canterbury Regional Council for the receipt, on an annual basis, of the hapua management fund.
- (3) Records shall be kept by the operator of the Lake Coleridge Hydroelectric Power Scheme enabling the calculation of the:
  - (a) Stored Water within Lake Coleridge;
  - (b) Stored Water that has been discharged from Lake Coleridge;

- (c) water (including Stored Water) being diverted into any canal from Lake Coleridge.
- (4) For the purposes of this order, and except as specified in clause 7(5), any abstractions or diversions of any water (including Stored Water) from any conveyance infrastructure constructed as part of the Lake Coleridge Project (other than water being discharged back into the Rakaia River from any such conveyance infrastructure) shall be treated as if those abstractions or diversions were from the Rakaia River between the Rakaia Gorge Bridge referred to in clause 2 of this order and the sea.

## **12. Scope**

Clause 10 is amended as follows:

- (1) In clause 10(1) “second proviso to” is deleted and replaced with “proviso in”.
- (2) In clause 10(1) “21(1)” is deleted and replaced with “14(3)(a)(b) or (e)”.

## **13. New clause 11**

The following is inserted as clause 11:

### **11 Restrictions on rules**

- (1) No rule in a regional plan shall classify an activity as permitted which, if it required resource consent, would be prohibited by this order.

Given under the hand of His Excellency the Governor-General of New Zealand, Jerry Mateparae, on the 4th day of February 2013.

[L.S.]

MARTIN BELL, Clerk of the Executive Council.

\*SR 1988/241

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