

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of the submissions and further submissions by Rangitata Diversion Race Management Limited to the Proposed Canterbury Land & Water Regional Plan

STATEMENT OF EVIDENCE OF BENEDICT RODNEY CURRY (HEARING 2)

1 INTRODUCTION

- 1.1 My name is Benedict Rodney Curry. I am the Chief Executive Officer of the Rangitata Diversion Race Management Limited (**'RDRML'** or **'the Company'**), and I have been employed in this role for five years.
- 1.2 An overview of my role, responsibilities and my experience with resource management processes was set out in Sections 1 and 2 of the evidence that I presented during Hearing One. Consequently, I have not repeated that detail in this statement.
- 1.3 This evidence is in support of the submissions and further submissions lodged by RDRML to the Proposed Canterbury Land and Water Regional Plan (**'the pL&WRP'** or the **'Regional Plan'**), as this relates to nutrient management provisions.
- 1.4 I confirm that I am familiar with this matter and that I am authorised to present this evidence on behalf of RDRML.

2 SUMMARY OF EVIDENCE

- 2.1 My evidence will cover:
 - a. An overview of the RDRML's involvement in nutrient management issues within the Canterbury Region;
 - b. A summary of the RDRML's concerns associated with the manner in which nutrient management zones have been formulated and their potential impacts upon the RDR and associated irrigation schemes;
 - c. The RDRML's position on nutrient management rules, and issues around achieving compliance with these rules;
 - d. The Company's involvement with OVERSEER™ and the manner in which it is being applied in mid-Canterbury;

- e. The RDRML's position on the definition of 'changed';
- f. The consequences of the auditing processes required by the pL&WRP and recommended by the Officer; and

3 NUTRIENT MANAGEMENT ISSUES WITHIN THE CANTERBURY REGION

- 3.1 RDRML, recognising the growing water quality issue, instigated an Audited Self-Management ('ASM') regime in 2010. Operating in a regulatory vacuum, RDRML developed an Environmental Strategy in discussion with the Canterbury Regional Council (the '**Council**'), and Farm Environmental Plans ('**FEPs**') that were based around the Ritso Society¹ and further tuned when the pL&WRP was notified.

The essence of the ASM is that RDRML, as the holder of the resource consents, will manage, via:

- a. An on-going audit process that is conducted by a specialist staff member (which is a capacity that the Company is yet to develop) and expert consultant advisors;
- b. The adoption and implementation of, or the requirement that individual farmers adopt and implement suitable (and proven) mitigation measures;
- c. The implementation of a compliance regime that could, in extreme situations, result in water delivery being withheld; and
- d. The adoption of the environmental requirements (as detailed within in Schedule 7 of the pLWRP for all its shareholders), thereby reducing the compliance burden on the Council.

As the regulator, the Council retains the right to 'audit the audit' in order to be satisfied with the compliance regime.

- 3.2 I note, for completeness, that a form of ASM has been in existence for many years at the RDRML, and has been operated to ensure compliance with the RDRML's water quantity related consent conditions. It is now being expanded to address good farm practices and water quality considerations. This is a substantial undertaking.

4 NUTRIENT MANAGEMENT ZONES

- 4.1 THE RDRML is opposed to the way in which the Council has sought to advance Nutrient Management Zones within the Regional Plan.
- 4.2 The Company's key concern is that the work underpinning the nutrient management zones does not appear to be scientifically justified or independently scrutinised. I note that Dr Ryder discusses that concern in his brief of evidence. While the RDRML appreciates that the setting of zones is an interim measure, I understand Mr Bryce's evidence to be that these interim measures will, as a consequence of the notified rules that 'hang off' them, constrain agricultural endeavour and how it is advanced. This is obviously disconcerting.
- 4.3 As is apparent from section 3.0 of this statement of evidence, the Company is proactively looking to reduce the nutrient losses associated with the agricultural activity it enables. Consequently, it supports the sustainable management of nutrients, leading to the reduction of nutrient losses being a goal of the Regional Plan.

¹ Formed in 2002 to promote water enhancement issues regarding the Central Plains Water Scheme.

However it is concerned with the imposition of additional constraints that are not based upon robust science, particularly where they have the potential to adversely affect farming enterprises, and the social fabric that is so closely intertwined in the rural areas of (specifically) mid-Canterbury.

- 4.4 For this reason, it is imperative that the planning provisions for the zones are not unduly restrictive but rather reflect their interim status as a tool for managing nutrient discharges until such time as catchment specific approaches are advanced under Sections 6-15 of the Regional Plan. I note here that the majority of the properties serviced by the RDR are located within the 'Red Zones'. As publicly notified these properties would be subject to a non-complying activity classification should the farm managers 'change' the management of their farming units and/or the type of agricultural endeavour that is undertaken. As Mr Bryce notes in his evidence, there is a very real chance that resource consents applied for may not be approved given the policy framework and the intent of the Regional Plan.
- 4.5 Mr Bryce also discusses and supports the Officer's recommendation to provide for 'new' or 'changed' activities in the Red Zones as discretionary activities. The RDRML also supports this recommendation.

5 NUTRIENT MANAGEMENT PROVISIONS

- 5.1 The RDRML is concerned to ensure that the provisions developed to manage the cumulative discharge of nutrients into the Canterbury Region's freshwater bodies do not undermine the operation of the RDR and the associated irrigation schemes and generation activities. In particular, the Company seeks to ensure that any rules do not place an unnecessary hurdle before the continued operation and expansion of the irrigation activities that stem from the operation of the RDR.
- 5.2 Overall, the Company considers that the Regional Plan should include incentives for resource users to decrease their discharges. This could be achieved by encouraging audited self-management approaches and farmer collective agreements (particularly in nutrient sensitive catchments), the setting of catchment wide limits, and by enabling the transfer of discharge rights. The Company considers that compliance can then be determined by the auditing of FEPs, either individually or in a more comprehensive manner advanced under Scheme Management Plans, similar to that being advanced by the RDRML.
- 5.3 The Company notes that the rules implementing the nutrient management policy framework are principally Rules 5.39 to 5.54. The Company supports, in principle, the interim approach advanced, particularly as it relates to providing for the continuation of farming activities. The Company notes and supports the rules that enable some existing farming activities to proceed without consent, although the validity of some of the standards listed, such as those associated with region-wide nitrogen discharge limits, is of concern to the Company and needs to be further tested. Mr Bryce discusses the standards and limitations of some of the rules further within his evidence.
- 5.4 In terms of the amended relief recommended by the Officer, the RDRML supports a move away from region-wide nitrogen discharge limits, in favour of managing nutrient discharges through the use of FEPs. It is acknowledged here, that this approach will likely be superseded once catchment specific limits are set under Sections 6 to 15 of

the Regional Plan. That said, the Company considers that FEPs will still play an important role as part of this catchment specific approach once these are adopted into the Plan.

6 USE OF OVERSEER

- 6.1 Nutrient models such as OVERSEER™ have, in the Company's opinion and my experience, a valuable role to play in the management of farming activities and the effects of the same. The RDRML acknowledges that OVERSEER™, when used as a guide to inform agricultural practice and good management, is useful, however there are limitations in applying this model as a regulatory tool applied on an annual basis. Dr Edmeades (for Canterbury Pastoral Limited) and Dr Roberts (for the Fertiliser Association of New Zealand Incorporated – 'FANZ') set these limitations out in some detail within their respective briefs of evidence. When utilising OVERSEER™ as a tool, the Company has experienced a number of challenges. As a model it is sensitive to the different input methods, which can produce varied results. The model is also under what seems to be continual development, which can lead to marked differences in results. An example of this occurred recently when the same dairy farm was modelled using the same input data. Under version 5.4.10 the loss was calculated at 31 Kg/N/Ha. Under Version 6 the loss result was 67 Kg/N/Ha.
- 6.2 As a consequence of the Company's experience with OVERSEER™, it supports the evidence presented by Dr Edmeades, particularly where he notes that the use of FEPs should be seen as the 'key regulatory tool' and that models such as OVERSEER™ should inform the FEPs. As Mr Bryce discusses in his statement of evidence, the amendments and additions advanced by the Council Officer appear to broadly accord with the approach advanced by Dr Edmeades. The Company considers this to be a positive development and thus supports the Officer's recommended relief, subject to the refinements that Mr Bryce advances in his evidence.
- 6.3 Further the Company notes that the Government's 2013 Freshwater Reforms highlight that *"it may be some years before systems like OVERSEER are precise enough to be used as the basis for enforcing quantitative conditions on landuse."*² While I understand that this document has no 'standing' in the framework that is advanced by the Resource Management Act 1991, I believe that such an acknowledgement, when coupled with the evidence of Dr Edmeades and Dr Roberts, justifies a careful and cautious approach being applied to the manner in which OVERSEER™ is employed within the Regional Plan.
- 6.4 The Company also acknowledges and supports the Officer's recommendations regarding the OVERSEER™ model, where he suggests that other models may also be employed and places a greater emphasis on FEP's as a key tool in the management of farming activities.

7 THE DEFINITION OF CHANGED

- 7.1 The RDRML considers that the definition of 'changed' advanced by the Officer is overly restrictive. In particular, the Company is concerned that application of water to areas that were not irrigated as of the 11th of August 2012 would deem a farm / farming operation to have 'changed'. Mr Bryce discusses the consequences that would be

² Ministry for the Environment. 2013. Freshwater reform 2013 and beyond. Wellington: Ministry for the Environment, page 49.

brought about if the definition of 'changed' presented by the Officer was carried over to the operative L&WRP in some detail in his evidence.

- 7.2 As a Company the RDRML is actively driving efficiency gains. Most of these gains are achieved through significant capital investment, such as, for example, the piping of its distribution water races and the development of up to 100,000,000m³ of off-river storage. The definition of 'changed' advanced puts potential impediments in place, thus making it more difficult to achieve such gains. Such an outcome seems to be counter intuitive and is likely to make the nutrient management initiatives that the Company is advancing a 'harder sell' to its shareholders. In my experience, encouraging 'buy in' to new concepts (especially when they come at a cost) is crucial. The Company is concerned that requiring advancements in nutrient management as well as seeking **any** new irrigation in the majority of Mid-Canterbury are effectively mutually exclusive and will actively discourage efficiency led improvements. As a consequence, the Company supports the evidence of Mr Bryce as it relates to the amendments that need to be advanced to the definition of the term 'changed'.
- 7.3 The Officer's Report recommended definition of "changed" is of some considerable concern to the Company, particularly the somewhat ambiguous recommendations regarding water volume and area. The Company has been in detailed discussions with the Council regarding the notified Regional Plan and had been reassured that the addition of water for reliability within an existing property would not trigger the change definition. The Officer's recommendation appears to be at odds with this advice.
- 7.4 Concerned by the proposed changes within the Regional Plan, the Company lodged a Land Use consent application with the Council in February 2012. The resource consent application is designed, once approved, to give some certainty to the RDRML and its shareholders, and the necessary level of reassurance to the Council regarding land use and its effects, principally through the imposition of conditions on the land use consent that will provide a Nitrate loss limit and address the management of the limit. To date, despite much work on both sides, the consent conditions have yet to be settled. This is more a reflection of the uncertainty of the science around the definition and calculation of Nitrate loss than a fundamental disagreement between the parties.

8 AUDITING PROCESSES

- 8.1 The Company notes that the rules implementing the 'nutrient discharges' policy framework are principally Rules 5.39 to 5.54. While supporting the general approach advanced in providing for the continuation of farm activities under Rules 5.40, 5.42 and 5.46, the RDRML is concerned that the Regional Plan (as notified) requires the auditing of FEP's annually for the first three years following their production. Further, and of greater concern, is Mr Bryce's advice that should the Officer's amendments to Schedule 7 of the Regional Plan be accepted that, the FEPs would need to be audited annually.
- 8.2 As I noted in my first brief of evidence to this Committee, the RDR provides water to approximately 400 farms. The Company considers that auditing the FEP for each of these farms every year is unnecessary, especially where there is no change on farm and in the farming systems employed. Requiring these audits at this frequency also adds significant costs. The RDRML has budgeted an annual cost for the ASM process

including the audit at \$220,000 for the 2014/15 financial year. This additional cost represents approximately 12% of the annual OPEX (operational expenditure) budget.

- 8.3 For these reasons the Company sought that the auditing requirements for FEPs should be reduced. Mr Bryce sets out the frequency of the auditing that the Company seeks, and what amendments are needed to the Regional Plan to give effect to that frequency of auditing.
- 8.4 I also note the concern raised in Mr Bryce's evidence regarding the interpretation and implementation of Rule 5.41 and Schedule 7(C) and the audit grading system (as amended by the Officer). This is obviously disconcerting. The Company prides itself on complying with its resource consents and the provisions of the relevant planning documents. This has manifested in the RDRML having an excellent compliance record. Any eventuality that could result in the RDRML acting in good faith but ultimately not achieving a permitted activity rule, which could, in turn, result in the Company being deemed to operate 'illegally' is clearly not acceptable, and should be avoided.

9 CONCLUSION

9.1 As I highlighted during Hearing 1, certainty is vital in any business, but especially farming. The notified version of the pL&WRP creates a great deal of uncertainty, particularly in the area of nutrient management. The RDRML takes the development of the pL&WRP and its goals seriously and, as a result, has engaged proactively with the Canterbury Regional Council on several occasions. While the Company supports many of the modifications that the Officer is recommending, some of its key concerns remain unresolved. In summary, these concerns are as follows:

- (a) Ensuring that the planning provisions supporting the nutrient management zones reflect the interim nature of these zones and do not unduly constrain the operation of the RDRML and its farming shareholders;
- (b) The Company supports a move away from a non-complying activity status for new farming activities or 'changed' farming activities in the Red Zones, with this being replaced with a discretionary activity status;
- (c) RDRML supports a move away from region-wide nitrogen discharge limits, in favour of managing nutrient discharge limits through the use of FEPs and that models such as OVERSEER™ should inform the FEPs;
- (d) The company supports the need for FEPs to be audited, although these should be undertaken at a frequency that is appropriate based on the nature of the farming activities and where a property forms part of a scheme management approach;
- (e) The Company considers that the definition of 'changed' advanced by the Officer is overly restrictive and is concerned where the application of water to areas that were not irrigated as of the 11th of August 2012 may trigger 'change'.

9.2 I thank the Commissioners for their consideration of this statement of evidence.

Benedict Rodney Curry

2nd of April 2013