

BEFORE THE CANTERBURY REGIONAL COUNCIL

IN THE MATTER OF: the Resource Management Act
1991

AND

IN THE MATTER OF: a submission on the Proposed
Canterbury Land and Water
Regional Plan

**EVIDENCE OF HERBERT ROSS FAMILTON
FOR DIRECTOR-GENERAL OF CONSERVATION**

Dated 13 May 2013

**Director General of Conservation
Private Bag 4715,
Christchurch 8140
Tel: (03) 371 3700 Counsel: Tara Allardyce**

STATEMENT OF EVIDENCE OF HERBERT ROSS FAMILTON

INTRODUCTION

Qualifications and Experience

- 1 My name is Herbert Ross Familton. I have been employed by the Department of Conservation ("DOC") in the position of Resource Management Planner in its South Island Shared Services Office since 21 May 2012. I am appearing here today to present planning evidence for the Phase II hearings in support of the Director-General of Conservation's ("DG") submission on the proposed Canterbury Land and Water Regional Plan ("pCLWRP").
- 2 In my current role I am responsible for providing information, advice and analysis on resource management issues for pCLWRP and consent hearings and appeals at a national level as part of my job within DOC's Policy and Regulatory group based in Christchurch.
- 3 I hold a Bachelor of Arts Degree with Honours in Geography (1983) and a Masters in Regional and Resource Planning (1985) from the University of Otago. I have over twenty six years experience in the area of natural resources planning. I was admitted as a full member of the New Zealand Planning Institute (NZPI) in 1993.
- 4 Prior to my current employment with DOC, I was employed by the Auckland Council as Senior then Principal Specialist (Air) from 2011 to 2012. I was employed by the Canterbury Regional Council ("ECan") as a Senior Resource Management Planner in the Policy Planning team from 2010 to 2011 in the Air Quality area, and from 2006 to 2009 in the environmental flow areas, focusing on the Waipara, Hurunui, and Waiau catchments. As part of this work, I prepared the paper to ECan to make chapters 1 - 3 of the Natural Resources Regional Plan operative.

- 5 Prior to 2006 I was employed by DOC and the Department of Lands and Survey in a number of planning roles. I was the lead DOC official for the whole of Government submission that advised the Attorney-General for the Waitaki Catchment Water Allocation Plan in 2005/2006. I processed restricted coastal activity coastal consents for the Minister of Conservation from 1997 - 2006 in the Southern Regional Office of DOC.
- 6 I produced a standard operating procedure for the development of Conservation Management Strategies (“CMSs”) nationally for DOC. In the DOC Management Planning system under Part III of the Conservation Act 1987, CMSs are equivalent to a Regional Policy Statement (“RPS”).
- 7 In Canterbury, I led the development of a number of DOC management plans, reviews, and amendments. This includes the Canterbury CMS, the Mt Cook/Aoraki National Park Management Plan, and the Arthur’s Pass National Park Management Plan.
- 8 The data, facts, information and assumptions I have considered in forming my opinions are set out in the part of the evidence in which I express my opinions. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.
- 9 I have read the Environment Court’s Code of Conduct for expert witnesses and I agree to comply with it. My qualifications as an expert are set out above. I confirm that the issues in the brief of evidence above are within my area of expertise.
- 10 The literature or other material which I have used or relied upon in support of my opinions are as follows:
- (i) The Resource Management Act 1991
 - (ii) the National Policy Statement on Freshwater
 - (iii) the National Policy Statement on Renewable Energy Generation
 - (iv) The New Zealand Coastal Policy Statement

- (v) Land and Water Forum, 2012. *Second Report of the Land and Water Forum: Setting Limits for Water Quality and Quantity, and Freshwater Policy- and Plan-making Through Collaboration*
- (vi) Land and Water Forum, 2012. *Third Report of the Land and Water Forum: Managing Water Quality and Allocating Water*
- (vii) The National Biodiversity Strategy
- (viii) The Canterbury Regional Policy Statement (2013)
- (ix) The Canterbury Conservation Management Strategy
- (x) The expert witness evidence from Dr David West from DOC and Mr John Waugh from the Royal Forest and Bird Protection Society
- (xi) Ministry for the Environment. 2013. *Freshwater reform 2013 and Beyond*. Wellington: Ministry for the Environment
- (xii) The ECan Section 42A Report R13/22, dated April 2013.

SCOPE OF EVIDENCE

11 My evidence will give a planning perspective of the relief sought by the DG's submissions and further submissions. My evidence will also comment on the Officer's Section 42A Report Volume 3 recommendation on that relief for the Phase III hearings on the following matters:

- Sub Regional Chapters Section 6 - 15

These Rules include the specific flow and allocation regimes for the Sub Regional Sections.

12 Dr David West will address issues associated with high naturalness waterbodies.

13 Please note that references to sections and page numbers throughout this statement of evidence are to the sections and page numbers contained in the Section 42A Report unless indicated otherwise.

14 The technical witness for the DG will address technical matters raised by the DG's submission on the pCLWRP.

15 I have utilised the following format for matters which I consider warrant detailed discussion in the main body of this evidence::

Policy, Rule or Schedule Number

- (a) **DG's submission:** I briefly reiterate the DG's submissions and/or further submission.
- (b) **Officer Comment and Recommendation:** I briefly note the aspects of the Officer's Section 42A Report that are relevant.
- (c) **Comment:** I provide commentary of the DG's position in light of the Section 42A Report.
- (d) **Recommendation:** in most instances I will insert a recommendation enlightened by the foregoing points (a) to (c).

16 Where I have not directly addressed a point in this evidence, the Commissioners may rely on the planning rationale and justifications offered in the DG's submission and/or further submission, or on ECan's Section 42A Report.

Explanation of terms used in this evidence:

ASCV	Areas of Significant Conservation Value
CMA	Coastal and Marine Area
CMS	Conservation Management Strategy
CWMS	Canterbury Water Management Strategy
ECan	Canterbury Regional Council
ECan Act	Environment Canterbury (Temporary Commissioners and Improved Water Management Act) 2010
DG	Director-General of Conservation
DOC	Department of Conservation
FENZ	Freshwater Environments of New Zealand
FRE	Frequency of fresh flows (1.5 - 3 times median flow)
HWRRP	Proposed Hurunui Waiiau River Regional Plan
NPS FW	National Policy Statement Freshwater Management 2011
pCLWRP	Proposed Land and Water Regional Plan (ECan 2012)
RMA	Resource Management Act 1991
RPS	Canterbury Regional Policy Statement (January 2013)

SPECIFIC SUBMISSIONS ON THE pCLWRP PROVISIONS PHASE III

ALL SUB-REGIONAL SECTIONS

HIGH NATURALNESS WATERBODIES LISTS

- 17 These lists appear in all sub-regional sections and, by their inclusion on the list, indicate ECan's Policy with regard to high naturalness waterbodies.

DG's Submission

- 18 The DG's submission supported the inclusion of:
- i) the top 20% of Freshwater Environments of New Zealand ("FENZ") into the high naturalness waterbodies list of all the sub-regional sections, and
 - ii) areas of significant conservation values.

Officer Comment and Recommendation

- 19 The Officer's Report recommendation was that the inclusion of the 20% FENZ waterbodies involved "whole catchments", and may have implications for other activities managed under the pCLWRP. The recommendation also stated that the addition of further waterbodies should be included by way of a formal plan change or variation.
- 20 While the section 42A Report noted the DG's submission on areas of significant conservation value, it did not address the submission or include them.

Comment

- 21 Dr West has provided more detail on the Ashburton catchment top 20% of FENZ for this Phase III hearing. My comments from Phase I on pages 85 and 86 of my evidence are still applicable with regards to high naturalness areas. I also enclose in Appendix 1 several ECan report references that have already outlined the high natural values for catchments in the Region. ECan has various reports available, outlining the natural character of Canterbury's Rivers

and Lakes, including Daly (2004) and Sutherland –Downing and Elley (2003), and Taylor, Champion, and NIWA (1996).

- 22 National Policy Statement Freshwater Management 2011 (“NPS FW”) Objective A2 requires the maintenance or improvement of the overall quality of fresh water while “protecting the quality of outstanding freshwater bodies”.
- 23 Canterbury Regional Policy Statement (January 2013) (“RPS”) Policy 7.3.1 complements NPS Objective A2 by making it a matter of regional importance to identify the natural character of freshwater bodies in the region, and further to preserve natural character where those values are in a high state.
- 24 My overall view on this matter based on the evidence of Dr West is that the pCLWRP has not comprehensively or systematically addressed this high naturalness waterbody issue. A more comprehensive solution and process is required to adequately address this issue in the pCLWRP to give effect to RPS Policy 7.3.1 and NPS Objective A2.
- 25 FENZ as outlined by Dr West, helps to achieve RPS Policy 7.3.1 in a more systematic and comprehensive manner rather than the current ad hoc approach. To do this across Canterbury would require more information collation, assessment, and consultation. If the Hearing Commissioners accept that if further work is required relating to NPS Policy A1 to address water quality issues in this plan, then in my view, assessing high naturalness water bodies would be an essential primary component of this water quality plan variation/ plan change work. I think that this needs to be done within the next two years, because it is a key part of an integrated water quality management approach.
- 26 In terms of areas of significant conservation values (“ASCV”), I have looked at the Schedule and ascertained that they are in the coastal marine area (“CMA”). The pCLWRP is not intended to apply to the CMA. Therefore, the ASCVs should not be part of the pCLWRP, as discussed on page 78 of the Part I hearing Section 42A Report on coastal plan jurisdiction.

Recommendations

- 27 I recommend that if the Hearing Commissioners are not of a mind to accept the DG's submission, then they consider recommending a plan variation or change to ECan to consider a more systematic and comprehensive approach to high naturalness waterbodies in the pCLWRP, within the next two years.
- 28 I recommend the Hearing Commissioners do not include ASCVs in the pCLWRP for the reasons outlined in paragraph 25 above.

LISTING OF CONSENTS

- 29 The DG sought a listing of freshwater consents and related information for each catchment.

DG's Submission

- 30 The DG's submission sought a schedule of surface and hydraulically connected groundwater consents be outlined in the pCLWRP.

Officer Comment and Recommendation

- 31 The Officer's Report recommendation was that the inclusion of the freshwater consents was not supported as this information would change over time.

Comment

- 32 I do not agree with the Officer's recommendations. I have two reasons for this view, outlined below.
- 33 Firstly, I view it as a matter of the public interest that the allocation of freshwater by catchment is clear and be available to the public. There is huge public interest in water allocation in Canterbury and a renewed focus on water management is brought about by the Environment Canterbury (Temporary Commissioners and Improved Water Management Act) 2010 ("ECan Act").

- 34 I am also aware that in the initial stages of the Waitaki Catchment Water Allocation Plan process, the precise amount of water allocated was either not clear or not known. The issue with allocation blocks is that we need to establish them with a defined amount or their purpose is completely negated. The Proposed Hurunui Waiau River Regional Plan (“HWRRP”), provides a very good case study in this matter.
- 35 A more recent ECan example of allocation uncertainty was the use of a two cumec gap between the A and B allocation blocks in the Waiau River Table 1 allocations in the HWRRP, because the allocation was not certain.
- 36 A two cumec gap was designed to ensure that no subsequent consent would derogate from an existing consent, because essentially the A allocation block size was not known or clear. This gap was discussed in the recent Hearing Commissioners decision on the HWRRP on pages 32 - 33 and paragraphs 103 - 108 of their hearing recommendation. This recommendation has been recently adopted by ECan. In the HWRRP decision, the Hearing Commissioners clarified the allocation status in table 1 to address the allocation status and the need for a two cumec gap. This was achieved by removing the two cumec gap, and sizing the A allocation block to include the sum of the existing consented takes as outlined in paragraph 108 of their HWRRP decision. In their report, the Hearing Commissioners have confirmed the A allocation block size.
- 37 This example clearly indicates that a considerable amount of effort in water planning is required to establish exactly what water has been allocated and where. However, this is the fundamental point of a block allocation system, and the key point regarding why this has to be established by ECan in the pCLWRP, clearly for all parties. What comprises the water allocation block by catchment and maintaining those limits set is in my view, a critical key to the success of the pCLWRP.
- 38 Secondly, there needs to be a place for prospective applicants for a water take to establish if there is available water in a block to abstract. For example, if no

A allocation block is available, then calculations will need to be done to assesses the reliability to abstract B allocation block water to obtain a consistent volume of water to fulfil the reliability needs of the prospective abstractor. This is because a resource consent for a B allocation block will not provide adequate “run of river” reliability for abstractors, particularly later in the growing season.

- 39 Blocks are used to establish limits as required by Policy A1 of the NPS and implemented by flow and allocation regimes under RPS Policy 7.3.4. The whole point of the block system under a Plan based water allocation system is to give people certainty about what is allocated and where. ECan has this consent information on a consent database. This is not accessible in a Plan block form, yet the block system is the basis for future water management. It is a relatively easy task to have this information publicly available. ECan will have to collate this information to make the block system work in any event, so this is not duplicating work and provides public transparency on the block allocation system.
- 40 Without publicly accessible information on the allocation blocks, ECan will not deliver all of the benefits promised under the Canterbury Water Management Strategy (“CWMS”). Accessibility of information is essential so that we have confidence that the limits have been set, can be seen, and are seen to being managed with the “environmentally sustainable framework” of the CWMS vision by ECan. A critical component of these sustainable framework limits is the block allocation system. It is a matter of public accountability.
- 41 I acknowledge that these allocations will change over time where block limits are not reached, or when conditions are reviewed or consents surrendered. This can be addressed in three ways, as outlined below:
- Firstly, by stating that these allocations are correct at a set date in the pCLWRP and by updating them each time a plan change is made. As the pCLWRP is expected to be regularly updated, then if these amounts are

updated at every plan change this will reduce the gap between allocation block and consented amounts.

- Secondly, if one looks at many of the A allocation blocks in the sub-regional chapters, many are full, so that in those circumstances, under Rule 5.98 any take that does not comply with a limit established in section 6 - 15 will be a prohibited activity under condition 1 of Rule 5.96. This means in these cases, that there will not be any more takes when these limits are reached.
- Thirdly, an option that could be considered by the Hearing Commissioners that is not directly Resource Management Act 1991 ("RMA") plan related is a requirement for ECan to post their water allocations by catchment on their website in the relevant catchment section as a recommendation to the relevant Council.

42 As a very basic example of the benefits of such an approach, I would be of the view that the submissions by the DG on water allocations in the Clarence and the Avon-Heathcote on the pCLWRP, for example, may have been able to be avoided if the allocation block status information was known at the time of submission. I shall comment on this later in my evidence.

Recommendations

43 I recommend that the Hearing Commissioners consider listing the details of all water consents that comprise an allocation block as an appendix in the pLWRP referred to for each sub regional sections, with a footnote or disclaimer noting that it is only as accurate as the last plan change, or;

44 The Hearing Commissioners recommend to ECan that it maintain the consented allocations per block and allocation block limits per catchment on its website so that the general public can access this information. I think this is the most sensible solution.

2. SUB REGIONAL SECTIONS

1. KAIKOURA (pages 12 – 17)

45 This section contains all the Rules relating to the Policies and Rules for the Kaikoura Rivers, including surface and groundwater allocation limits and high naturalness waterbodies.

DG's Submission and Further Submissions

46 The DG's submission sought the following changes:

- Provide a separate Policy regarding the formation of water user groups;
- Amend Rule 6.5.1 to prohibit all damming of the mainstem of Clarence River whether or not the damming is of the full flow;
- Amend Rule 6.5.1 to preclude diversion of water from the mainstem of the Clarence River;
- Table 2 should be amended to refer to a zero allocation block for the Clarence River;
- Insert a significantly higher minimum flow of 90% of mean annual seven day low flow & [should read 7] ("DMALF") as per the default Rule in 5.96, Condition 2 for new takes on the Upper Kahutara;
- Support other flows listed in the table; and
- Table 2 should be amended to refer to a zero allocation block for the Clarence River.

Officer Comment and Recommendation

47 The Officer's Report recommends changes as outlined in pages 12 - 17 of the Section 42A Report.

48 I have assessed the Officer's Report and basically agree with their recommendations for the reasons outlined in their Section 42A Report.

49 I particularly agree with the changes recommended to Policy 6.4.1 regarding user groups and the retention of Policy 6.4.2. I also support the Officer's rationale regarding the DG's submission on the Upper Kahutara.

50 I note the discussion on the Clarence River minimum flow and allocation, and consider the default minimum flow and allocation regime of condition will apply in the absence of a table 2 6.6.1 condition flow and allocation regime (as modified by the regime sought by the DG would be appropriate in the interim).

Recommendations

51 I recommend the Commissioners accept the Officer's Report recommendations for the Kaikoura section.

3. Hurunui –Waiaiu page 18

52 This section contains all the Rules relating to the Policies and Rules for the Hurunui-Waiaiu Rivers, including surface and groundwater allocation limits and high naturalness waterbodies.

DG's Submission

53 The DG's submission sought to:

- Amend the reference to wetlands to either provide evidence to support the numbers referred to in this introduction, or remove the numbers and simply note that there has been widespread loss and degradation of wetlands.

Officer Comment

54 The Officer's Report has not addressed the DG's submission in pages 18 - 20 of the Section 42A Report.

Comment

55 The amendments proposed in the Section 42A Report do not address all the concerns raised in the DG's submission. The wetland sites in my view need to

be referenced to a technical study to provide confidence on this number, or simply make a general note, if there is not a high degree of confidence on this number.

Recommendation

56 I recommend the Commissioners amend the Officer's recommendations in their Section 42A Report by either referencing a technical report on wetlands or making a general note that there has been widespread loss and degradation of wetlands in paragraph 2 of page 7-1.

4. WAMAKARIRI (pages 21 - 23)

57 This section contains all the Rules relating to the Policies and Rules for the Waimakariri River and Tributaries, including surface and groundwater allocation limits and high naturalness waterbodies.

DG's submission

58 The DG's submission sought to:

- amend Rule 8.5.1 to prohibit all damming of the mainstem of Ashley River whether or not the damming is of the full flow;
- delete all references to "unlimited" from table 7 and replace with "0" or provide hydrological evidence of sustainable block sizes that will not threaten the life-supporting capacity of these creeks; and
- remove "NA" for C permits in Table 7 and replace with "0".

Officer Comment and Recommendation

59 The Officer's Report recommends changes as outlined in pages 21 - 24 of the Section 42A Report.

Comment

60 I support the Officer's recommendations for the changes to Rule 8.5.1 which provides a prohibited activity Rule for the damming of the Ashley Gorge. The

changes clarify the location of where the Rule applies to in more detail. The Rule as modified also clarifies the damming is a prohibited activity, which makes the enforcement of this Rule clear.

61 I do not support the Officer's recommendations with regard to the B allocation blocks for the other small streams other than the Ashley River in table 7. The Section 42 Report states

"Given that the flows in the spring fed streams are stable, the inclusion of a B Block with unlimited allocation is unlikely to impact on flow variability."

62 My major concern with this is that it does not recognise the finite characteristics of spring fed streams. As a foothills catchment, the Ashley has low summer flows, and the existing surface water resource is highly allocated. By highly allocated, I mean that two of these catchments have A allocation blocks of 400% of the minimum flow. This means that they are not likely to provide reliable sources of water and their block size is greater than what I would recommend as a reliable size. They are likely to be greater than the default Rule of 5.96 in the pCLWRP.

63 I note the Government's current Freshwater discussion paper "Freshwater reform: 2013 and Beyond" (2013) on figure 2 page 17 classifies any allocation greater than 100% of the 7DMALF as the most allocated category. The implication of this are that these catchments would be the priority catchments to address water over-allocation issues first.

64 I am unaware of any requirements that state you cannot have an unlimited B allocation block but the impact of this could potentially flatline the stream/river for significant periods of time at the B block minimum flow. Flatlining is generally undesirable. If the stream is springfed and flows are stable, then the only variation to flows is likely to come when it rains and surface runoff augments the spring water in the stream.

65 Therefore, flatlining the flows at the B Block minimum could result in the only possibility of having flow variation in the stream being eliminated. In other

ECan Plans such as the Hurunui-Waiiau Plan, there is specific provision to protect the frequency of fresh flows (1.5-3 times median flow) ("FRE1.5-3") as a policy issue, Policy 2.5. This regime, with an unlimited B allocation block would eliminate these flows all together.

- 66 As a B block should be sized for an appropriate purpose, I find the rationale for an unlimited B allocation block in this case, to be totally unjustified. No rationale is provided for the reasons why an unlimited allocation is required.
- 67 This advice is contrasted with the ECan hydrology and planning advice on the Orari with regards to spring fed streams. I note that the Waimakiriri approach regarding B allocation blocks for spring-fed streams is completely inconsistent with the advice given in Appendix 3 by Ritson and Stapleton on spring fed creeks on the Orari. They state on page 30 that "there is no "B" block as it is predominantly a spring-fed creek with little flow variation". I much prefer the advice of Ritson and Stapleton, who clearly do not believe that having a "B" allocation block on a spring-fed stream is sustainable.
- 68 I do not agree that a B Block should not be taken on an unlimited basis without some restrictions. Restrictions may be necessary in terms of a maximum allocation rate or volume and also in terms of a method for protecting the FRE 1.5-3 flows such as gaps or flow sharing. A B block for spring fed streams on this basis, is in my view inconsistent with Policy 7.3.4 Water Quality of the RPS, which seeks to protect flows, freshes, and flow variability. An unlimited B allocation block in this catchment would not give effect to this RPS Policy.
- 69 Further, the NPS FW requires ECan to set freshwater quantity limits under Policy A1. In my view, an unlimited limit is not, in reality, a limit at all and is therefore also inconsistent with Policy A1 of the NPS. It also will not avoid over-allocation as by definition it will allow allocation of all flows above the B allocation block minimum flow, which is also in my view inconsistent with Policy A1 (b) of the NPS FW.

70 In the event that the Hearing Commissioners determine that a B allocation can be sustained in this case, then I would recommend that 1:1 flow sharing be a minimum requirement of these B allocation blocks. This will assist in protecting flow variability for FRE 1.5-3 flows. My strong preference, however, if there are no B consents granted, is that there should not be a B allocation block in these spring fed tributaries.

Recommendation

71 I recommend that the Hearing Commissioners check with ECan staff if there have been any B water take permits for the smaller tributaries in the Waimakariri section issued by ECan; and

72 if no such permits have been issued, then I would recommend the Hearing Commissioners provide a zero allocation block for all B water take permits in table 7 except for the Ashley River, and

73 if any B water take permits for the smaller tributaries have been issued, a pCLWRP requirement for 1:1 flow sharing for these B permits be imposed.

5. CHRISTCHURCH-WEST MELTON (pages 25 - 33)

74 This section contains all the Rules relating to the Policies and Rules for the Christchurch-West Melton area, including surface and groundwater allocation limits and high naturalness waterbodies.

DG's submission

75 The DG's submission sought to:

- add the Waimakariri to the list of main waterways in the area;
- add the Waimakariri to the list of main waterways in the area; and
- amend Table 9 to replace the words "no limit set" in relation to A allocations with the word "zero" for the Avon river.

Officer Comment and Recommendation

76 The Officer's Report recommends changes as outlined in pages 25 - 33 of the Section 42A Report. The DG's submissions above were not accepted in the Officer's Report.

Comment

77 The Officer's Report has clarified the inclusion of the Waimakariri River and exclusion of the Coastal Marine Area. I agree with the recommendations on these matters.

78 I do not agree with the Officer's recommendation with regard to the Avon allocation limits for all the same reasons as outlined in paragraphs 62 - 68 of my evidence on the Waimakariri sub regional section.

79 The Rule as drafted would allow unlimited takes from both the Avon or Heathcote Rivers which is not I believe, a sustainable outcome nor one sought by the majority of Christchurch residents.

Recommendation

80 I recommend the Hearing Commissioners consider setting the A block allocation limits for the Avon and Heathcote Rivers at the current consented limits for consumptive takes.

6. BANKS PENINSULA (pages 34 - 36)

81 This section contains all the Rules relating to the Policies and Rules for the Banks Peninsula Rivers, including surface and groundwater allocation limits and high naturalness waterbodies.

DG's submission and further submissions

82 The DG's submission sought to:

- amend the last sentence of introduction to read “Some streams exit to small estuaries situated in pocket beaches before entering the sea.”; and
- realign the boundaries to ensure that the coastal marine area (such as harbours and inlets) is excluded from the map.

Officer Comment and Recommendation

83 The Officer’s Report recommends changes as outlined in pages 34 - 36 of the Section 42A Report.

Comment

84 I agree with all of the Officer’s recommendations on this section as they have accepted all the DG’s submissions.

Recommendations

85 I recommend that the Hearing Commissioners accept the recommendations of the Officer’s Section 42A Report:

7. SELWYN-WAIHORA (pages 36 - 37)

86 This section contains all of the Rules relating to the Policies and Rules for the Selwyn-Waihora Rivers, including surface and groundwater allocation limits and high naturalness waterbodies.

DG’s submission

87 The DG’s submission sought to:

- amend the ranking of the bullet points in the introduction to reflect the order (first and second) of development priorities of the Committee; and
- amend the introduction to include reference to Te Waihora’s status as a Ramsar Site and the existence of the DOC and Ngai Tahu Joint Management Plan.

Officer Comment and Recommendations

88 The Officer's Report recommends changes as outlined in pages 36 - 37 of the Section 42A Report.

Comment

89 I do not agree the Officer's recommendations regarding the hierarchy of first and second order priorities.

90 My reason for this is that this is a CWMS fundamental principle as a regional approach to have first and second order priorities and that this is a matter to which ECan should have "particular regard" under section 63 of the ECan Act. The Officer has relied on the Zone Implementation Plan priorities as having more weight in this matter. This is stated in the Officer's Report. I do not agree with this view.

91 As discussed in my evidence of 4th February 2013, pages 118-20, paragraphs 93 - 103, I am of the view that more weight should be given to CWMS principle 2 "Regional Approach" than the Zone Implementation Plan priorities. Therefore, the first and second order priorities of the CWMS should in my view be prioritized as per the CWMS principle 2, and that the sentence should end at the word "identified:" and the words "by the Selwyn-Waihora Zone Committee" be deleted.

92 I note that Te Waihora Joint Management Plan is not recommended to be included in the pCLWRP. Normally I would not have an issue with the non-inclusion of a management plan. However, I believe that in this case, it is important to be included as it is a statutory requirement of the Ngai Tahu Claims Settlement Act (1998) (sections 167 to 182 and schedule 12). Further, my view is that its inclusion is consistent with the principle of active protection of Ngai Tahu resources under the Treaty of Waitangi. This is a section 8 RMA matter for ECan to address. It is the first joint management plan prepared

between the Crown and Iwi. I would therefore respectfully recommend that it be included in this pCLWRP section.

93 I note Te Waihora is a not a Ramsar Site and support the Officer's recommendations on this matter.

Recommendation

94 I recommend the Hearing Commissioners do not accept the recommendations of the Officer's Section 42A Report with regard to outcomes and prioritise the outcomes in line with the CWMS principles as discussed above, and that the Joint Management Plan be included as another relevant plan.

8. CENTRAL CANTERBURY ALPINE RIVERS (pages 36 - 40)

95 This section contains all of the Rules relating to the Policies and Rules for the Central Canterbury and Alpine Rivers, including surface and groundwater allocation limits and high naturalness waterbodies.

DG's submission

The DG's submission sought to add a comment to clarify that the Styx River catchment falls outside the Rules of the Waimakariri River Regional Plan 2004.

Officer Comment and Recommendation

96 The Officer's Report recommends changes as outlined in pages 36 - 40 of the Section 42A Report, and has clarified the status of the Styx River in page 25, paragraph 5.2 of the Section 42A Report.

Comment

97 I agree the Officer's Report has clarified where the Styx River is dealt with and that this satisfies the concerns of the DG regarding this matter.

Recommendation

98 I would recommend that the Commissioners accept the Officer's recommendations in the Section 42A Report.

9. ASHBURTON (pages 42 - 56)

99 This section contains all of the Policies and Rules for the Ashburton River and Tributaries, including surface and groundwater allocation limits and high naturalness waterbodies.

DG's submission

100 The DG's submissions sought to support Policy 13.4.2 and allocation limits 13.6.

DG's Further Submission

101 The DG further submitted in support of the Royal Forest and Bird Protection Society, which sought changes to the flow and allocation regime table.

Officer Comment and Recommendation

102 The Officer's recommendations are outlined in pages 42 - 56 of the Section 42A Report.

Comment

103 Mr Waugh is a respected local hydrologist and I value his opinions on the Ashburton River. His evidence has been assessed by the Departmental Hydrologist, Mr Stewart, who can find no flaws in his approach.

104 In my view, Mr Waugh's evidence gives better effect to NPS and RPS policies than the status quo in table 12, particularly with regard to the NZCPS.

105 Mr Waugh's observations on the effects of climate change based on a decade of mean flows are of interest. I note the proposed reductions in the A allocation block from August 2022 in table 12. This reduction in A allocation

block in my view is consistent with the NPS FW Policy A1 a) i) direction for regional plans to consider the reasonably foreseeable impacts of climate change.

106 I also note the significance of flows to sustain the opening of the Ashburton mouth as a significant coastal issue. In that regard, the NZ Coastal Policy Statement (2010) (NZCPS) is relevant. I regard Policies 11(b) v (Habitats), and vi (ecological corridors, in this case river ecosystems), and Policy 13, and Policy 15 as potentially relevant in a flow and allocation regime.

107 Mr Waugh provides evidence that a flow of 7000 L/s is required to maintain the mouth in the Ashburton. Table 12 proposes that this be 6000 L/s, which will not be adequate for river mouth opening purposes, based on his evidence. I infer from this evidence that to maintain the life supporting capacity of the Ashburton Mouth, a flow of 7000 L/s at SH1 is required.

108 The NZCPS is a matter that the pCLWRP must “give effect to”. In this regard, it is my view that the flows sought by Mr Waugh will better give effect to the NZCPS than the flows in table 12.

Recommendation

109 I recommend that the Hearing Commissioners accept the recommendations of the Officer’s Section 42A Report as modified by the evidence of John Waugh.

10. ORARI-OPIHI-PAREORA (pages 58 - 75)

110 This section contains all the Rules relating to the Policies and Rules for the Orari-Opihi-Pareora Rivers, including surface and groundwater allocation limits and high naturalness waterbodies.

DG’s Submission

111 The DG’s submission on section 10 sought:

- in table 15 replace the reference to “2040” with “2022” as the compliance timeframe for the new regime; and

- either delete B block or require consent applicants to demonstrate that the B block will not have an adverse effect of fresh and flood flows.

Officer Comment and Recommendation

112 The Officer's Report recommends changes as outlined in pages 58 - 75 of the Section 42A Report.

Comment

Current Situation

113 I am of the view that the current Orari River minimum flow and allocation situation with the Orari is currently seriously over allocated and the currently minimum flow is unlikely to be adequate in addressing in-stream environmental needs.

114 My rationale for this is as follows:

- The current 7DMALF is 1494 L/s, and
- The current allocation is 1524 L/s, making the A block allocation greater than 100% of the 7DMALF, and
- The current December-April minimum flow is 200 L/s, making the minimum flow 13% of the 7DMALF.

115 This is, in my opinion, a very poor minimum flow when compared to the default pCLWRP rule 5.96, condition 2, or the Government's draft NES on environmental flows. The proposed regime in Table 15 is cognisant of this need to progressively address three matters:

- Increase the minimum flow, and
- Reduce the A allocation block over time, and
- Provide a B allocation Block

116 As part of that adjustment, a B allocation block, provided it can be managed within acceptable environmental limits, can assist with providing reliable water

sourced from the Orari by enabling takes at higher flows, as well as a smaller A allocation block. Such a progressive implementation regime consistent with NPS policy E1 should enable such a transition to a more sustainable regime. Such a regime should seek to better sustain instream values, and would desirably, increase overall reliability for irrigators.

- 117 The current allocation block size also means that the reliability is also likely to be lower than desirable. In this regard, I note the long term intention of moving to an 800 L/s allocation block in table 15 and note that this is far closer to a more desirable water allocation “rule of thumb” amount of approximately 50% of the 7DMALF.

NES Compliance Date

- 118 I do not support a 2040 compliance date for the table 15 environmental flow and allocation limit table. This is because NPS FW Policy E1 (c) requires the ECan implementation programme to be fully implemented by 31 December 2030. I am therefore of the view that a 2040 date does not “give effect to” the NPS FW Policy E1 (b) as required under section 55(2) of the RMA. My interpretation of the maximum time available for the transition to the new regime under the NPS FW is therefore 31 December 2030.

Revised Policy

- 119 The Department has recently met the Orari Steering Group and has been able to mutually agree on some changes to the flow and allocation regime Policy. I have read and support the inclusion of changes mutually agreed between parties negotiated in early to mid May.

B Allocation Block Flow Variability

- 120 I have read Appendix 3 (the Ritson/Stapleton memo) of the Phase III section 42a report and their modelling work on the effects of the flow regimes on the Orari.

121 This is illustrated in table 4.5 and discussed on pages 18, 19 and 23 of their memo. This work shows reductions in the duration and number of low flow periods under the new flow regime. It also showed that “there does not appear to be a significant effect on the floods and freshes for all scenarios, even with a “B” block” (Ritson and Stapleton, line 2 and 3 paragraph 1, page 19).

122 I consider that the new flow regime in table 15 (as modified by the recent agreements with the Steering Group) is more consistent with RPS Policy 7.3.4 (c) than the status quo.

123 I am therefore of the view that the effects of the “B’ allocation block have been adequately modelled to address the relief sought by the DG on this matter.

Recommendations

124 I recommended that the Commissioners accept the recommendations of the Officer’s Section 42A Report with the following alterations:

- alteration of table 15 compliance dates from 2040 to 2030, and
- addition of a new Policy (to be as outlined by the Orari Environmental Flow and Allocation Regime Steering Committee).

11. WAITAKI (pages 76 – 82)

125 This section contains all the Rules relating to the Policies and Rules for the Waitaki River and Tributaries, including surface and groundwater allocation limits and high naturalness waterbodies.

DG’s Submission

126 The DG’s submission on section 11 sought to:

- make it clear that water quality in the other lakes feeding Benmore need to be high if Benmore’s water quality is to be maintained;
- amend bullet point 3 to read: “the braided river ecosystems are protected as an outstanding recreation resource”; and

- retain allocation limits of 15.6.

Officer Comment and Recommendation

127 The Officer's Report recommends changes as outlined in pages 76 - 82 of the Section 42A Report.

Comment

128 I agree with the general recommendations of the Section 42A Report. I note specifically the Officer's comments on the damming prohibition on the North Branch of the Waihao, and agree with this recommendation.

129 The DG's submission sought a comment on protecting the water quality of Lake Benmore. Having currently been involved with the Upper Waitaki consents process I am a view that is a serious issue. A comment regarding protecting the water quality of Lake Benmore is warranted.

130 I note the water quality map on pages 4 - 8 has the Ahuriri Catchment as a nutrient zone that is over allocated and therefore red zoned. This catchment drains into Lake Benmore. It is notable that this catchment is subject to the provisions of the Ahuriri Water Conservation Order, which has nationally outstanding values worthy of protection.

Recommendations

131 I recommend that the Hearing Commissioners accept the recommendations of the Officer's Section 42A Report, but also consider the addition of a comment on the need to improve water quality on the water bodies feeding into Lake Benmore on pages 15-1 and 15-2 for the reasons outlined above.

CONCLUSION

132 I am happy to answer any questions the Hearing Commissioners may have on this matter.

A handwritten signature in black ink, appearing to read "Herb Familton". The signature is written in a cursive style with a long horizontal stroke at the end.

Herb R Familton
Resource Management Planner
Department of Conservation

13th May 2013

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