

**BEFORE THE INDEPENDENT COMMISSIONERS**

**UNDER** the Resource Management Act  
1991

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

---

**MEMORANDUM OF COUNSEL ON BEHALF OF FISH AND GAME IN  
RESPONSE TO QUESTIONS FROM COMMISSIONERS DURING  
HEARING GROUPS 1 AND 2**

**13 JUNE 2013**

---

---

**ANDERSON LLOYD  
LAWYERS  
CHRISTCHURCH**

Solicitor: Maree Baker-Galloway

Level 10, Otago House  
Cnr Moray & Princes Street,  
Private Bag 1959,  
DUNEDIN 9054  
Tel 03 477 3973  
Fax 03 477 3184

## INTRODUCTION

1. During Fish and Game's presentation at Hearing Groups 1 and 2 for the Proposed Canterbury Land and Water Regional Plan ("pCLWRP") the Independent Hearing Commissioners ("the Commissioners") asked a variety of questions of legal counsel and expert witnesses. This Memorandum of Counsel, along with an appended supplementary legal submission and appended statements of evidence is Fish and Game's response to those questions.
2. The supplementary evidence statements are appended as:
  - A. Russell Death and Roger Young;
  - B. Alison Dewes; and
  - C. Phillip Percy.
3. The supplementary legal submission is appended as D.
4. The maps are appended as E.

## SUMMARY OF QUESTIONS FROM COMMISSIONERS IN HEARING GROUP 1 AND HEARING GROUP 2

### *Questions from Hearing Group 1*

5. The following questions will be answered by both Russell Death and Roger Young:
  - Q1. Commissioner van Voorthuysen: Asked for an amended version of Table 1a that noted how compliance with each of the limits should be measured and that noted deviations from the

Hayward report, explanations as to why. Further specific questions in respect of limits also follow.

- Q2. Commissioner van Voorthuysen: In relation to Schedule 5 why did Neil Deans recommend limiting toxicants at 99% protection level as indicated in the ANZECC guidelines versus 95% in Schedule 5?
- Q3. Commissioner van Voorthuysen: In relation to cyanobacteria what are the absolute limits that should be in the table?
- Q4. Commissioner van Voorthuysen: In respect of the management unit Alpine-Lower the Hayward Report recommends 95% but Roger Young recommends 99% why is there a difference in respect of nitrate and other toxicants in Schedule 5 and in Table 1 and the Hayward Report?
- Q5. Commissioner van Voorthuysen: In relation to Schedule 5 and Table 1a why is change for pH of no more than 0.5 recommended, is there support in the Hayward Report for this?
- Q.6 In Schedule 5 DOC is changed from 2 to 1 – why?
- Q7. Commissioner van Voorthuysen: Why is 11 degrees recommended to apply from April to October compared to what Hayward recommended which was 16 degrees. Is 11 degrees achievable or realistic?
- Q8. Commissioner van Voorthuysen: Should Schedule 5 include ammonia value?

6. The following question will be answered by Scott Pearson:

Q9. Commissioner Sheppard: Can a map be provided identifying all the fisheries detailed in Tony Hawker's evidence?

7. The following question will be answered by Phillip Percy:

Q10. Commissioner van Voorthuysen: Should use/consumptive values (such as irrigation or hydro for example) be acknowledged in Table 1a and/or Schedule XX and/or somewhere else?

***Questions from Hearing Group 2***

8. The following questions will be answered by Maree Baker-Galloway:

Q11. Commissioner van Voorthuysen: What is the status of the One Plan and the hybrid rule 13.1 it incorporates combining land use and water permits?

Q12. Commissioner van Voorthuysen: Check the Waikato Variation 5 case to clarify whether bundling s9 and s15 activities into hybrid rules was considered unlawful, or just not preferred in that case?

Q13. Commissioner van Voorthuysen: Is Fish and Game opposed in principle of the auditing of FEP, irrespective of rule status?

Q14. Commissioner Sheppard: Is there an exception in law for certifying by third parties the conditions for a permitted activity in a regional or district plan?

9. The following questions will be answered by Phillip Percy:

Q15. Commissioner Sheppard: Did Mr Percy take into account case law which does not support use of term "bottom line" in context of section 5(2)(a)(b) and (c)? (Maree Baker-Galloway will address briefly also)

Q16. Commissioner van Voorthuysen: How many numbers of farms would require a resource consent that are affected by the Canterbury Regional Council's ("ECan") rule structure?

10. The following questions will be answered by Alison Dewes:

Q17. Commissioner van Voorthuysen: How many herd homes using cut and carry of pasture, capture of effluent etc. are currently in Canterbury?

Q18. Commissioner van Voorthuysen: Asked Dr Dewes to read Dr McCall's evidence on behalf of Fonterra and Dairy New Zealand for the ECan hearing on the Proposed Hurunui and Waiau River Regional Plan, 12 October 2012, paragraphs 28 – 37 and give a response as to whether it changes her advice?

11. The following questions will be answered by Russell Death:

Q19. Commissioner van Voorthuysen: Asks for clarification on what was intended by the statement "adverse effects and significant adverse effects" are the same thing?

Q20. Commissioner Sheppard: What is a meandering stream; what are the impacts of allowing stock into meandering streams; and

is it practical and appropriate to exclude all animals from  
meandering streams?

**DATED** this 13<sup>th</sup> day of June 2013

A handwritten signature in cursive script, appearing to read "M A Baker-Galloway".

M A Baker-Galloway

Counsel for Fish and Game

