

**BEFORE THE INDEPENDENT COMMISSIONERS**

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

**AND**

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

---

**APPENDIX C - SUPPLEMENTARY EVIDENCE STATEMENT OF PHILLIP  
PERCY ON BEHALF OF NELSON/MARLBOROUGH, NORTH  
CANTERBURY AND CENTRAL SOUTH ISLAND FISH AND GAME  
COUNCILS**

**14 June 2013**

---

---

**ANDERSON LLOYD**  
LAWYERS  
DUNEDIN

Solicitor: Maree Baker-Galloway  
(maree.baker-galloway@andersonlloyd.co.nz)

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

## QUALIFICATIONS AND EXPERIENCE

1. My name is Phillip Harry Percy. My qualifications and evidence were set out in my Evidence in Chief, dated 4 February 2013.
2. This is my response to some of the questions raised by the Independent Hearing Commissioners during Fish and Game's appearance at Hearing Group 2. I also address a question that was posed to Ms Baker-Galloway at Fish and Game's appearance at Hearing Group 1 that she indicated I may be able to answer.
3. I have again prepared this evidence in compliance with the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2011.

**HG1 Q10: Should use/consumptive values (such as irrigation or hydro for example) be acknowledged in Table 1a and/or Schedule XX and/or somewhere else in the Plan?**

4. Table 1a defines the limits for rivers and therefore it defines the maximum amount of resource available for use. The limits in Table 1a operate by defining the numerical level above which use for consumptive purposes can occur. In other words, the resource can be used up until the point the numbers in Table 1a are met. So to acknowledge (which, in the context of the question I take to mean specify or include as a listed value) consumptive values in that table would contradict the definition of limits.
5. Schedule XX as proposed by Fish and Game is integrated into the Plan by having a relationship with the Table 1 limits. However Schedule XX is also cross-referenced in some rules in the Plan as a means to trigger a different activity status or rule stream where an

activity occurs within or near sites listed in the Schedule. In some cases these rules generically refer to sites listed in the schedule and in others they specify particular values within the schedule (e.g rivers identified as have the value Primary Salmonid Spawning).

6. Consumptive values could be included in Schedule XX but the way in which the schedule functions with the rules as drafted would likely complicate the structure of the Plan. If consumptive values for different water bodies are to be specified in the Plan, it is my view that a tidier solution would be to include them in a separate schedule.

**HG2 Q15: 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)**

7. Commissioner Sheppard asked me whether the Council should be cognisant of case law that does not support the concept that s5 paragraphs (a) to (c) comprise 'bottom lines'. I was not sufficiently familiar with all of the relevant case law at the time the question was asked and referred the question to counsel for Fish & Game. I have now had an opportunity to consider relevant case law, as provided to me by counsel, and offer the following response to the question.
8. In my evidence I used the term 'bottom line' in the context that s5 (2) (a) to (c) set out obligations to safe-guard life-supporting capacity, avoid, remedy or mitigate adverse effects on the environment and to make provision for future generations and that these obligations must be provided for in order for sustainable management to occur. Having reviewed the case law, it is my view that using the phraseology of 'bottom line' is not supported by the Environment Court. The concern of the Court appears to be whether the term, referred to as a 'catch phrase', is the correct way to describe the way in which subsections

(2) (a) to (c) function within s5. That concern is probably best described in *Royal Forest and Bird v Manawatu-Wanganui RC*; <sup>1</sup>

*'We have a reservation about using a phrase like "environmental bottom line" to refer to the contents of paragraphs (a), (b) and (c). We are not sure that the phrase expresses lucidly and exactly the intention of the provisions.'*

9. On that basis, I wish to amend my Rebuttal Evidence for Hearing Group 1 (Paragraph 26 on page 8) to remove the phrase 'bottom lines'. That phrase should be replaced with 'purposes', for it appears the case law is consistent that paragraphs (a), (b) and (c) are an essential component of sustainable management and those purposes and values must be provided for. A corresponding change should be made by deleting "baseline" in that same paragraph. No other amendments to my evidence are required.
  
10. I consider that my evidence is consistent with the case law on the basis that sustainable management is not provided for unless the purposes in s5(2)(a) to (c) are met. The evidence of Fish & Game is that, for the water quality aspect of life-supporting capacity, this is achieved in part by specifying the limits in Table 1 (a) to (c) as recommended by Associate Professor Death and managing the freshwater resource to achieve those limits.

---

<sup>1</sup> *Royal Forest and Bird Protection Society of New Zealand Incorporated v Manawatu – Wanganui Regional Council*, [1996] NZRMA 241 at page 269.

**HG2 Q16: How many farms would require a resource consent under the Fish & Game rule structure?**

11. Commissioner van Voorthuysen asked whether I could provide data on the number of farms in Canterbury. I have only been able to obtain an incomplete data set, however data I have obtained is set out in the table attached as Appendix A.
12. The appended data is compiled from the following sources:
  - a. Matthew McCallum-Clarke provided data on the number of farms over 5ha and over 50ha broken down for Red and Orange Zones. The data was derived from Agribase November 2012<sup>2</sup>. No data was provided for the number of farms within the Green, Pale Blue or Lake Zones.
  - b. New Zealand Dairy Statistics 2011-12, Dairy NZ
  - c. Section 32 Report for the Proposed Land and Water Regional Plan

---

<sup>2</sup> Caveats on data provided by Ecan officers:

- ☐ Agribase™ was used to tally the farms (data supply was Nov 2012). Farms are identified on FARM\_ID, a unique identifier created byASUREQuality.
- ☐ As you will appreciate, farms don't follow Nutrient Allocation Zone boundaries. Hence there is significant boundary overlap. A GIS command was used to 'extract farms with polygon centroids' within each zone.
- ☐ Some farm paddocks are not connected at all; some farmers own blocks many kilometres apart. This means that part of the farm might be in our Red Zone, and another part of the farm might be a long way away in Otago.
- ☐ It's worth remembering that there will be a lot of lifestyle blocks in the >5ha figure, and >50ha will also be a component of these numbers. Even though the orange zones are bigger (in terms of area) than the red, the numbers of farms are lower. This is probably the influence of lifestyle blocks around Christchurch and other urban-rural interfaces.

d. Beck, L B 2012: 2011-2012 Canterbury Region Dairy Report No. R12/80

13. I have included data on the number of dairy farms in Canterbury as this is an indication of the number of existing farming activities that are already required to obtain resource consents from the Council (the majority will need discharge consents for dairy effluent application as a minimum). There will be other farms that will also already have a consenting obligation, such as intensive livestock operations that involve animal effluent discharges.
14. I note that the New Zealand Dairy Statistics 2011-12 report states that the average dairy farm size in North Canterbury is 225 effective ha and the average farm in South Canterbury is 226 effective ha. That data suggests that most dairy farms will be greater than 50ha. However there are likely to be other farming activities, such as horticulture, that will operating on properties smaller than 50ha.
15. There are approximately 6000 properties in the 5ha to 50ha bracket. Of those, few will be dairy farms (most dairy farms are larger than 50ha).
16. One additional point that I would like to reiterate is that the Fish & Game proposal refers to the allocation status of *catchments* rather than *zones*. The numbers set out above are therefore indicative only. For example, there may be catchments within current Orange zones that are green (under-allocated) or red (over-allocated) and this will therefore affect the total number of farms affected by the proposed rules.

17. I also note that Fish & Game's rules apply based on the allocation status of catchments at the time the rules come into effect. Where voluntary and other non-regulatory approaches are effective in lowering the allocation status of catchments prior to the rules coming into effect, then the actual number of farms requiring consent will be lower than is currently the case.

A handwritten signature in black ink, appearing to read 'P. Percy', is centered within a light gray rectangular box.

Phillip Percy

14 June 2013

## Appendix A

Data source	Number of farms										
	Total	Total over 2ha	Total over 5ha	Total over 50ha	Over 5ha (Red Zone)	Over 50 ha (Red Zone)	Over 5 ha (Orange Zone)	Over 50ha (Orange Zone)	Over 5h (Green, Blue and Lake zones)	Over 50h (Green, Blue and Lake zones)	Total number of dairy farms
s32 Report (as at 30 June 2007)	17402	14481									858
Beck, L B 2012: 2011-2012 Canterbury Region Dairy Report No. R12/80											980
Ecan (email of 8 June 2013) based on Agribase Nov 2012 data			10859	4832	6112	2355	2862	1343			
Calculated based in Ecan 2013 data provided									1885	1134	