

Janel Hau

From: Catherine McCallum <catherine.mccallum@gtrlaw.co.nz>
Sent: Friday, 21 March 2014 4:46 p.m.
To: Mailroom Mailbox
Cc: Pip Newland
Subject: Submission on Variation 1 of the Land & Water Regional Plan
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Categories: Purple Category

Dear Sir/Madam

Please see the **attached** submission regarding Variation 1 of the Land & Water Regional Plan.

Can you please confirm receipt of the submission. If you have any questions please do not hesitate to contact us.

Kind regards

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SUBMISSION ON VARIATION 1 TO THE PROPOSED CANTERBURY LAND & WATER REGIONAL PLAN

Clause 6 First Schedule, Resource Management Act 1991

TO: Environment Canterbury
Freepost 1201
Variation 1 to the proposed Canterbury
Land & Water Regional Plan

By email: mailroom@ecan.govt.nz

Name of Submitter: Erralyn Farm Limited and Krysette Limited

1 This submission is on:

Variation 1 to the Proposed Canterbury Land & Water Regional Plan (**Variation 1**)

2 The specific provisions of Variation 1 this submission relates to are:

- 2.1 Policy 11.4.22; and
- 2.2 Policy 11.4.23; and
- 2.3 Policy 11.4.25; and
- 2.4 Policy 11.4.26; and
- 2.5 Policy 11.4.27; and
- 2.6 Rule 11.5.32 and associated matters to which discretion is restricted; and
- 2.7 Rule 11.5.33; and
- 2.8 Rule 11.5.37; and
- 2.9 Proposed amendments to Method 1 of Schedule 10

Introduction

- 3 The Submitters jointly own approximately 330 hectares of farmland located above State Highway 1 in the Combined Rakaia Selwyn surface and groundwater zone (**Property**). Krysette Ltd currently farms the Property as a dairy block. The Property has the benefit of three resource consents to take and use groundwater. Two of the consents are subject to adaptive management conditions and expire in 2020. The final consent is subject to conditions imposed through the Rakaia-Selwyn groundwater review and appeal process and expires in 2034.

Transfer of water permits

- 4 This submission opposes the provisions of Variation 1 affecting the transfer of water permits within the Rakaia-Selwyn water allocation zone.**
- 5 The reasons for this opposition include, but are not limited to, the following:**
- 5.1 Variation 1 does not recognise that a transfer of water is not always sought in order to facilitate an increase in irrigation. A transfer may also be used to improve the reliability of water supply for a property.
- 5.2 For properties currently trying to operate with an inherently unreliable consent, the restrictive transfer provisions of Variation 1 prevent the potential improvement in supply and the ability for the permit holder to provide for their social and economic wellbeing. This is a cost which was not identified by the section 32 report.
- 5.3 Policy 7.3.8(4) of the Canterbury Regional Policy Statement (CRPS) requires the recognition of the importance of reliability in supply for irrigation. Reliability is seen as a means to improve efficiency in water use and therefore benefit the water quantity and water quality limits in a catchment.
- 5.4 For the purposes of achieving CRPS policy 7.3.4(2)(a) the renewal of water permits is not considered to be an additional allocation which would result in further over-allocation. The relief sought in this submission would result in a transfer arrangement equivalent to the renewal of an existing permit.
- 5.5 The benefits associated with such an arrangement would be significant:
- (a) Irrigation scheme shareholders would be able to recognise some, if not all of the value inherent in their existing groundwater consents. This addresses one of the economic costs identified by the section 32 report.
 - (b) Reliability and efficiency of use of water would be improved for the recipients of transferred water, better allowing them to provide for their social and economic wellbeing.
 - (c) Phasing out of overallocation within the catchment is still enabled as an amount of water equivalent to the 'surplus' water released by the irrigation scheme shareholding is still surrendered.
 - (d) The Canterbury Regional Council will still retain the discretion to require surrender of up to 25% of a transferred permit as a disincentive to transfer historic unused water.

6 The submitter seeks the following relief:

- 6.1 Delete Policy 11.4.22(a); or, in the alternative and without prejudice to the relief sought in paragraph 6.1
- 6.2 Amend Policy 11.4.22(a) to allow the transfer of groundwater permits held by irrigation scheme shareholders within the Irrigation Scheme Area to other sites within the Irrigation Scheme Area; and
- 6.3 Amend Policy 11.4.22(c) to require surrender of up to 25%, rather than 50%; and
- 6.4 Add an additional subparagraph to Policy 11.4.22 to allow the transfer of a groundwater permit in the Rakaia-Selwyn or Selwyn-Waimakariri Combined Surface and Groundwater Allocation Zones without surrender, if the permit transferred is intended to replace an existing consent, and:
- (a) No more water is transferred than that authorised for extraction pursuant to the existing consent; and
 - (b) The existing consent is surrendered on completion of a successful transfer.
- 6.5 Delete condition 3(d) of Rule 11.5.37; or, in the alternative and without prejudice to the relief sought in paragraph 6.5
- 6.6 Amend condition 3(d) of Rule 11.5.37 to allow the transfer of groundwater permits held by irrigation scheme shareholders within the Irrigation Scheme Area to other sites within the Irrigation Scheme Area; and
- 6.7 Amend condition 4 of Rule 11.5.37 to read:
- (a) *If the transfer is within the Rakaia-Selwyn or Selwyn-Waimakariri Combined Surface and Groundwater Allocation Zones ~~50%~~ up to 25% of the volume of transferred water is to be surrendered, unless:*
 - (i) *The transferred water is intended to replace an existing consent; and*
 - (ii) *No more water is transferred than that authorised for extraction pursuant to the existing consent; and*
 - (iii) *The existing consent is surrendered on completion of a successful transfer.*
- 6.8 Amend the matters to which discretion is restricted on Rule 11.5.37 to add a further paragraph enabling consideration of the extent of the reduction in the rate or volume of take of the transferred permit required to assist with the phasing out of overallocation in

the Rakaia-Selwyn or Selwyn-Waimakariri Combined Surface and Groundwater Allocation Zones.

Consented volumes

7 This submission opposes the provisions of Variation 1 that require annual volumes to be calculated based on:

7.1 Demand conditions based on 8.5/10 years; and/or

7.2 "Demonstrated use"; and/or

7.3 Method 1 in Schedule 10.

8 The reasons for this opposition include, but are not limited to, the following:

8.1 It is important that the consented volume for an established operation is based on "reasonable use". This provides on-going viability of use and appropriately recognises the investment inherent in the existing consent. The Land and Water Plan policies speak of "reasonable use" and require determination of this in accordance with Schedule 10. It is unclear why Variation 1 speaks of "demonstrated use" (undefined) and limits the method of determination to only Method 1 of Schedule 10.

8.2 The section 32 Report suggests that information from the last three seasons supports this altered approach because it shows less water being used than allocated. However, a consented volume is an absolute maximum. It is not intended to reflect how much water is used on average or even most of the time. In light of that, the data referred to does not support the notion that consent holders have considerably more water allocated than needed.

8.3 It is unclear from the Variation as notified and the section 32 Report how the Regional Council is proposing to ascertain demonstrated use. It is also unclear how the records of demonstrated use are to be "moderated". The section 32 report advises that technical advice is yet to be commissioned on the development of a protocol to implement Method 1. This provides the Submitter with insufficient knowledge or comfort of the type of volume this process will result in.

8.4 In addition, the section 32 report refers to the statistic that 80% of surface and groundwater consents come up for renewal between 2030 and 2039. It is expected that by that stage there *"will be sufficient metering data to determine an annual allocation that takes into account actual water use for the type of land use, eg. arable or pasture"*.

8.5 This does not account for the 20% of water permits that will come up for renewal far sooner than these dates, for example, by 2020. These permits will potentially be unfairly

singled out and penalised with an artificially low annual volume if insufficient metering data is available by that date to satisfy consenting officers.

8.6 There is no reason to eliminate Methods 2 and 3 of Schedule 10 as being a means of deriving reasonable volumes for existing consents. Additionally, the costs of moving to an 8.5 year out of 10 volume rather than the 9 out of 10 set in Schedule 10 are not justified. Such erosion in irrigation reliability carries an economic consequence that cannot be justified by environmental outcomes and is contrary to the CRPS.

8.7 Just because a consented volume provides for 9 in 10 years reliability it does not follow that a consent holder is careless or reckless with the water that is not needed in other years. There are very real deterrents to such behaviour and most particularly the costs of abstracting water. It is therefore not surprising that actual recording show less water used than allocated most of the time. That is good environmentally. However, it does not support the contention that the water allocated is not needed at all or that irrigators can afford to lose it.

9 The submitter seeks the following relief:

9.1 Amend Policy 11.4.23 by replacing “demonstrated use” with “reasonable use”; and

9.2 Amend Policy 11.4.25, Rule 11.5.32(6), Rule 11.5.33(6) and associated matter of discretion (2); by deleting the reference to Method 1 (of Schedule 10) and instead allowing Schedule 10 in its entirety to be used to determine consented volumes; and

9.3 Amend Policy 11.4.26 so that “eight and a half” is replaced with “nine” and the additional consented volume is determined in accordance with Schedule 10; and

9.4 Delete the proposed addition to Schedule 10 – Reasonable Use Test.

Renewal of existing consents

10 This submission opposes the provisions of Variation 1 automatically imposing adaptive management conditions on the renewal of any existing water permit within the Selwyn-Waihora catchment that is currently subject to adaptive management conditions.

11 This submission opposes the discretion available to the Canterbury Regional Council to consider and/or require a change to the use of irrigation scheme water on renewal of an existing consent.

12 The reasons for this opposition include, but are not limited to, the following:

Adaptive management conditions

- 12.1 Adaptive management conditions are typically used as a tool to address over-allocation within a catchment. However, it is acknowledged, even within the Variation 1 s32 report, that they are costly, inherently unreliable and affect the ability of consent holders to provide for their economic wellbeing.
- 12.2 Variation 1 is drafted to directly address over-allocation within the Selwyn-Waihora catchment. However, it does not recognise or provide for a scenario when limits set within the catchment are no longer exceeded. In that instance, adaptive management conditions previously imposed would no longer be required, but would continue to penalise consent holders subject to them due to their high analysis and reporting costs.
- 12.3 The explicit requirement in Policy 11.4.27 does not carry through into Rule 11.5.32, creating some uncertainty for consent holders when renewing consents as to whether adaptive management conditions will be imposed or not. The relief sought brings clarity that adaptive management conditions are only intended as a tool to address over-allocation and will not carry forward on renewal if they are no longer required.

Irrigation scheme participation

- 12.4 Variation 1 appears to operate on an assumption that all groundwater permit holders within the Irrigation Scheme Area will or should be shareholders in the Central Plains Water Irrigation Scheme.
- 12.5 The restriction of discretion to "*the availability and practicality of using alternative supplies of water*" is more explicitly set out in the section 32 report as "*a consideration when consents are renewed and applied to prioritise the use of surface water supplied by Central Plains Water over use of groundwater in the catchment*"
- 12.6 This fails to allow for individual economic decisions on the benefits of joining the Central Plains Water (CPW) scheme and Variation 1 provides no guidance on whether 'practicality' encompasses economic concerns and what degree of 'impracticality' is required to avoid a compulsory switch to CPW water.
- 12.7 Consent holders wishing to renew an existing reliable consent are therefore faced with economic uncertainty and potentially a considerable financial burden. The discretion as proposed removes the individual right to provide for social and economic wellbeing if consent holders are obliged to join the CPW scheme at a time dictated by the renewal of their consent and not when is financially appropriate to their own needs.

13 The submitter seeks the following relief:

13.1 Amend Policy 11.4.27 to only apply adaptive management conditions on renewed consents if the limits set for the combined surface and groundwater allocation zone are still exceeded.

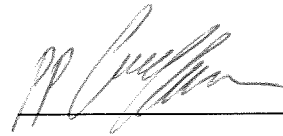
13.2 Delete restriction of discretion paragraph 3 associated with Rule 11.5.32.

14 With respect to all of the specific items of relief set out in paragraphs 6, 9 and 13 above, the Submitter seeks consequential amendments as are necessary to give full effect to the intent of the relief sought.

15 The submitter wishes to be heard in support of its submission.

16 If others make a similar submission, the submitter would consider presenting a joint case with them at any hearing.

Dated this day of 2014



P J Newland

Counsel for the Submitter

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