

IN THE MATTER OF hearing by the Canterbury Regional
Council under the Resource
Management Act 1991

AND

IN THE MATTER OF submission on Proposed Waipara
Catchment Environmental Flow and
Water Allocation Regional Plan

**Statement of Evidence on behalf of Canterbury Provinces, Federated Farmers of New
Zealand (Submitter Nos 63 and F19)**

1 Introduction

- 1.1 Federated Farmers of New Zealand welcomes the opportunity to present this evidence on the Proposed Waipara Catchment Environmental Flow and Water Allocation Regional Plan.
- 1.2 My name is Michael Morrow. I am Mid Canterbury President of Federated Farmers of New Zealand and chair Federated Farmers' Canterbury Regional Policy Committee. I have 25 years experience of owning and managing an irrigated, intensive arable and livestock farm at Longbeach, Mid Canterbury. I chair the Mid Canterbury Spray Irrigators Association.
- 1.3 With me is Lionel Hume. He is employed by Federated Farmers of New Zealand as a Senior Policy Advisor, based in Ashburton. He holds B.Ag.Sc. and M.Sc.(1st Class Hons) degrees from Massey University and a Ph.D.(Plant Science) from Lincoln University. His previous work experience was in plant and soil science. He is currently a member of Federated Farmers' Regional Policy Team.
- 1.4 This submission is made on behalf of the Canterbury Provinces of Federated Farmers of New Zealand. The Federation wishes to maintain ongoing dialogue with Environment Canterbury staff and councillors, to ensure that there is clarity of understanding and a good working relationship between the Council and the Federation.

- 1.5 Federated Farmers recognises the need to set appropriate flow and allocation regimes for Canterbury rivers and ask that this be done in the context of Part II of the Resource Management Act 1991 (RMA), in its entirety, and with particular regard to the vision and principles of the Canterbury Water Management Strategy (CWMS), as required by Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010.
- 1.6 When considering the allocation of water for abstractive use, the Water Quantity Chapter of the Proposed Natural Resources Regional Plan (NRRP) acknowledges the social, economic and cultural benefits of that allocation (Objective WQN4 and Policy WQN14). Social, economic and cultural benefits need to be considered, along with environmental matters, when setting environmental flow and allocation regimes. That process must be consistent with Part II of the RMA, requiring its statutory purpose to be applied in a broad sense, with the exercise of judgement and proportionality¹. Section 5 (which defines sustainable management) involves consideration of social, economic and environmental matters and then requires an overall broad judgement to be made based on the particular circumstances of a particular situation² & ³. Section 5 is the overriding provision and sections 6, 7 and 8, containing a hierarchy of *Matters of national importance* and *Other matters* are subject to it⁴. Thus, considerable weight is attached to provision for a community's economic, social and cultural wellbeing.
- 1.7 In addition, the recent NRRP decision has added two items to the list of matters to be considered when setting flow regimes for rivers (Policy WQN4(2)(a & c). These are (a) *the effects on existing water permits, including downstream permits* and (b) *the effects on existing investment*.
- 1.8 The Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010 requires that particular regard must be had for the vision and principles of the Canterbury Water Management strategy (CWMS). The CWMS is a collaborative strategy whereby the needs of farmers and growers, including the development of rural water infrastructure, will be considered in parallel with the need for environmental protection and restoration. The stated vision of the strategy is *To enable present and future generations to gain the greatest social, economic, recreational and*

¹ D.A.R. Williams, 1997: Environmental and Resource Management Law in New Zealand. Butterworths, Wellington.

² *NZ Rail Limited v Marlborough District Council* (1993) 2 NZRMA 449 at 470.

³ D.A.R. Williams, 1997: Environmental and Resource Management Law in New Zealand. Butterworths, Wellington.

⁴ D.A.R. Williams, 1997: Environmental and Resource Management Law in New Zealand. Butterworths, Wellington.

cultural benefits from our water resources within an environmentally sustainable framework. Following the vision statement is a list of features which will be evident within 10 years if the strategy is successful. This list of features is crucial to interpreting the vision statement. The features include: water users having access to reliable water, which will be used productively and efficiently; increasing primary production and employment; increasing economic value added by irrigation; and improved viability of rural communities.

1.9 It is stated on page 11 of the Section 42A Report that it is only the vision and principles of the CWMS, as set out in Part 1 of Schedule 1 of the ECan Act that applies to this plan, and not the whole of the CWMS. We argue that this is not strictly correct. It is recognised that, in some cases, the reading of an Act alone will not be sufficient to arrive at a clear meaning, and that it is necessary to understand the context of the legislation so that it can be properly understood⁵. Contextual information can be obtained from many sources, which range from the formal to very informal⁶. In the case of the Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010, one key piece of context is the Canterbury Water Management Strategy. The CWMS vision statement in Schedule 1 of the ECan Act cannot be accurately interpreted without reference to the CWMS in its entirety, including its key philosophy of parallel development and the list of features which will be evident within 10 years if the strategy is successful.

1.10 A change in context has occurred regarding the management of water in Canterbury. Federated Farmers asks that this be taken on board during this hearing process.

2 Policy 1.8 – Allocation and Reasonable Use

2.1 Policy 1.8 limits the amount of water allocated in any replacement consent to the amount of the previous consent, or the amount actually taken and used, whichever is less. Federated Farmers submitted (63.03, p 45) that the renewed allocation should reflect need, rather than use. Our submission was rejected on the basis that a number of larger consents have not been fully used or not used at all for a number of years.

⁵ McDowell, M.; Webb, D. 1995: The new Zealand Legal System – Structures, processes and legal theory. Butterworths, Wellington.

⁶ McDowell, M.; Webb, D. 1995: The new Zealand Legal System – Structures, processes and legal theory. Butterworths, Wellington.

2.2 However, Federated Farmers continues to believe that the amount of water actually taken and used is not an indication of need, depending on the period over which use was assessed. There is no detail on how use would be assessed. The amount of water allocated should reflect need for the particular land use, based on long term climate data and should provide at least 90% reliability. Short term records of water use may not provide a reliable indication of need. Also, water use by perennial crops (such as grapes or olives) will increase as those crops mature.

3 New Policy – Cumulative Effects of Small Takes

3.1 Environment Canterbury sought a new policy that recognises and manages the cumulative effects of small takes in the Waipara catchment. Federated Farmers opposed the submission on the basis that the proposed flow and allocation regime presumably takes account of all consented takes (F19.21, p 52). In response the reporting officers have recommended the imposition of monthly or annual volumes. It is not clear how this would address the issue raised. While an annual volume limit, based on reasonable use, might be justified, we would be opposed to monthly volume limits because these are unnecessary and tend to be difficult to manage. Any surface flow issue should be addressed directly via instantaneous rate of take while any reasonable use issue would be addressed by an annual volume limit. Issues, where they exist, should be addressed directly with a minimum of prescription.

4 Policy 3.5 - Partial Restrictions

4.1 Federated Farmers opposed the imposition of partial restrictions because they would decrease reliability of supply to existing A block consent holders, and because they would discourage the use of B block storage and therefore discourage the efficient use of water (63.05, p 13, Section 42A Report - Addendum). The proposal was inconsistent with the statement in Part I of the proposed plan, which stated the intention to ensure that existing abstractors would retain a reasonable reliability of supply. We advocated the use of audited self management approaches to manage takes within the flow and allocation regime.

4.2 Federated Farmers' submission was rejected on the basis of reports recommending the imposition of partial restrictions in order to protect the minimum flow, even though it is acknowledged that their imposition will *have a relatively significant implication for reliability of supply and economic costs for existing abstractors*. It was stated that simply

deleting Policy 3.5 would leave abstractors open to the imposition of partial restrictions on a consent-by-consent basis. The reporting officers have recommended that Policy 3.5 be amended to clearly signal the future introduction of partial restrictions, but also to specify that existing A block consents will not be reviewed to require partial restrictions until 2016. The recommendation is to introduce stepped reductions in take of 25%, 50% and 75% as flow reduces below the minimum flow plus the allocation block size. The recommendation is lacking detail about how the restrictions would be applied. It is clear that partial restrictions would have a major impact on reliability of supply in the Upper Waipara sub-catchment, and that substantial storage (relative to the number and size of consents) would be required to compensate for the loss in volume of water available to consent holders at critical times (Memorandum from Darren Leftley, Senior Hydrological Scientist, 16 February 2011). It is estimated that 0.9 million cubic metres of storage would be required at a cost of \$5.2 million. Further, it is acknowledged that it would probably not be economic to make this investment for pastoral farming, to which, it is stated, the majority of water currently abstracted in the Upper Waipara is applied.

- 4.3 A major consent holder in the Upper Waipara sub-catchment estimates that implementation of the recommended new flow regime, including partial restrictions, would increase the equivalent number of days of total restriction by at least 7-fold, averaged over the 22 year period from 1988 to 2010 (days of partial restriction were converted to an equivalent number of days of full restriction in order to make a comparison with the current flow regime). The same calculation for a dry year (2000/2001) indicates an increase in the equivalent number of days of full restriction of at least 18-fold. This demonstrates a massive decrease in reliability in the Upper Waipara sub-catchment.
- 4.4 The recommendation is completely inconsistent with the statement, under Plan Purpose and Scope (Part 1 - Introduction), that one focus for the plan is to ensure existing abstractors a reasonable reliability of supply. The recommendation is also inconsistent with the NRRP decision, which states that *the effects on existing water permits and the effects on existing investment* must be considered when setting a flow regime for a river (Policy WQN4(2)(a & b).
- 4.5 The justification given for B block partial restrictions, that storage would enable “water to be taken more often and for longer periods”, is not convincing. The volume of water taken must ultimately be equivalent to the volume used, except during the initial filling of storage. Storage should be encouraged because it enables the more efficient use of

water, for example by enabling more accurate scheduling of irrigation and the adoption/use of modern application technologies. The plan should set environmental limits and leave the detailed management to consent holders, ideally using audited self-management approaches.

5 Flow and Allocation Regime

- 5.1 North Canterbury Fish and Game Council sought an amendment in the focus of the flow regime, *from protecting economic values at the continued cost and detriment to instream values to a primary focus on non-consumptive values* (57.03, p 63). This submission was accepted in part while Federated Farmers' further submission in opposition (F19.32, p 63) was rejected. No reason was given by the reporting officers. Federated Farmers has the view that the plan should reflect the imperatives of Part 2 of the RMA, the NRRP decision and the parallel process philosophy of the Canterbury Water Management Strategy, as outlined on paragraphs 1.5 – 1.10 of this submission. It is not appropriate that the plan has a primary focus on *non-consumptive values*. Balance is required.

6 Consent Review

- 6.1 Te Runanga o Ngai Tahu requested a rule requiring all consents current at the time the plan was notified to be reviewed within 5 years of the plan becoming operative (60.03, p 71). The reporting officers stated that it was *generally agreed that a provision in this regard would provide some certainty to both consent holders and the wider public*. They went on to recommend that a three year time-frame would be appropriate, and that this should be embodied in a new Policy 3.8. The review of consents within a fixed time-frame was not flagged in the notified plan. However, the reporting officers picked-up on the recommendation by Te Runanga o Ngai Tahu, and went even further by recommending a 3 year time-frame. Therefore, Federated Farmers is opposed to a mandatory 5 year review, and believes that the reporting officers' recommendation of a three year time-frame is outside the scope of submissions.
- 6.2 The Natural Resources Regional Plan (NRRP) contains general guidelines on resource consent duration, in Section 1.3.5. The nature of these guidelines is consistent with those proposed as example guidelines in the Ministry for the Environment publication *Resource Consent Durations and Reviews*⁷. These guidelines correctly include matters

⁷ Ministry for the Environment 2000: *Resource Consent Durations and Reviews, A study of regional council and unitary authority practice under the Resource Management Act 1991*. Ministry for the Environment, Wellington

such as *the costs and benefits of the activity to the community, and the consent holder's capital investment in a pre existing activity.*

- 6.3 Federated Farmers has the strong view that consents to take water should be issued for 35 years whenever possible. Because of the very large sums of money needed to invest in irrigation infrastructure, both on-farm and off-farm, shorter consent durations will discourage investment. The uncertainty caused by shorter consent durations may, perversely, adversely affect the environment by discouraging investment in technology which would enable water and nutrients to be used more effectively and efficiently.
- 6.4 When considering the establishment of a new allocation regime and the review of consents, due regard must be had to the rights of existing consent holders. The principle of non-derogation of grants has been authoritatively declared to be the law (even where this may limit further grants that may be justifiable for promoting sustainable management)^{8 & 9}.

7 Stream Depletion Effect

- 7.1 Environment Canterbury submitted requesting amendment of the rules *to improve the management of stream depleting groundwater, including specific rules for identifying and managing highly connected groundwater and moderately connected groundwater* (56.07a, p 74). This submission was accepted and Federated Farmers' submission in opposition was rejected.
- 7.2 Environment Canterbury's submission gave no indication as to specifically how the rules should be amended to improve the identification and management of stream-depleting groundwater. Specifically, there was no mention of amending, or removing, the 3 litres/second flow threshold above which stream depletion effects were to be considered (Rule 6.1 in the proposed plan, as notified). Recommendations in response to Environment Canterbury's submission include removal of the 3 litres/second threshold, and the adoption of a new River Zone where groundwater takes, with a well depth up to 30 m, will be considered to be directly connected to the river. Those with takes less than 3 litres/second (and therefore stream depletion effects less than 3 litres/second) had nothing specific to alert them that they would be affected by the amended plan and

⁸ *Aoraki Water Trust v Meridian Energy* [2005] 2 NZLR 268; [2005] NZRMA 251; 11 ELRNZ 207 (FC).

⁹ Sheppard, D.; Harding, J.; Prime, K. and Vernon, J. 2010: Report and Recommendations of the Board of Inquiry into the Proposed National Policy Statement for Freshwater Management.

nothing 'concrete' on which to base a further submission. Submissions should identify the issues involved and what changes are sought, and should inform others as to what is sought¹⁰. Submissions must allow potentially affected parties a real opportunity to participate in the process of responding to those submissions¹¹.

- 7.3 Federated Farmers believes that adequate notice of the recommended changes flowing from acceptance of Environment Canterbury's submission was not given, and that, therefore, the recommendations are outside the scope of that submission. Therefore, the Federation is opposed to removal of the 3 litres/second threshold for consideration of stream depletion effects, opposed to the recommended new definition of hydraulically connected groundwater and opposed to the management of groundwater within the proposed River Zone.

8 Flow Regime

- 8.1 Federated Farmers opposed several submissions requesting a more restrictive flow and allocation regime (F19.18, F19.31, F19.34, F19.35 & F19.01, p 81-82). The reporting officers recommended partial acceptance of our submissions but recommended two changes; increases in the minimum flow at White Gorge from 50 litres/second to 60 litres/second and at Teviotdale from 110 litres/second to 120 litres/second. The reporting officers state that they are mindful of implications for consent holders and communities at large in the Waipara catchment. However, the proposed raising of minimum flows along with the imposition of partial restrictions will have substantial impacts on those reliant on using water resources in the Waipara catchment. For example, consent holders in the Upper Waipara sub-catchment estimate that the implementation of the recommended new flow regime, including partial restrictions, would hugely increase the number of days of restriction, as discussed in paragraph 4.2. This is in conflict with the proposition that a consent to take water creates a legal right of priority, and that where a resource is fully allocated a consent authority cannot later reduce availability of the resource to existing consent holders, by granting further consents or through rules in a plan¹². Therefore, Federated Farmers continues to oppose the recommended flow and partial restriction regime.

¹⁰ *Campbell v Christchurch CC* [2002] NZRMA 352 (EnvC)

¹¹ *Clearwater resort Ltd v Christchurch CC* 14/3/03, William Young J, HC Christchurch AP34/02

¹² *Aoraki Water Trust v Meridian Energy* [2005] 2 NZLR 268; [2005] NZRMA 251; 11 ELRNZ 207 (FC).

On behalf of Federated Farmers, we thank you for the opportunity to present these submissions.

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