

*Tabled e Hearing  
16.07.15*

**Before the Independent Commissioners**

**UNDER** The Resource Management Act 1991

**IN THE MATTER OF** The hearing of submissions and further submissions on Variation 2 to the Proposed Canterbury Land and Water Regional Plan – Section 13 Ashburton (Hinds/Hekeao Plains)

---

**LEGAL SUBMISSIONS ON BEHALF OF VALETTA IRRIGATION LIMITED  
(SUBMITTER ID 56723)**

**DATED 16 JULY 2015**

---

---

**Tavendale and Partners**

Lawyers, Ashburton

PO Box 324

Ashburton 7740

Telephone: (03) 308 4188; Facsimile: (03) 308 7412

Solicitor acting: G C Hamilton  
georgina.hamilton@tp.co.nz

**May it Please the Hearing Commissioners:****Introduction**

- 1 These legal submissions are presented on behalf of Valetta Irrigation Limited (VIL).
- 2 As the owner and operator of the Valetta Irrigation Scheme (**Scheme**), VIL has an interest and is affected by Variation 2 to the Proposed Canterbury Land and Water Regional Plan (Hinds/Hekeao Plains) (**Variation 2**). It accordingly made a submission on Variation 2.<sup>1</sup>
- 3 VIL has refined its position on the matters raised in its submission following a review of Council's Section 42A Report and through the preparation of evidence. The legal submissions that follow focus on the residual issues of concern to VIL, which relate to:
  - 3.1 Water permit transfers within the Valetta Groundwater Allocation Zone (**V-GAZ**);
  - 3.2 The V-GAZ allocation limit;
  - 3.3 Consented volumes for replacement water permits; and
  - 3.4 The nutrient management regime.
- 4 Evidence in support of VIL's position on those matters will be given by:
  - 4.1 **Mr Mark Dewhirst** - present Chairman of VIL's Board of Directors. Mr Dewhirst will provide a broad overview of the VIL and the Scheme. He will also describe the pilot project VIL has undertaken to better understand the availability, reliability and options for potential use of surplus surface water from the Scheme and outlines the basis for VIL's involvement in Variation 2.
  - 4.2 **Mr Ian McIndoe** - Principal Water Engineer, Aqualinc Research Limited. Mr McIndoe will present the results of the hydrological modelling and analysis undertaken by Aqualinc to quantify the benefits of a combined surface-groundwater supply system for the Scheme. He will also address the technical aspects of the water allocation and water transfer regimes under Variation 2 as they relate to VIL's submission.

---

<sup>1</sup> Dated 24 October 2014. VIL also lodged a further submission, seeking to clarify an ambiguity in its primary submission as regards the groundwater allocation limits for the Valetta Groundwater Allocation Zone.

5 It has been cost and time prohibitive for VIL to engage the range of experts needed to support all aspects of VIL's residual concerns. For that reason, as noted later in these submissions, VIL relies on the evidence called by other submitters at this hearing, including DairyNZ and Fonterra Co-operative Group Limited (**DairyNZ/Fonterra**), Rangitata Diversion Race Management Ltd (**RDRML**) and Mayfield-Hinds Irrigation Limited (**MHIL**).

#### **VIL's Interest in Variation 2**

6 The Scheme is located to the west of State Highway 1 between the Hinds River (to the south) and the Ashburton River (to the north).<sup>2</sup> The Scheme's command area comprises 16,290 ha, of which 10,980 ha of land is presently irrigated with water supplied from the Rangitata Diversion Race (**RDR**) and in accordance with the conditions of RDRML's resource consent CRC121664.<sup>3</sup>

7 VIL has recently completed a \$26 million upgrade<sup>4</sup> of the Scheme's distribution system from a network of open races to an 84 km pressurised in-ground pipe system with telemetered water measuring devices.<sup>5</sup> The upgrade has resulted in significant efficiencies and improvements across the Scheme,<sup>6</sup> including an estimated 1.2m<sup>3</sup>/s in water savings.<sup>7</sup>

8 These savings have not only enabled a 49% increase in the Scheme's irrigated land area,<sup>8</sup> but has also provided the opportunity to use surplus Scheme water for additional irrigation.<sup>9</sup>

9 Surplus water is generally only available during low to mid demand periods on the shoulders of the irrigation season<sup>10</sup> and has very low reliability; 45% in an average year and 23% in a 1 in 10 year event.<sup>11</sup> On its own, surplus water cannot be used to justify investment in irrigation.<sup>12</sup> However, when supplemented with groundwater reliability can be improved so that its use is realistically feasible.<sup>13</sup>

<sup>2</sup> The location of the Scheme's command area is shown in Annexure B of the Statement of Evidence of Mr Mark Dewhirst for VIL.

<sup>3</sup> Statement of Evidence of Mr Mark Dewhirst, at [20].

<sup>4</sup> *Ibid*, at [27].

<sup>5</sup> *Ibid*, at [24] and [25].

<sup>6</sup> *Ibid*, at [28].

<sup>7</sup> *Ibid*, at [27].

<sup>8</sup> *Ibid*, at [28(a)].

<sup>9</sup> *Ibid*, at [50].

<sup>10</sup> *Ibid*, at [12].

<sup>11</sup> Statement of Evidence of Mr Ian McIndoe, at [10].

<sup>12</sup> *Ibid*, at [30(a)].

<sup>13</sup> *Ibid*, at [30(b)].

- 10 VIL understands there is sufficient groundwater consented within the Scheme command area available<sup>14</sup> to increase reliability of supply for irrigation of an additional 2,245ha.<sup>15</sup> VIL sees the opportunity to use groundwater in this way as a means of utilising an otherwise unused resource<sup>16</sup> (surplus water is currently by-washed or not taken by VIL from the RDR<sup>17</sup>) and protecting the viability of the Scheme.<sup>18</sup>
- 11 For VIL, it is therefore critical that Variation 2 enables:<sup>19</sup>
- 11.1 the use of groundwater to supplement unreliable surplus Scheme water supply on a Scheme-wide basis.
  - 11.2 existing groundwater consents to be renewed without the risk of allocation being reduced because the groundwater has been used for that purpose (i.e. where full allocation may not have been used in the preceding irrigation seasons, but may be required to meet reasonable irrigation needs in dry years).
  - 11.3 farming activities within the Scheme area to operate within a nutrient management framework that is based on appropriate water quality outcomes and has achievable timeframes.

### Relevant Statutory and Planning Framework

- 12 A summary of the statutory duties to be carried out by a regional council in the course of deciding whether to accept or reject a submission on a variation was provided at [164] of the Hearing Commissioners' Report and Recommendations on proposed Variation 1 of the proposed Canterbury Land and Water Regional Plan (**Variation 1 Decision**). For the sake of brevity, I do not propose to repeat that summary here.
- 13 VIL accepts the summary of considerations recorded in the Variation 1 Decision is an appropriate basis against which the Hearing Committee should consider and make recommendations to Council on the submissions and further submissions on Variation 2. Accordingly, these submissions address the relief sought by VIL with reference to those considerations.

<sup>14</sup> Over and above that required to supply the needs of the 100% groundwater-supplied areas and to improve reliability of supply to existing shareholders.

<sup>15</sup> Statement of Evidence of Mr McIndoe, at [131].

<sup>16</sup> Statement of Evidence of Mr Dewhirst, at [50].

<sup>17</sup> Statement of Evidence of Mr McIndoe, at [22].

<sup>18</sup> Statement of Evidence of Mr Dewhirst, at [57].

<sup>19</sup> Ibid, at [60].

## Water Permit Transfers / Groundwater Allocation Limits

### *VIL's request*

- 14 As already noted, what VIL primarily seeks to achieve through Variation 2 is the ability to use existing consented groundwater allocations to supplement surplus Scheme water for the purpose of improving reliability. In essence, VIL's proposal is to create a combined surface-groundwater supply system for the Scheme.<sup>20</sup> The experts agree this is an ideal situation from a water quantity perspective.<sup>21</sup>
- 15 As Variation 2 precludes new applications for groundwater abstraction and use within the V-GAZ, the ability to fully transfer flow, volume and the location of current groundwater consents is critical to the implementation of such a system.<sup>22</sup> Transfers will enable allocations to be arranged or configured to meet demand.<sup>23</sup>
- 16 For that reason, VIL opposes Rule 13.5.34, which prohibits groundwater permit transfers<sup>24</sup> within the V-GAZ and seeks that Variation 2 allow applications for groundwater permit transfers within the V-GAZ to be made and approved under section 136 of the RMA.<sup>25</sup>
- 17 VIL's consultant, Mr McIndoe, recommends a new "B" allocation block be created for the V-GAZ to enable the effective management of the existing consented groundwater VIL intends to use to improve the reliability of surface water supply within the Scheme's command area.<sup>26</sup> The new "B" allocation block, comprising in the order of 10 million m<sup>3</sup>/year,<sup>27</sup> would be transferred out of the current V-GAZ "A" allocation block<sup>28</sup> and be subject to conditions.<sup>29</sup>
- 18 VIL supports Mr McIndoe's recommendation and accordingly seeks amendments to Variation 2 to provide a rule framework for a new "B" allocation block for the V-GAZ.<sup>30</sup> In essence, the outcome sought by VIL is that Variation 2 treat supplementary (or reliability) takes in a different way to

<sup>20</sup> Evidence of Mr McIndoe, at [133].

<sup>21</sup> Statement of Evidence of Mr Michael Thorley (dated 15 May 2015), at [52]; Rebuttal Evidence of Mr McIndoe, at [5].

<sup>22</sup> Statement of Evidence of Mr McIndoe, at [16].

<sup>23</sup> *Ibid*, at [55].

<sup>24</sup> Other than to the new owner of the site to which the water permit relates and where the location of the take and use of water does not change.

<sup>25</sup> VIL's submission on Variation 2 (dated 24 October 2015), at [27].

<sup>26</sup> Statement of Evidence of Mr McIndoe, at [91].

<sup>27</sup> *Ibid*, at [95].

<sup>28</sup> *Ibid*, at [91].

<sup>29</sup> *Ibid*, at [93].

<sup>30</sup> In this regard, VIL seeks to pursue only part of the relief sought at [24.2], [24.7] and [24.8] of its submission on Variation 2.

other takes. It seeks that the rule framework allow for existing groundwater consents to be renewed on their expiry subject to adaptive management conditions that authorise the taking and use of groundwater up to the original consented volume and rate of abstraction (subject to reasonable use assessment) where the proposed use is primarily to supplement surface water supplied by an irrigation scheme.

- 19 The specific amendments sought by VIL are set out in **Annexure A** to these submissions.

***Scope to grant VIL's request***

- 20 Before considering the appropriateness of VIL's request, you must turn your mind to the following:<sup>31</sup>

1. *From primary submissions on the variation, identify an issue about an amendment made to it; and*
2. *Check whether the issue is within the scope of the Council's authority to amend the variation.*

- 21 In relation to (1), VIL's primary submission raised as an *issue* the shortcomings of the groundwater allocation management approach under Variation 2 in so far as the use of existing groundwater allocations to supplement surplus Scheme surface water for improving reliability is concerned. VIL's submission sought amendments to the water transfer provisions, and the introduction of "a separate and additional allocation limit for reliability or supplementary groundwater takes" (with complementary rules), as methods for addressing that issue.<sup>32</sup> In relation to the latter submission point, VIL now only seeks to pursue a separate allocation limit for reliability or supplementary groundwater takes.

- 22 It is acknowledged a potential issue as to scope arises in respect of this latter aspect of VIL's request. This issue arises as Variation 2, as notified, did not propose changes to the V-GAZ allocation limit is proposed in the Variation, which is presently set at 96.6 million m<sup>3</sup>/year as an "A" allocation, i.e. the V-GAZ "A" allocation limit did not form part of Variation 2. In this sense, it could be said that VIL's submission was not "on" Variation 2.

- 23 It is submitted the following matters are relevant to your consideration of (2):

---

<sup>31</sup> Variation 1 Decision, at [164].

<sup>32</sup> At [27] (water transfers); at [25], [24.2], [24.7] and [24.8] (secondary allocation block).

23.1 VIL's request relates to the groundwater allocation management approach for the V-GAZ, which is squarely within the scope of Variation 2 as notified. This is implicit from the Variation text itself contained in *Part 3: Amendments to Section 13 - Ashburton*,<sup>33</sup> and is confirmed in *Part 1: Scope of the Variation*:

*...The Variation introduces changes to describe the limits, targets, time frames and additional policies and rules to address over-allocation of water quantity and water quality for the Hinds/Hekeao Plains Area as required by the objectives and strategic policies of the proposed Canterbury Land and Water Regional Plan...*

23.2 VIL's request does not seek to change the allocation limit for the V-GAZ; rather it proposes that a new "B" allocation of 10 million m<sup>3</sup>/year is created with the balance (86.6 million m<sup>3</sup>/year) remain as "A" allocation.

23.3 VIL's request will solely benefit VIL and its shareholders.

23.4 The new "B" allocation would comprise the volume of the existing consented groundwater allocations within the Scheme's command area that are currently used as supplementary takes.<sup>34</sup> The interests of the holders of those existing consents are represented by VIL. No other party would be prejudiced by VIL's request being granted.

24 Bearing these matters in mind, in my submission, VIL's request is both within the ambit of its primary submission and Variation 2 as notified,<sup>35</sup> and consequently is within the scope of Council's authority to amend Variation 2.

#### ***Appropriateness of VIL's request***

25 It is understood from the section 42A report that Council opposes VIL's request. The basis for Council's opposition to the creation of a "B" allocation block is unclear.<sup>36</sup> However, it is understood Council's position as regards water transfers is summarily:<sup>37</sup>

<sup>33</sup> For example, policies 13.4.16 and 13.4.17.

<sup>34</sup> Importantly, it will not include existing consented allocations that are used with the Scheme command area for 100% irrigation.

<sup>35</sup> That being a key factor in determining whether a submission is "on" a plan change, as confirmed by Kos J in *Palmerston North City Council v Motor Machinists Limited* [2013] NZHC 1290, at [91].

<sup>36</sup> The Section 42A Report (at page 213) sets out general reasons for the recommended rejection of submissions seeking changes to the allocation limits in Table 13(f). However, a specific response to VIL's submission is not provided.

<sup>37</sup> Section 42A Report, at [11.13] and [11.16].

- 25.1 The Zone Committee's solutions package for the Hinds/Hekeao Plains Area requires stopping the use of unused water to help achieve the outcomes for the Hinds/Hekeao Plains Area;<sup>38</sup>
- 25.2 As VIL's request will result in more water being abstracted than at present, it will not help to achieve the outcomes of the Zone Committee;<sup>39</sup> and
- 25.3 No alternatives to address over-allocation are proposed in order to address the over-allocation issue<sup>40</sup> and give effect to the NPSFM.<sup>41</sup>
- 26 In my submission, there is no evidence to support the proposition that VIL's request will result in the abstraction of more water than present. It is accepted that continued abstraction and use of groundwater will decrease the volume of water flowing through the aquifers, but the use of groundwater to supplement surface water under VIL's proposal will result in a new increase in flow through the aquifers. This is because:<sup>42</sup>
- 26.1 Groundwater will only be taken when it is needed to maintain reliability of supply.<sup>43</sup> At all other times, groundwater will remain in the aquifers.
- 26.2 Bringing additional surface water into the Scheme command area through irrigation will increase recharge to groundwater and therefore the volume of water in the aquifers.<sup>44</sup> Recharge is estimated to be in the order of 5 million m<sup>3</sup>/year on average and not less than 3 million m<sup>3</sup>/year in 1 in 10 year events.<sup>45</sup>
- 27 The result will be increased lowland streamflow,<sup>46</sup> which in my submission will contribute positively to achieving the outcomes for the Hinds Plains area referred to in the section 42A report.
- 28 With reference to the summary of considerations referred to earlier, it is respectfully submitted the following matters are relevant to your consideration of VIL's request:

---

<sup>38</sup> At [11.33].

<sup>39</sup> At [11.55].

<sup>40</sup> At [11.16].

<sup>41</sup> At [11.55].

<sup>42</sup> Statement of Evidence of Mr McIndoe, at [102].

<sup>43</sup> Statement of Evidence of Mr McIndoe, at [88].

<sup>44</sup> *Ibid.*, at [68].

<sup>45</sup> *Ibid.*, at [87].

<sup>46</sup> *Ibid.*, at [88].



- 28.1 Mr McIndoe's evidence demonstrates that VIL's request is viable from a hydrological<sup>47</sup> perspective. In my submission, it is therefore a reasonably practicable option for facilitating a combined surface-groundwater supply system for the Scheme in light of the apparent "paper" over-allocation in the V-GAZ.
- 28.2 Mr McIndoe's evidence also demonstrates that VIL's request will result in environmental benefits that would not occur under Variation 2 as proposed,<sup>48</sup> namely aquifer recharge in the order of 5 million m<sup>3</sup>/year on average, and consequently increased lowland streamflow.
- 28.3 In doing so, it is submitted VIL's request would more fully give effect to:
- (a) Objective B1 of the NPSFM (sustainably managing the taking and use of freshwater);
  - (b) Policies B5 and B6 NPSFM (avoiding and phasing out over-allocation); and
  - (c) Policy 7.3.4(2) of the Canterbury Regional Policy Statement (CRPS) (avoiding and phasing out over-allocation);
- than Variation 2 as proposed.
- 28.4 VIL's request will also increase the reliability of surplus Scheme water to at least 95%,<sup>49</sup> which will:
- (a) enable the irrigation of a further 2245 ha, with associated socio-economic benefits; and
  - (b) provide security for farmers, thus encouraging efficient water use by avoiding "just in case" (rather than "just in time") irrigation.<sup>50</sup>
- 28.5 In doing so, it is submitted VIL's request would more fully give effect to:
- (a) Objective B3 and Policy B4 of the NPSFM (efficient use of water); and

<sup>47</sup> Statement of Evidence of Mr McIndoe, at [15].

<sup>48</sup> Ibid, at [88].

<sup>49</sup> Ibid, at [10].

<sup>50</sup> Evidence of Mr Dewhirst, at [54].

- (b) Policy 7.3.8(4) of the CRPS (improving efficiency in the allocation and use of fresh water by recognising the importance of reliability of supply for irrigation);

than Variation 2 as proposed.

28.6 For the reasons already noted, it is submitted that VIL's request is the most appropriate way to achieve the purpose of the RMA.<sup>51</sup>

28.7 VIL's request will not result in an exceedance of the V-GAZ allocation limits:

- (a) As noted, allowing water permit transfers to occur in the circumstances proposed by VIL will result in more water in the aquifers, which will assist in reversing the over-allocated status of the V-GAZ.

- (b) The experts agree the creation of a secondary allocation would assist in dealing with the apparent "paper" over-allocation of the V-GAZ.<sup>52</sup> Under VIL's request, 10 million m<sup>3</sup> of groundwater would be transferred from the V-GAZ "A" allocation block (with a consequential reduction in the V-GAZ "A" allocation) to create the new "B" block.

28.8 In terms of nutrient discharges, the additional area of land that could be irrigated if VIL's request is accepted falls within the class of "new irrigation areas" contemplated by RDRML's consent. Nutrient discharges associated with the new irrigation and associated farming activity would be managed within the allocation limits prescribed by RDRML's consent.

28.9 VIL agrees that the relevant objectives are those recorded in the Section 32 Report for Variation 2 at Section 10.1.2, i.e. pLWRP Objectives 3.2 and 3.6 to 3.13.

28.10 With all of the above considerations in mind, it is respectfully submitted that VIL's request is the most appropriate way of achieving the relevant objectives.

<sup>51</sup> This being a relevant consideration given the Hearings Panel's finding at [298] of the Variation 1 Decision that the NPSFM does not "cover the field": "...the NPSFM, while regulating the use of fresh water does not contain provisions on the use of fresh water resources in a way, or at a rate, which enables people and communities to provide for their social, economic or cultural wellbeing, and for their health and safety; nor does it directly address matters identified in section 6 as matters of national importance, such as natural character, outstanding natural features and landscape and areas of significant indigenous vegetation and significant habitats of indigenous fauna."

<sup>52</sup> Statement of Evidence of Mr Thorley, at [57]; Rebuttal Evidence of Mr McIndoe, at [9].

***Legality of prohibited activity classification***

- 29 Before moving from this topic, it is appropriate to address the legality of the prohibited activity classification proposed to be given to transfers under Rule 13.5.34. As already noted, VIL's submissions opposed this activity status.<sup>53</sup>
- 30 The Hearing Committee has already received comprehensive legal submissions on this issue from Counsel for DairyNZ/Fonterra Limited.<sup>54</sup> For the sake of brevity, I do not proposed to repeat those here but rely on and adopt the position outlined in those submissions on this legal issue. In my respectful submission, there is no jurisdiction under the RMA for Council to include a rule, as proposed, that treats applications for water permit transfers under section 136(2)(b) of the RMA<sup>55</sup> as if they were *prohibited* activities.

***Dairy NZ/Fonterra's Proposed Transfer Rule***

- 31 It is acknowledged that the appropriate classification for water transfers will ultimately be a matter of planning merits. In this regard, VIL accepts the position advanced by DairyNZ/Fonterra that the appropriate activity status for water permit transfers under Variation 2 would be discretionary.<sup>56</sup>
- 32 Dairy NZ/Fonterra propose an amended transfer rule which would enable transfers to occur but only in circumstances where the volume of the transferred water does not exceed the average annual volume taken and used over the preceding four-year period, or the period 1 July 2009 – 30 June 2013, whichever is greater. A similar transfer rule formulation is proposed by Te Runanga o Ngai Tahu.<sup>57</sup>
- 33 VIL accepts the basis on which this proposition is advanced by these parties. However, as Mr McIndoe will explain, the proposed rule formulation may preclude transfers where the permit in question has been used in the past for supplementary supply and for that reason its allocation may not have been used *over the preceding four-year period or the period 1 July 2009 – 30 June 2013*.
- 34 Should you accept the submitters' proposal in this regard, it is VIL's preference that any such rule should contemplate, as an alternative, that water permit transfers with the V-GAZ where the transferred water is to be

<sup>53</sup> At [25].

<sup>54</sup> Legal submissions on behalf of DairyNZ and Fonterra Co-operative Group Limited, at [2.1] – [2.3].

<sup>55</sup> Being a transfer of a water permit for other than damming of diverting water to another person on another site, or to another site, if both sites are in the same catchment (either upstream or downstream), aquifer, or geothermal field.

<sup>56</sup> *Ibid*, at [2.4]

<sup>57</sup> Statement of Evidence of Ms Linda Murchison, at [149].

used for improving the reliability of surface water supplied by an irrigation scheme.

### Consented Volumes

- 35 A key concern for VIL is the requirement under the notified version of Variation 2 that the volume and rate of abstraction of groundwater for irrigation for replacement consents be calculated using Method 1 of Schedule 10 (Reasonable Use Test).
- 36 In effect, this requirement penalises existing consent holders who had used their consented groundwater allocations to supplement surface water supply. This is because it does not allow for dual water sources where the sum of the allocation required from both sources exceeds the Method 1 allocation, even though the amount of water proposed to be used remains with the Method 1 limit for a single water source.<sup>58</sup>
- 37 This would be an unsatisfactory outcome considering the obvious benefits of the use of groundwater for supplementary, particularly in terms of giving effect to the higher order planning directives and implementing the freshwater objectives of the pLWRP already addressed.
- 38 VIL's concerns have now been addressed through the Reporting Officer's recommended deletion of the reference to *Method 1* in Policy 13.4.16 and Rule 13.5.31 and the recommended deletion of Rule 13.5.31. It is understood that the intention of these amendments is to bring those provisions into line with the Variation 1 Decision. VIL supports the recommended amendments.

### Water Quality Provisions

- 39 VIL understands the need to ensure the management of water quality within the Hinds Plains Area is improved and enhanced, and for a planning framework that ensures improvements are achieved over time.<sup>59</sup>
- 40 However, a key concern for VIL is the approach that Council has adopted in identifying water quality outcomes (or objectives) for freshwater bodies within the Hinds sub-catchment, and consequently the loadings, targets and reductions derived from those objectives. As outlined in its submission, VIL is concerned the objective setting exercise has not followed the robust and

<sup>58</sup> Statement of Evidence of Mr McIndoe, at [29].

<sup>59</sup> The need for a strong planning framework and a precautionary approach to scarce and irreplaceable resources was accepted by the Environment Court in *Day and Ors v Manawatu-Wanganui Regional Council* [2012] NZEnvC 182, at [3-45].

prescriptive exercise envisaged by the National Objectives Framework under the NPSFM.<sup>60</sup>

- 41 VIL acknowledges Council has notified a staged programme for implementation of the National Objectives Framework.<sup>61</sup> That programme includes the notification of *a sub-regional section for integrated land and water management in Hinds River/Hekeao and Ashburton-Rangitata groundwater zone* by 2025.
- 42 VIL accepts, in the meantime, it is necessary for Variation 2 to adopt a precautionary approach to the management of the water resources in the Hinds sub-catchment.<sup>62</sup> However, like many other submitters, VIL is concerned that achieving the nutrient targets and reductions within the timeframes prescribed by Variation 2 will come at significant cost to farmers within the Hind Plains Area. In this regard, VIL relies on the evidence called by Dairy NZ/Fonterra, RDRML and MHIL.
- 43 Overall, VIL supports and adopts the position advanced at this hearing by MHIL on nutrient loss reductions (Policy 13.4.13), the policy and rule framework for “new irrigation” and irrigation schemes unable to comply with nutrient loss reductions.

#### **Summary of Decisions Sought by VIL**

- 44 VIL respectfully requests that its submission be allowed to the extent that:
- 44.1 the introductory text to Variation 2 be amended in the manner recommended by the Reporting Officer to recognise the importance of agriculture in the Hind Plains Area;
- 44.2 Policy 13.4.16 and Rule 13.5.31 be amended to delete the reference to *Method 1* and Rule 13.5.31 be deleted as recommended by the Reporting Officer;
- 44.3 the provisions concerning water transfers and groundwater allocation limits for the V-GAZ be amended in the manner set out in **Annexure A** to these legal submissions; and
- 44.4 the provisions concerning nutrient loss reduction, provision of “new irrigation” and irrigation schemes unable to comply with nutrient loss reduction water quality targets, reductions and the associated

<sup>60</sup> At [17.10] to [17.11].

<sup>61</sup> Publicly notified on 13 September 2014.

<sup>62</sup> In accordance with the decision of the Environment Court in *Day and Ors v Manawatu-Wanganui Regional Council* [2012] NZEnvC 182, at [3-45].

timeframes be amended as outlined in the legal submissions of Counsel for MHIL (dated 16 July 2015).

Dated: 16 July 2015

A handwritten signature in black ink, appearing to read 'G.C. Hamilton', written over a horizontal line.

G.C. Hamilton  
Counsel for Valetta Irrigation Limited

**ANNEXURE A – SUMMARY OF DECISIONS SOUGHT BY VALETTA IRRIGATION LIMITED – WATER TRANSFERS AND VALETTA ALLOCATION ZONE ALLOCATION LIMITS**

Variation 2 Provision	Decision sought by VIL <sup>63</sup>
<b>Transfer of Water Permits</b>	
13.5.34	<p>Amend Rule 13.5.34 as follows:</p> <p><i>The temporary or permanent transfer, in whole or in part, (other than to the new owner of the site to which the take and use of water relates and where the location of the take and use of water does not change) of a water permit to take or use groundwater within the Valetta Groundwater Allocation Zone <del>must not under section 136 of the RMA be approved, in the same was as if it were a prohibited activity.</del> is a discretionary activity provided the following condition is met:</i></p> <p><i>1. the transferred water is to be used for supplementing surface water supplied by an irrigation scheme in order to improve reliability.</i></p>
<b>Valetta Groundwater Allocation Zone – Allocation Limits</b>	
Table 13(f)	<p>Amend Table 13(f) as follows:</p> <p>(i) Amend the A allocation limit from 96.6 million m<sup>3</sup>/yr to 86.6 million m<sup>3</sup>/year for the Valetta Groundwater Allocation Zone.</p> <p>(ii) Amend the B allocation limit from 0 million m<sup>3</sup>/yr to 10 million m<sup>3</sup>/year for the Valetta Groundwater Allocation Zone.</p>
New Rule 13.5.31A	<p>Insert new Rule 13.5.31A as follows:</p> <p><i>The take and use of groundwater from within the B permit allocation limit of the Valetta Groundwater Allocation Zone for the purpose of supplementing surface water supplied by an irrigation scheme is a restricted discretionary activity provided that the following conditions are met:</i></p> <p>(a) <i>The annual volume of the groundwater take, in addition to all existing consented takes, does not exceed the B permit allocation limit as set out in Table 13(f);</i></p> <p>(b) <i>The bore interference effects are “acceptable”, as set out in Schedule 12;</i></p> <p>(c) <i>The applicant holds a lawfully established groundwater take for an equal or greater rate and volume than is sought;</i></p>

<sup>63</sup> Amendments to the Reporting Officer's s42A Report recommendations (dated 1 May 2015) are shown in tracked changes (additions shown in underline; deletions in strikethrough). Additional amendments sought by VIL are shown in tracking and grey shading.

	<p>(d) <u>the combined surface-groundwater supply results in a net volumetric gain of water to the aquifer.</u></p> <p><u>The exercise of discretion is restricted to the following matters:</u></p> <ol style="list-style-type: none"><li><u>1. whether the amount of water to be taken and used is reasonable for the proposed use. In assessing reasonable use for irrigation purposes, the CRC will consider the matters set out in Schedule 10;</u></li><li><u>2. the maximum rate of take, including the capacity of the bore or bore field and any irrigation scheme;</u></li><li><u>3. the effects the take has on any other authorised takes, including interference effects set out in Schedule 12.</u></li></ol>
--	---