

BEFORE THE CANTERBURY REGIONAL COUNCIL

IN THE MATTER OF

The Resource Management Act 1991

AND

IN THE MATTER OF

an application by **Rosehip Orchards NZ Limited** filed under CRC072117 to disturb the bed of the Ohau River to lay and maintain a pipeline for the supply of water for irrigation, approximately 9 km south-east of State Highway 8, Twizel.

**REPORT AND DECISION OF HEARING COMMISSIONERS PAUL ROGERS,
MICHAEL BOWDEN, DR JAMES COOKE AND EDWARD ELLISON**

PART B - SITE SPECIFIC DECISION

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1 INTRODUCTION

- 1.1 This is a decision on an application by **Rosehip Orchards NZ Limited** (the applicant). It is one of many decisions we have made on 104 applications by various applicants for water permits and associated consents in the Upper Waitaki Catchment.
- 1.2 The decision should be read in combination with our Part A decision, which sets out our findings and approach to various catchment wide issues that are common to multiple applications. References to our Part A decision are made throughout this decision as appropriate.

2 THE PROPOSAL

- 2.1 The applicant proposes to undertake works in the bed of the Lower Ohau River for the purposes of installing and maintaining a pipeline. This pipeline will be used to convey water from the intake structure to the applicant's property for use in irrigation.
- 2.2 The location of the proposed Rosehip Orchards pipeline crossing is between map references H39:851-485 to H38:858-490, approximately 9 km south-east of State Highway 8, Twizel, as illustrated in Figure 1 below
- 2.3 The proposal also involves a temporary diversion of water during construction of the intake structure to minimise the work required in flowing water. Although a consent for this diversion has not specifically been sought, we have considered this activity as part of the proposal for the reasons outlined in our Part A decision.



Figure 1: Location of proposed pipeline

The application

- 2.4 The application is for an activity in the bed of a lake or river pursuant to section 13 of the RMA. Section 13 of the RMA describes restrictions on certain uses of beds of lakes and rivers. Activities are prohibited unless expressly allowed by a rule in a regional plan and in any relevant proposed regional plan, or by a resource consent.

- 2.5 The application (CRC072117) was lodged with the Canterbury Regional Council (the Council) on 22 January 2007 and considered to be notifiable on that date. The application requested a consent duration to 2025.

Modifications after notification

- 2.6 The s42A report writer (Ms Rodrigo) noted that the applicant was proposing to install the intake location 1.5 - 2 kilometres upstream of the take location that was originally applied for. Ms Rodrigo said that while the general details associated with the pipeline and the works required for its installation remained the same, the change in location could result in a change to the adverse effects arising from the original proposal.
- 2.7 Her reassessment of effects has not identified any additional parties who may be affected by the change and who have not already submitted on the application. While the applicant stated that consultation occurred with DoC (who would be considered to be an affected party due to potentially sensitive breeding habitat located within the river bed), no confirmation has been provided on whether they have any concerns with the change in location of the pipeline.
- 2.8 The general principle for modifications after notification is that amendments are allowed provided they do not increase the scale or intensity of the activity or significantly alter the character or effects of the proposal. The key consideration is prejudice to other parties by allowing the change. In this case, we are satisfied that the change does not significantly alter the intensity or effects of the proposal and that no party would be adversely affected by allowing the change.

Related consents and applications

- 2.9 Resource consent is not required for the physical works in the canal as section 13 of the RMA only relates to the beds of lakes and rivers. However a separate consent is required for a water permit to take and use the water under section 14 of the RMA. A separate application was lodged by the applicant for this activity (CRC072118), which is the subject of a separate decision.

3 DESCRIPTION OF THE ENVIRONMENT

- 3.1 The Lower Ohau River is located downstream of Lake Ruataniwha Dam. The flow in this part of the river is largely controlled by Meridian Energy Limited (MEL). Splash flows are released monthly and occasionally water from the Ohau C canal is allowed to spill into the river via the labyrinth weir.
- 3.2 The Lower Ohau River bed is generally dry with some ponded areas between Ruataniwha Dam and the confluence with the Twizel River. These ponded areas however, are part of a recognised conservation area, used by DoC as a captive breeding centre for black stilt. This area also provides habitat and breeding areas for other birds, such as the banded dotterel, black fronted terns and wrybills.
- 3.3 The lower reach of the Ohau River (extending 2 km upstream of the Benmore Dam) provides opportunities for fishing and other recreational pursuits (such as jet boating, swimming, etc).
- 3.4 There are no consented users of water in the Ohau River bed in the vicinity of the proposed works. However Telstra Clear have consent CRC071228 to lay fibre optic cables beneath the Twizel and Tekapo river beds. The Twizel river bed location (NZMS 260 H39:8559-4926 and H39:8588-4922) is in close proximity to the proposed pipeline location.
- 3.5 There is one mudfish habitat site recorded in the vicinity of the proposed works within the Ohau River (NZMS 260 H39:8579-4870). There are two marked wetland areas, one approximately 1 kilometre north-west of the proposed pipeline crossing, one approximately 500 metres south of this crossing.
- 3.6 As mentioned in our decision on the take and use consent, we did visit the site on the ground to ensure we were familiar with the environment within which the proposed activity would take place.

4 PLANNING INSTRUMENTS

- 4.1 The planning instruments relevant to this application are:

- (a) Transitional Regional Plan (TRP); and
 - (b) Proposed Natural Resources Regional Plan (PNRRP);
 - (c) Natural Resources Regional Plan (NRRP)
 - (d) Proposed and Operative Canterbury Regional Policy Statement (CRPS); and
 - (e) Mackenzie District Plan (MDP)
- 4.2 The provisions of these planning instruments critically inform our overall assessment of the application under s104(1)(b) of the RMA, as discussed in Section 14 of this decision. In addition, the rules within the relevant planning instruments determine the status of the activity, as set out below.

Status of the activity

- 4.3 In our Part A decision we provide a detailed discussion of our approach to determining the status of activities. We now apply that approach to the current application.
- 4.4 In accordance with section 88A of the RMA, the relevant plans for determining the status of the activity are those that existed at the date the application was lodged (22 January 2007). In relation to this application, that was the TRP and the PNRRP.
- 4.5 The TRP is silent on matters relating to works in the bed and banks of rivers and lakes in the Waitaki catchment. This activity therefore requires consent as a discretionary activity under the TRP.
- 4.6 The relevant provisions of PNRRP (as notified) are as follows:
- (a) Rule BLR3 of the PNRRP classifies activities involving excavating, drilling, tunnelling or disturbance within the bed as a permitted activity, provided certain conditions are met. These conditions include restrictions on the volume of material excavated, and the activity not having an effect on flooding risk, bank stability, and the integrity of existing lawfully established structures. Also, the activity cannot be undertaken within surface water at or below the water table.
 - (b) Should any of the conditions of the permitted activity not be met then Rule BLR8 classifies the activity as discretionary.
 - (c) There is potential for the activity to affect bank stability, therefore the activity is a discretionary under the PNRRP.
- 4.7 In relation to the minor diversion of water associated with construction activities, the relevant plan for determining the status of the activity is the WCWARP. The diversion fails to qualify as a permitted activity under Rule 1 of the WCWARP due to the quantity and rate of water being diverted. However it complies with all other relevant rules in the WCWARP and therefore requires consent as a **discretionary** activity.
- 4.8 Based on the above, the activity as a **discretionary activity** and requires resource consent pursuant to sections 13 and 14 of the RMA.

5 NOTIFICATION AND SUBMISSIONS

- 5.1 This application was notified on 4 August 2007, at the same time as the related take and use application. A number of submissions were lodged on the overall proposal as discussed in our decision on the take and use application (CRC072118). However none of those submissions made any reference to this land use application or the effects of the proposed works in the bed.

6 THE PLANNING OFFICER'S REPORT

- 6.1 A officer report on the application and submissions was prepared by the Regional Council's planner (Ms Rodrigo). The report was pre-circulated in advance of the hearing.

- 6.2 Key conclusions from the s42A report in relation to the potential effects of the proposal are summarised below.
- (a) Flood-carrying capacity & erosion: Effects may be more than minor given the extent of the works across the river bed.
 - (b) Man-made structures: Uncertain whether the works within the bed and banks of the Ohau River would result in impacts and instability of the access roads on the river terraces.
 - (c) Bank stability: Effects uncertain.
 - (d) Water quality: Effects minor, however, the diversion required to mitigate effects of works in flowing water may require consent (as discussed above).
 - (e) Riparian plants and animals: Effects uncertain as the extent and significance of the effects on riparian vegetation has not been assessed.
 - (f) Instream ecosystems: Effects should be minor, provided conditions regarding timing of works are included and adhered to.
 - (g) People and amenity values: Effects minor, provided condition regarding hours of work is included and adhered to.
 - (h) Tangata Whenua values: Effects minor.
- 6.3 In relation to relevant objectives and policies, Objective BLR 1 of the PNRRP aims to ensure that works in the beds and banks of rivers and streams can be undertaken while minimising effects, including flood-carrying capacity, natural character, ecosystems, other structures, erosion, Ngai Tahu values. Based on the applicant's assessment of effects, Ms Rodrigo could not be sure that these effects would be adequately mitigated.

7 THE APPLICANT'S CASE

- 7.1 Legal counsel for the applicant, Mr Kelvin Reid, presented opening submissions and called two witnesses as follows:
- (a) Mr Ian McIndoe Groundwater Consultant, report on pipeline proposal
 - (b) Dr Gregory Ryder, Water Quality Scientist & Aquatic Ecologist, report on water quality and aquatic ecology

Installation works

- 7.2 Mr McIndoe described how the pipeline would be installed beneath the bed of the Ohau River just below the Twizel confluence, which at that point included flow from the Twizel River. Flow would be diverted across to one side of the channel, a trench will be dug, the pipe laid, and the trench back-filled. The water would then be diverted across to the other side of the channel where the pipeline installation would be repeated as for the first half. Works in flowing water will be avoided as much as possible.
- 7.3 He said that the areas of excavation will be approximately 3 m wide, 3-4 m deep and will extend for approximately 700 m across the width of the Ohau River. It is intended to have a minimum 2 m cover over the pipeline in the riverbed as protection against potential erosion during flood flows or spillage. Excess spoil from the works will be minimal and spread out over the river bed to represent the current state.
- 7.4 Mr McIndoe estimated that the duration of the proposed works associated with the installation of the pipeline beneath the river will be in the order of 1 week and will be carried out during daylight hours.

Effects on Ecosystems

- 7.5 Mr McIndoe said that as the works in the river bed would be carried out over a short time period (approximately 1 week) potential effects on instream values or aquatic ecosystems were expected to be minor. Fish passage would be maintained throughout the duration of the proposed works through the diversion of flow to one side of the bed. No storage of fuel or refuelling of any vehicles and machinery would occur anywhere on the bed of the river; thereby ensuring contaminants will not enter flowing water.
- 7.6 Consultation with the Department of Conservation (DoC) had highlighted the following concerns:
- (a) Effects on the DoC ponds and grasshopper monitoring sites (downstream of the Rosehip Orchards site).
 - (b) Effects on flying birds if pipeline set above ground level.
 - (c) Timing of works during bird breeding season (August to the end of January).
 - (d) Introduction of weeds via machinery.
- 7.7 In response to these concerns, the applicant has proposed the following mitigation measures:
- (a) The pipelines will be buried beneath the riverbed and will be located upstream of several black stilt ponds administered by DoC and located NE of the Ohau C power station, and well downstream of the Ruataniwha Wetlands. The pipeline will also avoid any grasshopper monitoring sites downstream of the proposed pipeline.
 - (b) Works will be undertaken when flows permit, and as far as practical will be undertaken outside fish spawning and bird breeding periods. Where this is unavoidable, consultation will be undertaken with DoC and Fish and Game. A condition is also proposed whereby works cannot be undertaken within 100 m of nesting birds.
 - (c) To control the potential for the introduction of weeds to waterways during construction, machinery will be washed before moving to a new site to minimise the risk of any weed introduction. The applicant intends to follow recommended Environment Canterbury (ECan) and DoC guidelines.
- 7.8 Dr Gregory Ryder said that installation of the pipeline below the bed of the Ohau River would result in the removal of macroinvertebrates and less mobile fish life stages (e.g. common and upland bully eggs and larvae), but more mobile fish (e.g. adult bully and salmonids) will be able to move to avoid the area during construction.
- 7.9 Dr Ryder said that some macroinvertebrate taxa would also drift downstream to avoid areas with increased sediment deposition (e.g. Deleatidium mayflies). There was likely to be a short-term increase in fine sediments downstream of the excavation area, but this would decrease over time through higher flows dispersing this material. Macroinvertebrates will begin recolonisation almost immediately and the community will resemble pre-construction community typically within four to six weeks following the completion of construction. Fish would also move back into the area almost immediately depending on seasonal effects and abundance of local populations. Best practice guidelines to reduce sediment inputs to watercourses during construction should be followed and Dr Ryder also recommended that Environment Canterbury's Erosion and Sediment Control Guidelines be adopted.
- 7.10 Brown and rainbow trout and sockeye salmon have spawning runs in the lower Ohau River. Dr Ryder said that installation of the pipeline in the bed of the Ohau River had the potential to disturb spawning salmonids, and sediments released could smother spawning gravels downstream. He therefore recommended avoiding any construction activities in the river during the spawning and rearing seasons, which was between late February and late March for sockeye salmon and between approximately June-October for trout.
- 7.11 Dr Ryder said that threatened galaxiids have been found in small springs and backwaters on terraces of the Ohau River. Construction activity and the laying of the irrigation pipeline have the potential to damage or destroy potential galaxiid habitat. He therefore recommended that, where possible, construction machinery avoid wetted areas away from the Ohau River channel. Where wetted areas were unavoidable, he recommended surveys be undertaken for the presence of

galaxiids prior to disturbance and that any fish likely to be affected be relocated to suitable habitat nearby. Consultation with DoC was recommended for this operation.

- 7.12 Dr Ryder said that the invasive alga *Didymo* had been found in the Ohau River, and could potentially be transferred to springs on the river banks. Where possible, construction machinery should avoid wetted areas and machinery working in wetted areas should be cleaned and inspected prior to entering the water.

Erosion, Flood Carrying Capacity and Essential Structures

- 7.13 Mr McIndoe said that in order to minimise erosion of the river bed, construction of the intake will take place during periods of low flow, when the risk of flooding is low.
- 7.14 Works would be undertaken to minimise the disturbance to the riverbed. Where any disturbance occurs to the banks of the river, the applicant will undertake remedial work to restore the bank stability. Additionally, as the pipelines are proposed to be buried beneath the riverbed and excess materials levelled to the natural bed level, the flow of water will not be impeded and will not be deflected into the banks of the river, avoiding erosion potential.
- 7.15 Mr McIndoe said that there are no known flood protection structures or other essential structures within the vicinity of the site.

Sediment Transport

- 7.16 Under the works proposed for the Rosehip Orchards pipeline, some sediment may be released into the Twizel River. However, the short duration of the proposed works means sediment release will only occur over a short period of time and no long term or ongoing adverse effects should arise. Undertaking the works when flows are low will minimise disturbance to the bank and reduce the risk of sediment entering the river. The effects of sediment entering the river will be minor.

Effects on Other Users

- 7.17 Mr McIndoe said that the potential effects on other users from the proposed works relate to effects on water quality from sediment release into the river, and the timing of works. The applicant will undertake all practical measures to minimise the discharge of sediment into flowing water. Additionally, works will be carried out during daylight hours and will not be carried out on weekends or public holidays.
- 7.18 Mr McIndoe believed that the small localised scale and the reshaping and levelling of the proposed work site to resemble the natural riverbed would ensure the proposed works would result in minor, if any changes to the amenity values currently attributed to the Ohau River.
- 7.19 Additionally, the proposed location of the pipeline was at least 2.5 km from the main road (SH8); therefore the works will not be easily seen by the community or tourists.

Overall effects

- 7.20 Mr McIndoe said that potential effects from the installation of the pipelines would be temporary in nature, localised and of a small scale. The effects would therefore have a negligible effect on the natural and physical river environment.

8 UPDATES TO S42A REPORTS

- 8.1 Ms Rodrigo in her s42A addendum identified the following matters as outstanding:
- (a) The impacts on riparian vegetation as a result of the works to install the pipeline;
 - (b) Whether all parties including DOC were aware of the proposal to change the location of the pipeline and have any concerns regarding the amendment to the application;
 - (c) Whether mitigation measures recommended by Mr McIndoe and Dr Ryder are proposed to be adopted by the applicant.

9 APPLICANT'S RIGHT OF REPLY

- 9.1 Mr Kelvin Reid replied to the outstanding issues in Ms Rodrigo's addendum agreeing that the matters relating to vegetation, flood carrying capacity (Meridian release of water from the labyrinth weir), and bank stability during and post construction are capable of being addressed in the conditions of consent.

10 STATUTORY CONTEXT

- 10.1 The relevant statutory context is set out in detail in our Part A decision. In accordance with those requirements, we have structured this evaluation section of our report as follows:

- (a) Evaluation of effects
- (b) Evaluation of relevant planning instruments
- (c) Evaluation of other relevant s104 matters
- (d) Part 2 RMA
- (e) Overall evaluation

11 EVALUATION OF EFFECTS

- 11.1 Drawing on our review of the application documents, the submissions, the Officers' Reports, the evidence presented at the hearing and our site inspection, we have concluded that the effects we should have regard to are:

- (a) Effects on ecosystems
- (b) Effects on flood carrying capacity
- (c) Effects on man-made structures and bank stability
- (d) Effects of diversion

Effects on eco-systems

- 11.2 The Applicants have discussed the effects of the initial installation with DoC and have agreed not to undertake works at times of the year when birds nesting could be disturbed. Mr McIndoe in his evidence discussed the amended location of the pipeline and need to avoid conflict with DoC activities in the riverbed such as the Black Stilt breeding and the grasshopper monitoring. DoC staff have given evidence at this hearing and have not pursued this matter further.

Effects on flood-carrying capacity

- 11.3 In terms of the works required to install infrastructure, including constructing a pipeline under the Ohau River, there were initially some concerns. The first was that if Meridian elected to release water into the Ohau River via the labyrinth weir during the installation works there could potentially be adverse effects.

- 11.4 This issue of impacts on the flood carrying capacity was addressed in Mr McIndoe's evidence where he stated:

"water is only released into the river via the labyrinth weir as an emergency overflow. The proposed works in the riverbed are located upstream of the weir and therefore the flood carrying capacity of the river will not be affected in any way by the works".

- 11.5 The reporting officer has now indicated that the temporary works required to install a pipeline under the Ohau River should not result in an impact on the flood-carrying capacity of the river.

Effects on man-made structures and bank stability

- 11.6 The section 42A report also identified that the applicants had not assessed whether there were any man-made structures that might be affected by the installation of the infrastructure. The report also questioned whether bank stability may be impacted on.
- 11.7 Regarding the impacts on man-made structures and bank stability, Mr McIndoe addressed this point in his evidence when he stated that the pipeline would need to cross over the canal road and as such, permission should, and would be, sought from Meridian to undertake this crossing. Essentially, the works cannot proceed without Meridian consent which will involve detailed construction engineering design to be approved by Meridian. Mr McIndoe also makes it clear that any damage done to the banks of the river during the construction phase will be restored to a state consistent with the surrounding environment.
- 11.8 It should be noted that the reporting officer has now suggested that this issue could be dealt with by way of conditions. In particular she has suggested that a condition to require the applicants to notify Meridian would be appropriate, as would a condition requiring the applicants to ensure the stability of the roadway and river bank after construction. If considered necessary, the Applicants have indicated they would agree to such a condition.

Effects of diversion

- 11.9 In respect of the diversion associated with construction of the intake, it is over a short length, will be temporary in nature and returns to the same watercourse it is originally part of. Given the nature of the activity, we are satisfied that the effects will be no more than minor. However we consider that it is necessary to impose some brief conditions of consent to ensure that the extent of the diversion is clearly defined and the activity is managed appropriately.

Key conclusions on effects

- 11.10 In relation to the actual and potential effects of the proposal, our key conclusions are as follows.
- 11.11 The proposed activity will have minor effects subject to appropriate design, construction and mitigation measures being prepared and implemented. This includes a compliant Construction Management Plan, adhering to Canterbury Regional Council Erosion and Sediment Control Guidelines and preparing technically compliant plans for the cut and burial of the pipeline in the river bank and watercourse and including post construction stability remediation.

12 EVALUATION OF RELEVANT PLANNING INSTRUMENTS

- 12.1 Under s 104(1)(b) of the Act, we are required to have regard to the relevant provisions of a range of different planning instruments. Our Part A decision provides a broad discussion of those planning instruments and sets out the approach we have applied to identification and consideration of the relevant provisions.
- 12.2 In relation to the current application, we consider that the key relevant provisions can be found in Chapter 6 of the NRRP, which relates to activities in the beds of lakes and rivers. The chapter contains one objective and two related policies.
- 12.3 Objective BLR1 aims to ensure that works in the beds and banks of lake, rivers and streams can be undertaken while minimising effects, including flood-carrying capacity, natural character, ecosystems, other structures, erosion, Ngai Tahu values. Given the conclusions we have reached on these matters above, we consider that, subject to appropriate conditions, the proposal is consistent with this objective.
- 12.4 Policies BLR1 and BLR2 aim to control activities associated with the erection, placement, use and maintenance of structures within the bed of rivers to ensure that Objective BLR1 is achieved. This may include restricting activities so that they do not affect flood carrying capacity, erosion or create plant infestations. For the reasons discussed above, with the imposition of appropriate conditions, we consider the proposed activity is consistent with these policies.
- 12.5 In respect of the proposed diversion, given its minor nature and our conclusions on effects outlined above, we consider that the activity is consistent with the relevant objectives and policies in the WCWARP seeking to sustain the quality of the environment.

13 EVALUATION OF OTHER RELEVANT S104 MATTERS

- 13.1 With regard to s104(1)(c), the consent authority can consider any other matter relevant and reasonably necessary to determine the application. After hearing all the relevant evidence, we consider that no such matters exist in relation to this application.

14 PART 2 RMA

- 14.1 Section 104(1) states that the matters which we have discussed above are subject to Part 2, which covers section 5 through section 8 inclusive. These sections are set out in full in our Part A decision and are discussed below in the context of the current application.

Section 6 – Matters of National Importance

- 14.2 Section 6 identifies matters of national importance that we must “recognise and provide for” when making our decision.
- 14.3 Sub-sections (a) and (e) of Section 6 of the RMA are particularly relevant to these applications. The applicant has proposed measures to minimise the effects on water quality and ecosystems which will adequately protect the natural character of the environment.

Section 7 – Other Matters

- 14.4 Section 7 lists other matters that we shall “have particular regard to”.
- 14.5 Sub-section (a), we note that the applicant consulted Ngai Tahu in respect of their overall proposal; no cultural issues were identified with the proposed pipeline through that engagement.
- 14.6 Sub-sections (c) (f) and (h) are specifically relevant to these applications and should be considered when deciding the acceptability of effects resulting from the proposed works in the bed. Section (c) refers to the maintenance and enhancement of amenity values. The applicant has proposed mitigation measures to ensure that this objective is achieved.
- 14.7 Section (f) refers to the maintenance and enhancement of the quality of the environment. The applicant has proposed mitigation measures to ensure that this objective is achieved, particularly with regards to water quality and ecosystems.
- 14.8 Section (h) requires protection of the habitat of trout and salmon. Through the water quality mitigation proposed, the applications will be consistent with this objective.

Section 8 – Treaty of Waitangi

- 14.9 Finally, section 8 requires that we shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).
- 14.10 We find that the statutory requirements of Section 8 have been addressed through the incorporation of Ngai Tahu cultural, spiritual values and associations in plan objectives, policies and rules. The applicant has responded accordingly by contributing to the wider applicant study of cultural impacts and specifically consulted with Ngai Tahu in respect of their own applications. The nature and short duration of this particular activity does not trigger s8 considerations.

Section 5 – Purpose of the RMA

- 14.11 Turning now to the overall purpose of the RMA, that is, “to promote the sustainable management of natural and physical resources”. For the reasons discussed above, we consider that the proposed activity with the mitigation that is proposed is consistent with the overall objective of s5 of the RMA.

15 OVERALL EVALUATION

- 15.1 Under s104B of the RMA, we have a discretion as to whether or not to grant consent. This requires an overall judgment to achieve the purpose of the Act and is arrived at by:
- (a) Taking into account all the relevant matters identified under s 104;

- (b) Avoiding consideration of any irrelevant matters;
 - (c) Giving different weight to the matters identified under s 104 — depending on our opinion as to how they are affected by the application of s 5(2)(a), (b), and (c) and ss 6-8 — to the particular facts of the case; and then in light of the above; and
 - (d) Allowing for comparison of conflicting considerations, the scale or degree of conflict, and their relative significance or proportion in the final outcome.
- 15.2 This is a discretionary activity and Ms Rodrigo said that she was satisfied that most of the issues raised in her s42A report had either now been addressed adequately or could be addressed by the inclusion of appropriate conditions of consent. We concur with her assessment.
- 15.3 There do however remain some issues that need to be addressed. The impacts on riparian vegetation we believe can be adequately addressed by conditions and we consider that the mitigation measures recommended by Mr McIndoe and Dr Ryder should be part of the conditions of any consent granted.
- 15.4 Having reviewed the application documents, all the submissions, taking into account the evidence to the hearing and taking into account all relevant provisions of the RMA and other relevant statutory instruments we have concluded that the outcome which best achieves the purpose of the Act is to **grant** consent.

16 DECISIONS AND REASONS

- 16.1 Pursuant to the powers delegated to us by the Canterbury Regional Council:
- 16.2 For all the above reasons, pursuant to sections 104 and 104B of the Resource Management Act 1991, we **GRANT** application CRC072117 by **Rosehip Orchards Limited** for the following activity:
- To disturb the bed of the Ohau River to lay a pipeline for the supply of water for irrigation, at or about map reference NZMS 260 H39:856-490, and associated maintenance works to maintain the pipeline and abstraction, approximately 9 km south-east of State Highway 8, Twizel. The works will involve a temporary diversion of water within the bed of the Ohau River at the location of the pipeline.
- 16.3 Pursuant to section 108 RMA, the grant of consent is subject to the conditions specified at **Appendix A**, which conditions form part of this decision and consent.
- 16.4 The duration of this consent shall be until the 30th April 2025.

DECISION DATED AT CHRISTCHURCH THIS 22ND DAY OF NOVEMBER 2011

Signed by:

Paul Rogers	 _____
Dr James Cooke	 _____
Michael Bowden	 _____
Edward Ellison	 _____

APPENDIX A: CONDITIONS OF CONSENT (CRC072117)

1. The works shall be limited to the excavation and disturbance of the bed and banks of the Ohau River for the purpose of the placement, extension, removal or demolition of a pipeline in or on the bed and banks of the Ohau C canal for abstracting water.
2. Works shall only be carried out within the bed and banks of the Ohau River between map reference at or about NZMS 260 H39:851-485 and H39:858-490, as shown on attached plan.
3. Excavation shall not exceed a depth of 5 metres below the level of the river bed prior to excavation, nor a surface area of 20 metres by 50 metres.
4. If further excavation at the site in the river bed is not to occur within seven days following the last working at the site, then the following shall occur:
 - a. All deposits of gravel, sand and other natural material shall be levelled to the natural bed level;
 - b. The excavation area shall be reshaped and formed to a state consistent with the surrounding natural river bed.
5. Prior to commencing excavation, a copy of this resource consent shall be given to all persons undertaking activities authorised by this consent.
6.
 - a. Excavation shall not occur within 100 metres of birds, which are nesting or rearing their young in the bed of the river.

AND

 - b. Prior to any construction works being carried out in the period 1 September to 1 February, the consent holder shall ensure that:
 - i. a suitably qualified and independent person inspects the proposed area of works, no earlier than eight working days prior to any works being carried out, and locates any bird breeding sites of birds listed in Schedule A;
 - ii. the person carrying out the inspection prepares a written report that identifies all the located bird breeding or nesting sites and provides copies of that report to the consent holder and the Canterbury Regional Council;
 - iii. the name and qualifications of the person carrying out the inspection are provided to the Canterbury Regional Council with the report;
 - iv. any person carrying out works authorised by this consent are informed of any bird breeding or nesting sites located; and
 - v. where work ceases for more than 10 days, the site will be re-inspected for bird breeding and nesting sites in accordance with parts (a) to (d) of this condition.
7. The Canterbury Regional Council, Attention: RMA Compliance and Enforcement Manager, shall be notified not less than 3 working days prior to the commencement of works described in condition (1).
8. Prior to the commencement of construction, the consent holder shall prepare a Construction Management Plan (CMP) and be submitted to the Canterbury Regional Council, Attention: RMA Compliance and Enforcement Manager. The CMP shall cover (but not be limited to) the following matters:
 - a. Construction hours and days of the week when construction activity may occur.

- b. Protocols for the handling and management of hazardous substances.
 - c. Protocols associated with the accidental discovery of archaeological matter.
 - d. Measures to be taken to prevent the erosion of excavated areas, including the prevention of sediment discharge.
 - e. Post construction measures to ensure that the construction area is rehabilitated as closely as practicable to its natural state (as it was pre construction).
 - f. Safety measures to ensure that the general public is not at risk of harm when accessing Crown land in close proximity to the construction area.
9. The consent holder shall ensure that any construction activities in the wetted bed of the river associated with the construction of the pipeline described in condition 1 are avoided during Feb to March, and June to October.
10. Erosion controls shall be installed on all earthworks to prevent sediment from flowing into any surface water body.
11. Works shall not be undertaken in any manner likely to cause erosion of or instability to the bed or banks of the Ohau River; nor reduce the flood-carrying capacity of the Ohau River.
12. At least 20 working days prior to the commencement of the works, the consent holder shall submit to the Canterbury Regional Council, Attention: RMA Enforcement and Compliance Manager, an Erosion and Sediment Control Plan (ESCP) as part of the CMP that includes, but is not limited to the following:
 - a. a locality map; and
 - b. detailed drawings showing the type and location of erosion and sediment control measures, on-site catchment boundaries, and off-site sources of run-off; and
 - c. drawings and specifications of all designated erosion and sediment control measures with supporting calculations; and
 - d. a programme of works, which includes but is not limited to a proposed timeframe for the works;
 - e. a schedule of inspections and maintenance of erosion and sediment control measures; and
 - f. details of when the erosion and sediment control measures are to be established and decommissioned; and
 - g. measures to ensure that there is no tracking of mud or earth onto the surrounding road network, including the provision of shaker ramps and/or wheel washes where appropriate; and
 - h. measures to be undertaken should erosion and sediment control measures fail and result in contamination of any watercourse or water body.
13. The ESCP shall be prepared in general accordance with the Environment Canterbury Erosion and Sediment Control Guidelines 2007 (ECAN ESC Guidelines).
14. The ESCP shall be communicated to all persons undertaking activities authorised by this consent and a copy of the ESCP shall be kept on site at all times.
15. The Erosion and Sediment Control Plan and any revisions of that document shall be submitted to the Canterbury Regional Council, Attention: RMA Compliance and Enforcement Manager, for certification that the Erosion and Sediment Control Plan meets all the requirements of the conditions of this consent.
16. No activities authorised by this consent shall commence or be undertaken other than in full compliance with the Erosion and Sediment Control Plan that has been certified by or on behalf of

the Canterbury Regional Council RMA Compliance and Enforcement Manager in terms of condition 12.

17. The consent holder shall adopt the best practicable options to:

- a. Minimise soil disturbance and prevent soil erosion;
- b. Prevent sediment from flowing into any surface water; and
- c. Avoid placing cut or cleared vegetation, debris, or excavated material in a position such that it may enter surface water.

18. To prevent the spread of *Didymo* or any other aquatic pest, the consent holder shall ensure that activities authorised by this consent are undertaken in accordance with the Biosecurity New Zealand's hygiene procedures.

Note: You can access the most current version of these procedures from the Biosecurity New Zealand website <http://www.biosecurity.govt.nz> or Environment Canterbury Customer Services.

19. The consent holder shall ensure that during construction:

- a. All practicable measures shall be undertaken to prevent oil and fuel leaks from vehicles and machinery.
- b. As far as is practicable, machinery avoids the wetted area of the Ohau River ; or where this is not possible the consent holder, in consultation with Department of Conservation, undertake surveys to confirm the presence of galaxiids prior to disturbance, and that any fish likely to be affected are to be relocated to suitable habitat nearby.
- c. There shall be no storage of fuel or refuelling of vehicles and machinery within 20 metres of the bed of a river.
- d. Fuel shall be stored securely or removed from site overnight.

20. The consent holder shall ensure that works do not prevent the passage of fish, or cause the stranding of fish in pools or channels.

21. The consent holder shall ensure that machinery used in the construction of the pipeline is:

- a. Free of plants and plant seeds prior to use in the waterbody; and
- b. That the machinery is thoroughly washed after use in the Ohau River.

22. The consent holder shall ensure that the following procedure is adopted in the event that koiwi (human remains) or taonga (cultural artefacts) are unearthed or are reasonably suspected to have been unearthed during the course of construction and other activities.

- a. Immediately as it becomes apparent, or is suspected by workers at the site that koiwi or taonga have been uncovered, all activity at the site will cease.
- b. The plant operator will shut down all machinery or activity immediately, and leave the area and advise his or her supervisor of the occurrence.
- c. The supervisor shall take steps to immediately secure the area in a way that ensures that koiwi or taonga remain untouched as far as possible in the circumstances and shall notify the consent holder.
- d. The Consent Holder will notify the New Zealand Police (in the case of koiwi) and the relevant runanga representatives that it is suspected that koiwi and/or taonga have been uncovered at the site.
- e. The runanga representatives will contact the appropriate kaumatua to act on their behalf in this matter in order to guide and advise the consent holder as to the appropriate course and the consent holder will immediately advise the consent holder of the identity of such kaumatua.

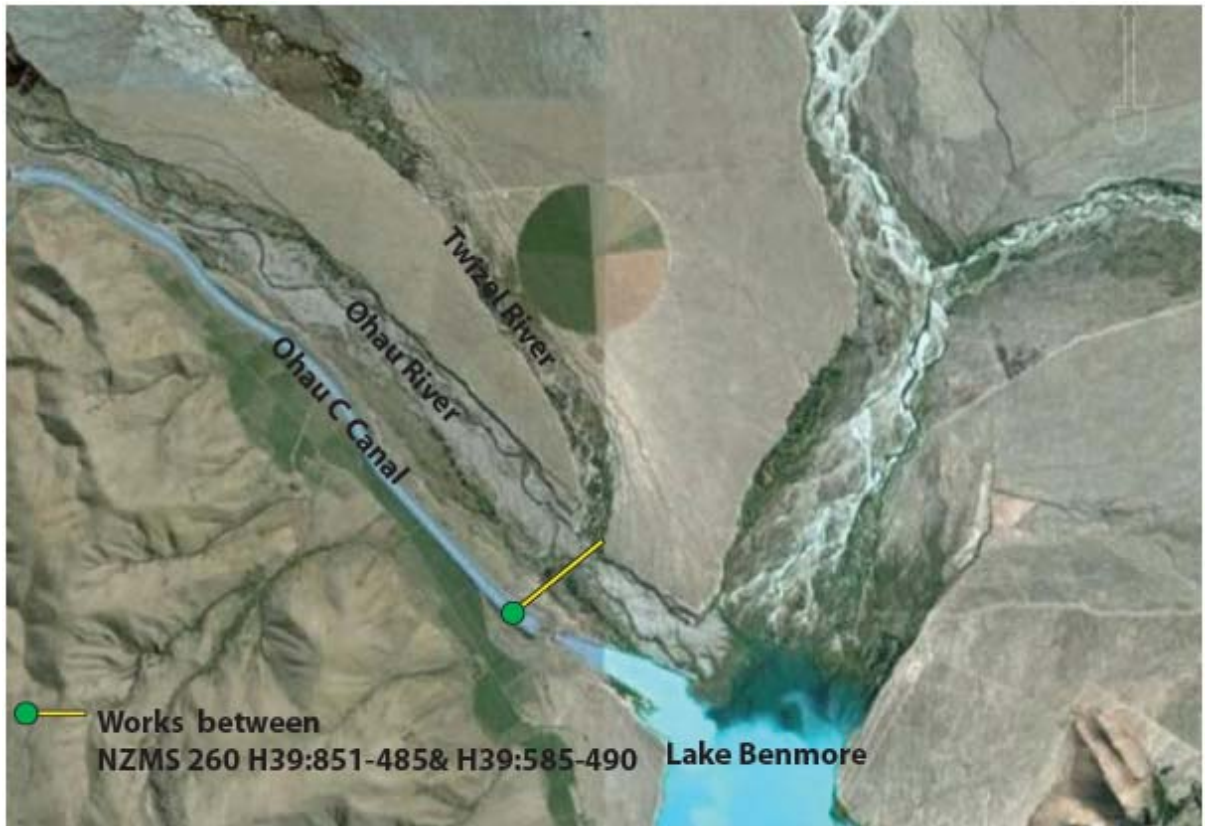
- f. The consent holder shall ensure that representatives on its behalf are available to meet and guide kaumatua and police (as appropriate) to the site, assisting with any requests they may make.
 - g. If the kaumatua are satisfied that the koiwi or taonga are of Maori origin the kaumatua will decide how they are to be dealt with and will communicate its decision to the consent holder, New Zealand Police and such other parties as are considered appropriate.
 - h. Activity on site shall remain halted until the New Zealand Police and the kaumatua have given approval for operations to recommence.
 - i. The consent holder shall ensure that kaumatua are given the opportunity to undertake karakia and such other religious or cultural ceremonies and activities at the site as may be considered appropriate in accordance with tikanga Maori (Maori custom and protocol).
23. Upon completion of works, all disturbed areas shall be stabilised and revegetated with similar species to those found in the intermediate vicinity of the particular site following completion of the works.
24. Upon completion of works, all spoil and other waste material from the works shall be removed from site on completion of works.
- 25.
- a. The consent holder shall ensure that if water is abstracted the gallery and, or, intake shall be designed to prevent native and exotic fish species from entering the system.
 - b. The fish screen shall be designed by a person with experience in freshwater ecology and fish screening techniques, and constructed in a manner that ensures the principals of the NIWA fish screening guidelines (Fish Screening: Good Practice Guidelines for Canterbury, NIWA Client Report 2007-092, October 2007, or other revision of these guidelines. (Copy available on www.ecan.govt.nz)) are achieved.
 - c. No water may be taken in terms of this permit until, upon completion of the intake structure a report is provided to the Canterbury Regional Council, Attention: RMA Compliance and Enforcement Manager. The report shall be prepared by the consent holder for certification and shall demonstrate compliance with the following:
 - i. Design plan for the gallery specifying gallery dimensions;
 - ii. Detail of depths and sizes of layers of gravel over the gallery;
 - iii. Photographic evidence of key stages of construction of the gallery, including demonstrating compliance with gravel specifications in sub clause (c)(ii) above;
 - iv. Any ongoing maintenance required by the manufacturer is carried out in accordance with their specifications."
 - d. The intake structure shall be maintained in good working order. Records shall be kept of all inspections and maintenance. And those records shall be provided to the Canterbury Regional Council upon request.
26. Water shall only be temporarily diverted within the bed of the Ohau River for the purpose of installation and maintenance of an irrigation supply pipeline, installed and maintained in accordance with this consent (CRC072117).
27. The diversion of water referred to in Condition 26 shall only occur over a maximum reach of 50 metres at or about map reference NZMS 260 H39:856-490.
28. The diversion of water shall not impede fish passage or cause the stranding of fish in pools or channels.
29. For the period of diversion, all water diverted shall remain within the bed.
30. When diversion ceases, water shall be returned to its original course.

31. The Canterbury Regional Council may, once per year, on any of the last five working days of May or November, serve notice of its intention to review the conditions of this consent pursuant to Section 128 of the RMA, for the purposes of dealing with any adverse effect on the environment which may arise from the exercise of the consent and which it is appropriate to deal with at a later stage.
32. The lapsing date for the purposes of section 125 shall be 31st December 2016.

Advice note:

Nothing in this consent authorised the taking and use of water for irrigation purposes. A separate consent is required from the Canterbury Regional Council for this activity.

Plan CRC072117



Schedule A – list of bird species

South Island Pied Oystercatcher

Black Stilt

Pied Stilt

Wrybill

Banded Dotterel

Black-fronted Dotterel

Grey warbler

Fantail

Bellbird

Silvereye

Spur-winged Plover

Paradise Shelduck

Grey Duck

NZ Shoveler

Grey Teal

NZ Scaup

Black-billed Gull

Red-billed Gull

Caspian Tern

White-fronted Tern

Black-fronted Tern

White-winged Black Tern

Australasian Bittern

Marsh Crake

Spotless Crake

Cormorant/shag colonies

Or any other bird species deemed by a suitably qualified person to require protection.