

**BEFORE THE CANTERBURY REGIONAL COUNCIL**

**IN THE MATTER OF**

The Resource Management Act 1991

**AND**

**IN THE MATTER OF**

applications by **Simons Hill Station Limited (CRC062843)** and **Simons Pass Station Limited (CRC062869)** to discharge surplus irrigation water to Pūkaki River at Simons Hill and Simons Pass Stations, Lake Pūkaki.

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**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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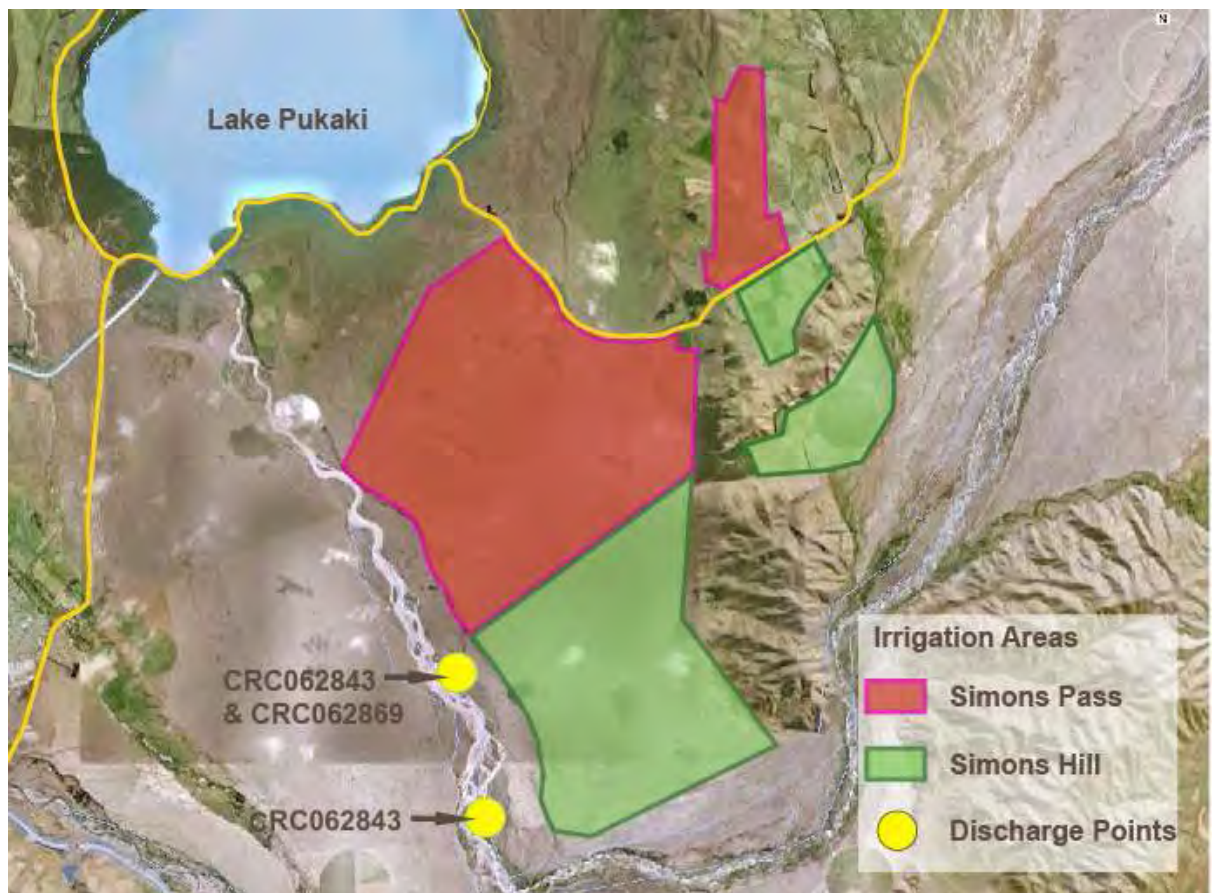
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## 1 INTRODUCTION

- 1.1 This is a decision on applications by **Simons Hill Station Limited** and **Simons Pass Station Limited** (the applicants). 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 Although the applications are made by two separate applicants, we have issued this as a combined decision as they are effectively for the same activity (albeit operated independently), with the same evidence and issues relevant to each.
- 1.3 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 is made throughout this decision as appropriate.

## 2 THE PROPOSAL

- 2.1 The applicants have applied to discharge surplus irrigation water in association with the proposed irrigation scheme and canal system for Simons Hill and Simons Pass Stations. Water will be discharged at two locations on the Pūkaki River, as illustrated in Figure 1 below.



**Figure 1:** Indicative location map

- 2.2 The upstream discharge location is adjacent to the south-western boundary of Simons Pass Station, and the lower discharge location is adjacent to Simons Hill Station. This lower discharge location will only be used by Simons Hills Station Limited, where the upstream location is proposed to be used by either applicant. We note that there was somewhat inconsistent information presented regarding the locations proposed by each applicant. We have based the proposed locations on the information contained in the application documents and the notification details.
- 2.3 The primary purpose of the discharge is to enable the shared irrigation race system from Pūkaki Canal or Lake Pūkaki to be dewatered, which will over a period of approximately three hours. In addition, discharges to the Pūkaki River may occur in emergency overflow situations.

- 2.4 The discharge will occur by means of a weir in the race adjacent to the discharge point. Pūkaki Irrigation Company Limited (PIC) have applied for consent to disturb the bed and banks of Pūkaki River (CRC062872) for the purpose of installing the discharge structure and associated erosion control structure, as discussed further below.
- 2.5 The maximum rate of the discharge sought by each applicant is 1,531 litres per second (L/s), which is equivalent to the rate of take proposed under the related water permits. The flow capacity of the discharge structures for each location in the application by PIL corresponds with this maximum rate of discharge.

### **The applications**

- 2.6 The applications are for the discharge of contaminants into the environment pursuant to section 15 of the RMA. Consent is required under the Natural Resources Regional Plan (NRRP), as discussed below.
- 2.7 The applications (CRC062843 and CRC062869) were lodged with the Canterbury Regional Council (the Council) on 14 February 2006 (with the associated water permit applications) and requested a consent duration to 30 April 2025.

### **Related consent applications**

- 2.8 The following resource consent applications are closely related to the current application, each of which are discussed further below:
- (a) Applications for water permits by the applicant to take and use surface water for spray irrigation and stock water use at Simons Hill Station (CRC062842 and CRC082304) and Simons Pass Station (CRC062867 and CRC082311); and
  - (b) Land use applications by Pūkaki Irrigation Company Limited to install multiple intake structures and construct a pipeline across numerous watercourses (CRC082300, CRC062866, CRC062870, CRC062871 and CRC062872), including the installation of a discharge and erosion control structure in the Pūkaki River.

### Water permits

- 2.9 The applicants have applied for consent to take water from three different locations to irrigate their properties at Simons Hill and Simons Pass Stations. These locations are Pūkaki Canal, Lake Pūkaki and Tekapo Canal. These intake locations are put forward as alternatives so that, if granted, the applicants will choose their preferred intake location and the other consents will no longer be required.
- 2.10 The water sourced from either Lake Pūkaki or Pūkaki Canal will be conveyed via a mixture of an open race and piped system. This system will require, at times, excess irrigation water to be discharged into the Pūkaki River. This application (CRC062843) seeks to authorise these discharges. The applicants' third option (sourcing water from the Tekapo Stilling Basin) is an entirely piped system, does not result in any discharge of excess water. If that option is granted and exercised, the current applications will no longer be required.
- 2.11 Our findings on the water permit applications are contained within separate decisions. To avoid unnecessary duplication, reference will be made to the discussion in those decisions throughout this decision where appropriate.

### Land use consents

- 2.12 Pūkaki Irrigation Company Limited (PIL) proposes to install water intake and delivery infrastructure for a new irrigation scheme, which will be used by up to four properties to the south of Lake Pūkaki, including the applicants. In accordance with the water permit applications, PIL have proposed three locations for the intake being Lake Pūkaki, Pūkaki Canal and the Tekapo Canal.
- 2.13 Application CRC062872 relates to the installation of the discharge structure and associated erosion control structure. The discharge structure will be a weir in the race adjacent to the discharge point. The erosion control structure will comprise of rocks concreted into the area of turbulent flow immediately downstream of the discharge. Our findings on the land use consent applications by PIL are contained within a separate decision.

## Discharge to land

- 2.14 In addition to the proposed discharge to water, evidence was also presented on a potential discharge of surplus irrigation water to non-irrigated land in unspecified locations adjacent to the centre pivot irrigation areas. This discharge may occur due to an unexpected shutdown of a pump coinciding with the buffer storage ponds being at capacity.
- 2.15 Despite presenting evidence on this matter through Mr McIndoe, Mr Kyle on behalf of the applicants maintained that consent was not required for this activity. The reporting officer Ms Bartlett considered that consent was required under Rules WQL2 and WQL57. However Mr Kyle explained that in his view these rules did not apply to this application. He considered that these rules relate to the discharge of a contaminant onto or into land, which in this case is not proposed as the condition of the water from its source would not change. Mr Kyle therefore disagrees that consent is required for proposed discharge to land.
- 2.16 We consider that Mr Kyle makes a valid point on this issue and note that the PNRRP rules do distinguish between the discharge of contaminants and the discharge of water. In addition, we note that the applicants' original consent application did not seek consent for this discharge to land and was clearly limited to a discharge to the Pūkaki River. In addition, we note that the notification details include no mention of this discharge to land. This creates some real concerns around scope if we were to now consider this activity.
- 2.17 For the above reasons, we have decided not to assess the discharge to land as part of this application. We were also influenced by the evidence presented by the applicant that the risk of this activity is very low and that it may in fact never occur. If the Council maintains that consent is required for this activity under the now operative provisions of the NRRP, then that is an issue for the Council and the applicant to address in the future as required.

## 3 DESCRIPTION OF THE ENVIRONMENT

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### Pūkaki River

- 3.1 Pūkaki River is the only natural outflow from Lake Pūkaki. It has been highly modified for hydroelectricity generation purposes. The Pūkaki River only receives flow when required for special recreational activities or excess water is spilt from Lake Pūkaki. Consequently, flows in the river can range from 0 – 1000 cumecs. Since the establishment of the Upper Waitaki power scheme, the Pūkaki Canal receives the base outflow from Lake Pūkaki with an average flow of 187 cumecs.
- 3.2 In Maria Bartlett's Section 42A report she noted that the Pūkaki River bed and margins provide habitat for threatened indigenous invertebrates (e.g. *Brachaspis robustus* and *Sigaues minutes*) and, to some extent, indigenous bird species.
- 3.3 Samples of water from Lake Pūkaki and the Tekapo River show low concentrations of Nitrate-N (0.0015 mg/L and 0.0018 mg/L respectively) and the same low concentration of P (0.004 mg/L), based on 1 May 2009 samples taken by the applicant.
- 3.4 There is no regularly flowing water on the Pūkaki outwash flats. The paths of ephemeral streams on Simons Pass Station to the north run on to Simons Hill Station, but flows after heavy rainfall are likely to run to ground before the boundary of Simons Hill Station.

### Simons Hill Station

- 3.5 Simons Hill Station encompasses an area of 6,432 ha which comprises of 30 % hill, ranging in height from 500 m to 1,000 m a.m.s.l. and 70 % flat. The majority of the flat land lies west of the Mary Range and is known as the Pūkaki flats. The Pūkaki flats are bounded by the Tekapo River, the Pūkaki River and Simons Hill on the Mary Range extending up to State Highway 8. According to the applicant the flat areas range from very light soils (~30 mm PAW) to very heavy soils (~130 mm PAW) with approximately 3,000 ha being lighter soils found almost exclusively on the Pūkaki flats.
- 3.6 Natural short tussock grasslands within the proposed irrigation area on the Pūkaki flats have been replaced by a sparse, and largely exotic community of grasses and Hieracium, interspersed with extensive areas of bare soil. According to the applicant these changes have come about as a result of changing environmental conditions, the invasion of herbaceous and woody weeds and rabbit infestation.

- 3.7 In Ms Bartlett's Section 42A report for the proposed water take by Simons Hills Station Limited (Report 33A), she observed that Banded dotterel (listed as being in gradual decline) are noted in the DoC Tenure Review Report (for Simons Hill Station) as nesting and feeding on the depleted grassland areas of the Pūkaki flats. Furthermore, Macann's skink is present on grasslands and stony ground on the property, and the Mackenzie Basin variety of common gecko is found throughout. Ms Bartlett also noted that threatened invertebrate species, including the *Sigauss minutus* grasshopper are likely to be present within the lower terraces of the Pūkaki flats.

#### **Simons Pass Station**

- 3.8 Simons Pass Station is currently used for low intensity sheep and cattle farming, and stocking rates are traditionally very low. The proposed command area under the related water permit application is bordered by a line of power pylons to the northwest, Wolds Station land to the northeast, Mary Range, Simons Hill Station and Maryburn Station to the east, Simons Hill Station to the south, and Pūkaki River to the west.
- 3.9 State Highway 8 runs through the eastern extent of the proposed irrigation area west of the Mary Range, and is adjacent to the southern extent of the irrigation area east of the Mary Range.
- 3.10 A Rabbit Fence built in 1888, originating on Glentanner Station, runs through the southwest corner of the proposed irrigation area west of the Mary Range, heading towards Simons Hill Station, and is classified as an archaeological site under the Historic Places Act. The Bullock Trail, which is purported to be the first road through the Mackenzie country, runs from west to east through the southern area of Simons Pass Station

## **4 PLANNING INSTRUMENTS**

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- 4.1 As discussed in our Part A decision, there is a wide range of planning instruments that are relevant under the RMA. This includes national and regional policy documents, along with regional and district plans. The key planning instruments relevant to this application are as follows:
- (a) Transitional Regional Plan (TRP);
  - (b) Proposed Natural Resource Regional Plan (PNRRP)
  - (c) Natural Resources Regional Plan (NRRP); and
  - (d) Proposed and Operative Canterbury Regional Policy Statement (CRPS).
- 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 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. In relation to these applications, that was the TRP and the PNRRP.
- 4.4 There is no General Authorisation for the discharge as described above. Resource consent is therefore required as a **discretionary** activity.
- 4.5 The following rules from the PNRRP are applicable to these applications.
- (a) Rule WQL1 – There are likely to be times when the discharge of water to water does not comply with Condition 2 of this rule.
  - (b) Rule WQL56 – This rule requires that the quality of Pūkaki River water shall not be altered, given that the water quality classification for Pūkaki River is 'natural' under Schedule WQL1.
  - (c) Rule WQL60 – This rule applies to point source discharges to a river, where conditions of Rule WQL56 are not met and states the activity is non-complying.

- 4.6 The status of the activity under the above rules turns on the effect of the discharge on water quality. Prior to notification the Council deemed that the natural quality of water in the river, as sourced from Lake Pūkaki, will not be maintained, given that water is to be discharged from an open race system passing through stocked areas, up to 12 kilometres from the intake. However this was based on an assumption that the water would be contaminated by stock accessing the canal.
- 4.7 During the course of the hearing, the application confirmed that the canal would be fenced and not accessible by stock. On this basis the proposed discharge will meet the water quality limitations set out in Schedule WQL1 and therefore will comply with Rule WQL56 as a discretionary activity. The Reporting Officer (Ms Bartlett) accepted this argument and agreed that the discharge was a discretionary activity.
- 4.8 We return to the issue of water quality later in our decision as part of our evaluation of effects. However, based on the above and our findings in the balance of the decision, we agree that the proposal to discharge to water should be considered as a **discretionary** activity under Rule WQL56.

## **5 NOTIFICATION AND SUBMISSIONS**

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- 5.1 Both applications were publicly notified on 4 August 2007, along with some of the associated water permit applications.
- 5.2 All of the specific submissions on the applicants' suite of applications were in reference to its water permit applications to take and use water. Our decisions on the water permit applications contain the details of these submissions. There were no specific submissions received in relation to these applications and no submitters presented evidence in relation to these applications.

## **6 THE SECTION 42A REPORTS**

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- 6.1 Section 42A reports on the applications and submissions were prepared by the Council's Consent Investigating Officer, Ms Maria Bartlett. The two reports for the two separate applications were effectively identical, with only the applicant name and Station references differing between the two. The conclusions and overall recommendations were the same in both reports.
- 6.2 The primary reports were supported by a number of specialist s42A reports prepared by Messrs Heller, Hanson, Glasson, McNae and Stewart, and Drs Clothier, Schallenberg, Meredith and Freeman. The key issues addressed by these reports were cumulative water quality effects, landscape effects, and environmental flow and level regimes.
- 6.3 All reports were pre-circulated in advance of the hearing. We have read and considered the content of the reports and refer to them as relevant throughout this decision. Specific points noted from the s42A reports are summarised below.

### **Effects on Flow Carrying Capacity and Erosion**

- 6.4 In her Section 42A report Ms Bartlett explained MEL's water release regime from Lake Pūkaki into the Pūkaki River. She noted that releases occur when the Maximum Control Level (MCL) is exceeded at the spillway, and requires an initial discharge of 35 cumecs, with incremental increases in the discharge per 0.1 metre exceedance of the MCL.
- 6.5 The proposed maximum discharge to Pūkaki River by each applicant represents approximately 4.5% of the initial discharge flow authorised by Meridian's discharge consent. Consequently, Ms Bartlett accepted the applicants' position that the effects with respect to flow carrying capacity of the Pūkaki River will be minor.
- 6.6 In regards to erosion of the Pūkaki River at the proposed point of discharge Ms Bartlett stated in her S42A report (pre-hearing) that design plans had not been provided to enable a full assessment of the proposed erosion protection works. After reviewing the applicants' evidence which included diagrams of the proposed discharge structure and erosion protection works Ms Bartlett stated in her Section 42A addendum report (post-hearing) that she was satisfied that the applicants had provided a concept design for the discharge structure and erosion protection work.

## **Ecosystem Effects**

- 6.7 Ms Bartlett noted in her Section 42A report that the applicants did not identify any species present within the Pūkaki River bed that may be affected by the proposed activity, but asserts that species acclimatised to the current state of the Pūkaki River will be accustomed to rapid flooding. Ms Bartlett accepted the applicants' assumption that these species are unlikely to be adversely affected, given the existing flow regime for the river, which is dependent on infrequent, large-scale releases from the Pūkaki spillway.

## **Water Quality**

- 6.8 The applicants stated that there would be no change in water quality discharged to Pūkaki River, as it is sourced from Lake Pūkaki. In her Section 42A report Ms Bartlett did not agree with the applicants' assumption, given that the open race system will convey water through intensively stocked areas over a distance of ~12 km. At the time Ms Bartlett wrote her report the applicants had not specifically stated that stock access to the race system will be restricted and therefore Ms Bartlett expected some deterioration in water quality between the point of take and point of discharge.
- 6.9 On assessing the applicants' evidence Ms Bartlett, in her S42A addendum, accepted the applicants' assessment regarding effects on water quality. This is based on there being no change in water quality from point of take to the point of discharge due to the canal being fenced off from stock access not passing through heavily stocked areas. On that basis Ms Bartlett stated, in her S42A addendum, that the discharge of water to water could be considered a discretionary activity rather than non-complying.

## **Assessment of Alternatives**

- 6.10 Ms Bartlett's noted that the applicants had alternative proposals in process to irrigate the same land area from an entirely piped scheme from the Tekapo Stilling Basin (CRC082304 and CRC082311). Under these proposals the discharge to the Pūkaki River could be avoided. Consequently, Ms Bartlett did not support granting this proposal as it stands because the option to take water from the Tekapo Stilling Basin exists.

## **Statutory Considerations**

- 6.11 With regard to s104(1)(b) of the RMA, Ms Bartlett considered the relevant provisions of the RPS and pNRRP. She did not consider the applications were consistent with Objectives WQL1.1 and WQL1.2 and Policy WQL1 of the pNRRP due to potential effects on water quality. She considered alternatives exist to the proposed discharges.
- 6.12 In regards to Part II of the RMA Ms Bartlett noted that the proposal would allow the development of land to occur, which may provide for the economic and social well-being of the community. However, in Ms Bartlett's view the applicants had not proposed sufficient measures to "avoid, remedy or mitigate" the potential impacts on ecosystems and water quality as required in Section 5(2)(c) of the RMA.

## **7 THE APPLICANTS' CASE**

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- 7.1 Legal counsel for the applicants, Mr Kelvin Reid, presented opening submissions and called a large numbers witnesses in relation to the overall irrigation proposal. However most of this evidence concerned the water permits, rather than the proposed discharges.
- 7.2 Comment on the discharges was provided in the evidence of Mr Ian McIndoe, Dr Gregory Ryder and Dr Melissa Robson. Key points from their evidence is summarised below.

### **Opening legal submissions**

- 7.3 Mr Reid presented opening submissions on behalf of five different applicants, including the current two applicants. He provided background information on Simons Hills Station, Simon Pass Station and the Pūkaki Flats. He also explained the relationship between the applicants and PIL, (which is to provide the infrastructure for the proposed irrigation scheme) and the consultation that has occurred with submitters.
- 7.4 Much of his submissions focussed on issues relating to the take and use applications, such as the availability of water, the applicants' approach to thresholds, and assimilative capacity. We have



discussed in this evidence in our decisions on the relevant take and use applications and do not repeat this information here.

- 7.5 Mr Reid set out for us the relevant statutory framework for consideration of the applications, which is consistent with the approach we have applied. He then identified the relevant witnesses that would present evidence and summarised some of the key issues they would cover. We have summarised this evidence below as it is relevant to the current discharge applications.

### Effects on River Hydrology and Erosion

- 7.6 In his evidence **Mr Ian McIndoe** (Soil and Water Engineer, Aqualinc Research Ltd) explained the flow regime for the Pūkaki River. He said that the river is typically dry and only flows when MEL releases water from the Lake Pūkaki Spillway. Due to the infrequent nature of the releases, he said, the Pūkaki River experiences a wide range of flow conditions.
- 7.7 Mr McIndoe stated that the applicants' proposed discharge (1.5 cumecs) is trivial when compared to the spill flows. Consequently, in his view the proposed discharge, by its self or in conjunction with Simons Pass Station (~3 cumecs total), will not cause any adverse effects on the flood carrying capacity of the Pūkaki River.
- 7.8 Water discharged into the Pūkaki River will flow into the Tekapo River where these two rivers confluence, approximately 5 km upstream of Lake Benmore. The average flow in the Tekapo River is about 7-10 cumecs with the main contributions coming from the Forks and Gray Rivers, Irishman Creek and the Mary Burn.
- 7.9 Mr McIndoe stated that if the water reaches the lower Tekapo River, the increase in flow would be smoothed out and well within the limits currently experienced after spills from Lake Pūkaki. Furthermore, given the permeability of the riverbed, in Mr McIndoe's view, some or all of the applicants' discharged water may disappear underground. Consequently, Mr McIndoe believed that no significant adverse effects on flow in the Tekapo River would eventuate.
- 7.10 Mr McIndoe outlined the mitigation measures the applicant proposed to undertake to prevent erosion of the Pūkaki riverbed and to ensure compatibility of the discharge with the Pūkaki River's flow. These measures include:
- (a) A small weir in the race at the point it enters the Pūkaki River to dissipate energy, and to ensure that flow enters the Pūkaki riverbed under sub-critical conditions. The weir will also prevent fish from swimming up into the supply race, should fish ever be present in the river. Mr McIndoe noted that the height of the weir would be determined based on site conditions, particularly spill flows down the Pūkaki River.
  - (b) Immediately downstream of the weir, rocks will be concreted into the substrate to prevent erosion in the area of turbulent flow.
  - (c) The area immediately below the concrete-protected zone will be protected with riprap.
  - (d) The channel will be gradually opened out so that the flow will be released into a Pūkaki River braid at a velocity and depth comparable to that of a natural river channel conveying the same flow. The characteristics of a typical braid will be determined based on site measurements.
- 7.11 Mr McIndoe provided a drawing of the proposed discharge structure in his evidence. A table of evidence, presented at the hearing referencing the applicants' evidential reply (to s42A report), stated that Mr Titus Smith (Senior Engineer, Riley Consultants Ltd) had provided evidence relating to the proposed discharge structure's design. We could not locate any reference Mr Smith made regarding the proposed discharge structure. Despite this, Mr McIndoe stated that there are not expected to be any engineering or hydrological issues arising from the discharge of water into the Pūkaki River.

### Effects on Water Quality

- 7.12 The water proposed to be discharged to the Pūkaki River will be sourced from Lake Pūkaki or the Pūkaki canal, which is the same source as that of the Pūkaki spill water. Mr McIndoe noted that although, the water will be conveyed a distance of about 12 km by open race before being released into the river, the potential for water to be contaminated before entering the river is very low. He explained that this is because the race passes through land that normally has a very

low stocking rate. In addition, Mr McIndoe noted that the proposed race would be fenced from stock access.

- 7.13 Mr McIndoe also believed that as with the Pūkaki River, there would be no change in water quality in the lower Tekapo River as a result of the discharge. Furthermore, Mr McIndoe noted that because any water discharged to the Pūkaki River will be part of the applicants' annual volume allocated for irrigation it is in their interest to discharge as little as possible.
- 7.14 **Dr Gregory Ryder** (Ryder Consultants Limited) added that the restriction of stock from open water races would result in a reduction of potential inputs of stock dung and urine and associated faecal bacteria, nutrients and oxygen demanding substances. Dr Ryder stated that as the Pūkaki River is generally dry throughout the middle reaches, he expected no permanent aquatic ecosystems in the area of discharge. **Dr Melissa Robson** also stated in her evidence, relating to the FEMP, that stock will not have any access to open irrigation races.

## Effects on Downstream Users and Amenity Values

- 7.15 Mr McIndoe did not expect any significant effects would occur to downstream water users or any adverse effects on amenity values as a result of the proposed discharge. Furthermore in his view the maximum flow of 3 cumecs (when combined with Simons Pass) is a very small flow compared to potential spill flows. Once water is in the Pūkaki river main channel or braids, he expected it will rapidly dissipate and become integrated with normal river flows.

## 8 APPLICANT'S RIGHT OF REPLY

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- 8.1 Mr Reid presented closing submissions on behalf of the applicant. In addition, supplementary and rebuttal evidence was provided from several witnesses. Understandably, these submissions and evidence focused on the more controversial aspect of the wider proposal, being the related applications to take and use water. This material did not include any comment on the issues relevant to these applications.

## 9 STATUTORY CONTEXT

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- 9.1 The relevant statutory context for a **discretionary** activity 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

## 10 EVALUATION OF EFFECTS

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- 10.1 Based on the evidence presented to us at the hearing we agree that water quality will be maintained from the point of take (Lake Pūkaki/Pūkaki Canal) to the proposed point of discharge in the Pūkaki River. This decision is based on the applicants fencing the entire canal system from stock (which will be included as a condition of the related take and use applications, if granted) and that the land through which the canal flows currently has a low stocking rate.
- 10.2 We agree with Mr McIndoe that discharge structure is designed to dissipate energy and that no effect on the flow of the Pūkaki or Lower Tekapo rivers is likely. We also agree that no erosion is likely but note that neither we, nor council officers have sighted detailed drawings of the proposed structure.

## 11 EVALUATION OF RELEVANT PLANNING INSTRUMENTS

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- 11.1 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 assessment of those planning instruments and sets out the approach we have applied to identification and

consideration of the relevant provisions. The following part of our decision should be read in combination with that Part A discussion.

- 11.2 The key provisions of relevance to the proposed discharges can be found in the water quality chapter of the NRRP (Chapter 4). Objective WQL1.1 aims to maintain and improve water quality, physical and chemical characteristic in rivers (including Pūkaki River) and Objective WQL1.2 seeks a similar outcome in relation to lakes (including Lake Benmore into which the Pūkaki River flows). Policy WQL1 seeks to give effect to these objectives and relates to point source discharges that may enter surface water.
- 11.3 Ms Bartlett contended that the Policy WQL1 (as it existed at the time) required consideration of whether the discharge is necessary or whether other options are available. She considered that given the availability of alternative options that would not require a discharge, these applications were inconsistent with this policy. However we do not read the policy in this way. We consider that the primary focus of the policy is on protecting water quality and that the issue of alternatives is limited to consideration of whether the discharge of contaminants to an existing treatment system is a practical alternative. We do however return the issue of alternatives under our discussion of additional s104 matters below.
- 11.4 Given our conclusions above in relation to the effects of the proposal on water quality, we are satisfied that the proposal is consistent with the relevant objectives and policies in relation to water quality. Although there are other objectives and policies of the relevant plans of potential relevance, we consider that none of these provisions have a bearing on our consideration of whether or not to grant consent to these applications.

## **12 EVALUATION OF OTHER RELEVANT S104 MATTERS**

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- 12.1 Under s104(1)(c), we are required to have regard to any other matter that we consider to be relevant and reasonably necessary to determine the application. One such matter that we consider is relevant to these applications, and which was raised by the Ms Bartlett, is the availability of alternatives. This is reflected in clause 1(b) of Schedule 4 of the RMA, which requires that the assessment of environmental effects for a proposed discharge include an assessment of alternatives.
- 12.2 As noted above, the proposed discharges are part of a wider irrigation scheme for Simons Hills and Simons Pass Station. However three alternative irrigation proposals have been put forward by the applicants. Of these three, only the proposed takes from Lake Pūkaki and Pūkaki Canal would create the need for the proposed discharges that are the subject of these applications. The alternative is the proposed take from the Tekapo Canal, which involves a piped system that would avoid the need for any discharges. This is a factor that we have taken into account in our considerations and which we return to in our overall evaluation.

## **13 PART 2 RMA**

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- 13.1 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 applications.

### **Section 6 – Matters of National Importance**

- 13.2 Section 6 identifies matters of national importance that we must "recognise and provide for" when making our decision, including in particular preserving the natural character of lakes and rivers (s6(a)) and the relationship of Maori with the environment (s6(e)).
- 13.3 In respect of s6(a) we recognise that preservation of the natural character of lakes and rivers is the imperative. We think that because of our finding in terms of the water quality issues, which takes into account mitigation measures, the grant of consent recognises and provides for the preservation of the natural character of lakes and rivers.
- 13.4 In relation to section 6(e) we are cognisant of the relationship that Ngāi Tahu hold with the natural resources of this area. Given the scale and relative infrequency of the proposed activity we consider that the mitigation measures and conditions provide for the cultural relationship to this catchment that is of importance to Ngāi Tahu.
- 13.5 For the above reasons, we consider that granting consent to the proposal would recognise and provide for s6 matters, as we are required to do under the RMA.

## Section 7 – Other Matters

- 13.6 Section 7 lists “*other*” matters that we shall “*have particular regard to*”. We make the following observations in relation to each of those matters as they are relevant to this application, referring to the sub paragraph numbers of s7:
- 13.7 Sub-section (a) refers to kaitiakitangā. We consider that the proposed activity with mitigation measures and conditions sits within the acceptable environmental parameters outlined by Ngāi Tahu such that that it will not cause distress to the function of kaitiakitangā.
- 13.8 In terms of sub-section (d), we have had particular regard to the intrinsic values of ecosystems and consider that through the grant of consent with the conditions imposed such values will be safeguarded. Sub-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.
- 13.9 Having particular regard to the above matters in the context of section 7, we conclude that the grant of consent could be supported

## Section 8 – Treaty of Waitangi

- 13.10 Finally, section 8 requires that we shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi). We are satisfied that the consultation procedures provided Ngāi Tahu with the opportunity to understand and respond to the proposed activity (albeit in conjunction with a large number of applications in the Mackenzie Basin) and that the principles of the Treaty of Waitangi have been taken into account.

## Section 5 – Purpose of the RMA

- 13.11 Turning now to the overall purpose of the RMA, that is, “to promote the sustainable management of natural and physical resources”.
- 13.12 As part of the wider irrigation scheme proposed by the applicants, the proposed activity will allow the development of land to occur, which may provide for the economic and social well being of the community. In addition, we are satisfied that the applicant has proposed sufficient measures to avoid, remedy or mitigate the potential impacts on the environment, as required in Section 5(2)(c).

## 14 OVERALL EVALUATION

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- 14.1 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.
- 14.2 Overall, we find that provided the applicant fences the canal and as proposed in their evidence, then the environmental effects will be minor. In addition the proposal will be consistent with the provisions of the relevant planning instruments.
- 14.3 The main conflicting consideration in this case is that there is an available alternative under which the proposed discharges would not be required, namely the proposed take from Tekapo Canal. Although this is a factor counting against the grant of consent, we consider that it should not be determinative given our conclusions regarding the effects of the activity and its consistency with the relevant plan provisions,

- 14.4 Having reviewed the application documents and evidence provided 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.

## 15 DECISION

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- 15.1 Pursuant to the powers delegated to us by the Canterbury Regional Council; and
- 15.2 For all of the above reasons and pursuant to sections 104, 104B and 104D of the Resource Management Act 1991, we **GRANT** the following applications:



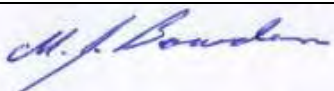
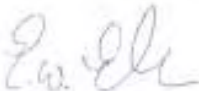
**CRC062843** by **Simons Hill Station Limited** to discharge surplus irrigation water to Pūkaki River at a maximum rate not exceeding 1,531 litres per second at, Simons Hill Station, Lake Pūkaki.

**CRC062869** by **Simons Pass Station Limited** to discharge surplus irrigation water to Pūkaki River at a maximum rate not exceeding 1,531 litres per second at, Simons Hill Station, Lake Pūkaki

- 15.3 Pursuant to section 108 RMA, the grant of consent is subject to the conditions specified at **Appendices A** and **B** respectively, which conditions form part of this decision and consent.
- 15.4 The duration of these consents shall be until 30 April 2025.

DECISION DATED AT CHRISTCHURCH THIS 9<sup>TH</sup> DAY OF MARCH 2012

Signed by:

|                |  |
|----------------|--|
| Paul Rogers    | <br>_____ |
| Dr James Cooke | <br>_____ |
| Michael Bowden | <br>_____ |
| Edward Ellison | <br>_____ |

## **APPENDIX A: CONDITIONS OF CONSENT (CRC062843 – SIMONS HILL STATION LTD)**

### **Limitations on discharge**

1. Water shall only be discharged to the Pūkaki River at or about map references NZMS 260 H38:874-563 and NZMS 260 H38:880-540, as shown on Plan CRC062843/CRC062869;
2. The discharge shall only be water from the Pūkaki Irrigation Company scheme irrigation race;
3. Water shall only be discharged at a rate not exceeding 1,531 litres per second.
4. All practicable measures shall be undertaken to avoid erosion of the bed or banks of the Pūkaki River occurring as a result of the discharge.
5. In the event of any erosion occurring to the bed or banks of the Pūkaki River, as a result of the discharge, the consent holder shall be responsible for rectifying the situation as soon as practicable.
6. The discharge, after reasonable mixing, shall not cause a change in the colour or a reduction of the clarity of the receiving water body.
7. The consent holder shall before the first exercise of this consent:
  - a. install a water meter(s) that has an international accreditation or equivalent New Zealand calibration endorsement, which will measure the rate and the volume of water discharged to within an accuracy of plus or minus ten percent, at a location that will ensure the total discharge of water is measured;
  - b. Take a reading from the water meter at least quarterly and record the date and the meter reading either electronically or in a log book kept for that purpose; and supply this data to the Canterbury Regional Council, Attention: RMA Compliance and Enforcement Manager, when requested in writing.
  - c. Ensure that the water meter is accessible to the Canterbury Regional Council at all times for inspection.
  - d. Ensure that the water meter is installed, operated and maintained throughout the duration of the consent in accordance with the manufacturer's instructions.
  - e. Take all practicable measures to ensure that the water meter is fully functional at all times.

### **Review of conditions**

8. 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 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.

### **Lapse**

9. The lapsing date for the purposes of section 125 shall be 5 years from the commencement of this consent.

## **APPENDIX B: CONDITIONS OF CONSENT (CRC062869 – SIMONS PASS STATION LTD)**

### **Limitations on discharge to Pūkaki River**

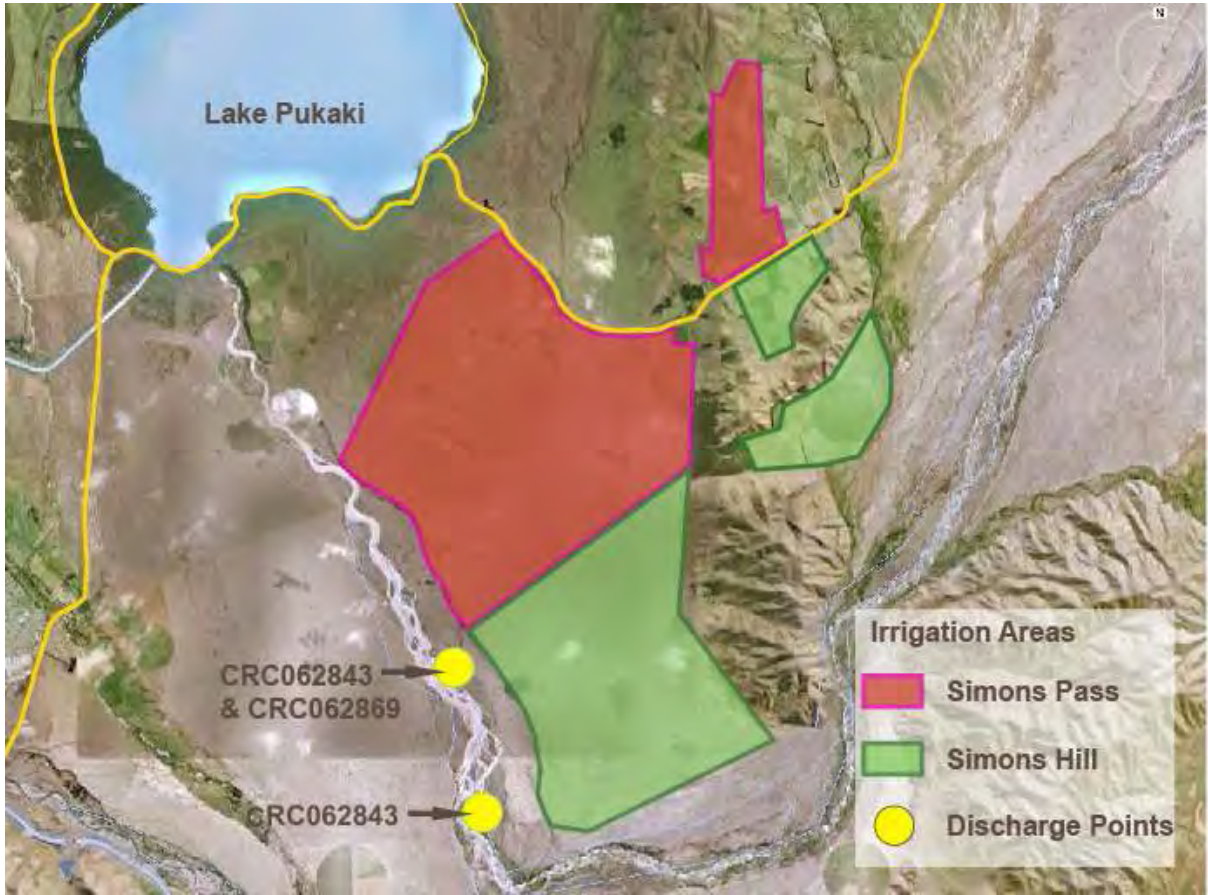
1. Water shall only be discharged to the Pūkaki River at or about map reference NZMS 260 H38:874-563, as shown on Plan CRC062843/CRC062869;
2. The discharge shall only be water from the Pūkaki Irrigation Company scheme irrigation race;
3. Water shall only be discharged at a rate not exceeding 1,531 litres per second.
4. All practicable measures shall be undertaken to avoid erosion of the bed or banks of the Pūkaki River occurring as a result of the discharge.
5. In the event of any erosion occurring to the bed or banks of the Pūkaki River, as a result of the discharge, the consent holder shall be responsible for rectifying the situation as soon as practicable.
6. The discharge, after reasonable mixing, shall not cause a change in the colour or a reduction of the clarity of the receiving water body.
7. The consent holder shall before the first exercise of this consent:
  - a. install a water meter(s) that has an international accreditation or equivalent New Zealand calibration endorsement, which will measure the rate and the volume of water discharged to within an accuracy of plus or minus ten percent, at a location that will ensure the total discharge of water is measured;
  - b. Take a reading from the water meter at least quarterly and record the date and the meter reading either electronically or in a log book kept for that purpose; and supply this data to the Canterbury Regional Council, Attention: RMA Compliance and Enforcement Manager, when requested in writing.
  - c. Ensure that the water meter is accessible to the Canterbury Regional Council at all times for inspection.
  - d. Ensure that the water meter is installed, operated and maintained throughout the duration of the consent in accordance with the manufacturer's instructions.
  - e. Take all practicable measures to ensure that the water meter is fully functional at all times.

### **Review of conditions**

8. 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 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.

### **Lapse**

9. The lapsing date for the purposes of section 125 shall be 5 years from the commencement of this consent.



(Note - irrigation areas shown on this plan are indicative only)