BEFORE INDEPENDENT HEARING COMMISSIONERS

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of the hearing of submissions on Proposed Variation 1 (Selwyn-Te Waihora) to the Proposed Canterbury Land and Water Regional Plan

SUBMISSIONS OF COUNSEL ON BEHALF OF IRRIGATION NEW ZEALAND INCORPORATED, DUNSANDELL GROUNDWATER USERS ASSOCIATION INCORPORATED, ERRALYN FARM LIMITED AND KRYSETTE LIMITED
Dated: 14 September 2014

Tavendale and Partners
Lawyers, Christchurch
Level 1, 15b Leslie Hills Drive, Riccarton
P O Box 442
Christchurch 8140
Telephone: (03) 374-9999, Facsimile (03) 374-6888
Solicitor acting: Alanya Limmer
MAY IT PLEASE THE COMMISSIONERS

Introduction

1 These submissions on Variation 1 to the proposed Land and Water Regional Plan (Variation 1) are presented on behalf of three parties, collectively referred to as 'the Submitters':

1.1 The Dunsandel Groundwater Users Association Inc (Dunsandel Group)

1.2 Irrigation New Zealand (INZ)

1.3 Erralyn Farms Ltd and Krysette Limited (Erralyn Farms)

Water quality

2 These submissions do not address water quality issues.

3 The Dunsandel Group did not lodge a direct submission with respect to the water quality and land use controls introduced in Variation 1. It is, nonetheless, concerned with the likely effect of these controls. However, water quality issues have been thoroughly covered by individual members of the Dunsandel Group, INZ and other farmers within the catchment; they have therefore elected to focus their resources on water quantity issues.

4 INZ and Erralyn Farms did submit on the water quality provisions proposed. Mr Curtis for INZ and Mr Begg for Erralyn Farms Ltd and Krysette Ltd will be speaking to their respective submissions on the water quality and land use control provisions of Variation 1.

Water quantity

5 These submissions address the water quantity provisions of Variation 1.

6 The relief sought by the Submitters in combination (set out in the attached Appendix A) primarily affects the following particular matters:

6.1 The limits set for the Selwyn-Waimakariri and Rakaia-Selwyn combined surface and groundwater zones;

6.2 The Policies and Rules on transfers (including the compulsory surrender requirement); and

6.3 The methodology by which consented volumes are calculated.

7 These submissions focus on those three matters.
Appendix A also shows marked-up changes to:

8.1 The discretion reserved to impose adaptive management conditions on water permits not already subject to adaptive management; and

8.2 The prohibition on damming in parts of the Selwyn and Waianiwaniwa Rivers.

Unless otherwise stated, the relief presented for consideration represents a joint case from the Submitters on those provisions. In some areas, the original relief sought by one submitter may have been incompatible with that sought by another. However, through discussions and after consideration of expert advice, they are in a position to bring their joint requests forward.

Jurisdiction for these changes arises out of either one (or sometimes all three) submissions.

Evidence

11 Four witnesses will be providing evidence.

11.1 Leo Donkers, Committee Member, will provide evidence on behalf of the Dunsandel Group and discuss:

(a) The Group’s membership and history of participation in groundwater planning in the catchment.

(b) The Group’s concerns with Variation 1.

11.2 Ian McIndoe, Soil and Water Engineer, has provided primary and rebuttal evidence on behalf of the Dunsandel Group and INZ. His evidence covers:

(a) The appropriateness of the allocation limits proposed in Table 11(e) for the Selwyn-Waihora groundwater catchment.

(b) His assessment of current allocation in the catchment.

(c) His knowledge of transfers within the catchment.

11.3 Mr Andrew Curtis, of INZ and on its behalf, has filed primary and rebuttal evidence. His evidence comments on several matters relevant to the joint case on water quantity as well as matters relevant only to INZ’s submission. His evidence includes comment on:

(a) Transfer of water permits.

(b) The importance of water supply reliability for irrigation.
(c)  Allocation methodology.

(d)  SMART irrigation – the INZ framework for Irrigation Good Management Practice.

11.4 Mr Errol Begg provides evidence on the following matters for Erralyn:

(a)  The importance of reliable water supply to his farming operation.

(b)  The economic effect of farming with adaptive management conditions.

(c)  The process of deciding whether to participate in CPW, particularly the economic factors that are considered.

(d)  The effect of the proposed nutrient controls on his farming activities.

Summary of Relief

12  The Commission will discern two lines of argument from the Submitters, the primary one being the allocation limits are incorrect. Consequent on this argument is outright opposition to the provisions promulgated as a means of bringing the catchment back into allocation.

13  Alternatively, the Submitters argue that even if the allocation limits remain as notified (or are set at a lower level) the catchment is not as over-allocated as the Council contends and the costs of the measures proposed to reduce over-allocation are excessive relative to the benefits to be obtained and therefore should be modified. Their particular focus in this regard is the transfer provisions and how annual or seasonal volumes are calculated.

14  It is submitted the relief sought by the Submitters¹ better achieves the objectives² of the pLWRP, while giving effect to relevant provisions of:

14.1  the National Policy Statement on Freshwater Management 2014 (NPS)³; and

14.2  the Canterbury Regional Policy Statement (CRPS)⁴.

15  Further, it is more consistent with the goals of the Canterbury Water Management: Strategy (CWMS)⁵.

¹ Set out in Appendix A using tracked changes
² Particularly, Objectives 3.7, 3.10, 11, 12, 13 and 3.24 of the pLWRP
³ B. Water quantity, particularly Objective B3 and Policy B3 and the definition of Limit
⁴ Particularly, Objectives 7.2.1-7.2.2, 7.2.4 and Policies 7.3.4, 7.3.8, 7.3.10 and 7.3.13 of the CRPS
⁵ Vision of the CWMS is "To enable present and future generations to gain the greatest social, economic, recreational and cultural benefits from our water resources within an environmentally sustainable framework", Annex G – CWMS Revised Targets, B. Water use efficiency and 7. Irrigated Land Area at pg 18 and 20
National Policy Statement for Freshwater Management 2014

16 Put simply, in respect of water quantity, the NPS continues to require:

16.1 Establishment of allocation limits;

16.2 Avoidance of further over-allocation;

16.3 Reduction of any existing over-allocation; and

16.4 Improvement and maximisation of efficient allocation and use of water.

17 In response to each of these key directives, the Submitters position is:

17.1 The Submitters recognise the need to set limits\(^6\) on the amount of water available for consumptive use in the catchment, and to specify timeframes and methods to comply with those limits where they are being exceeded\(^7\).

17.2 The limits set are incorrect and, therefore, the Submitter's relief better gives effect to the NPS.

17.3 Prohibited status for new grants beyond the limits is not challenged, therefore (whether the limits are altered or not) the Submitters relief continues to give effect to this requirement.

17.4 Even if the limits are not altered, the NPS provides discretion around how any existing over-allocation should be phased out and to this end the relative costs and benefits are relevant\(^8\). The Submitters relief still gives effect to the NPS in this regard but better achieves the Act and the NPS directive around efficient allocation and use.

17.5 The factual backdrop of current allocation in the catchment is important in assessing the costs and benefits of proposed methods to phase-out allocation. If the direness of the existing situation is overstated, the s32 assessment will be wrong\(^9\).

---

\(^6\) Objective B2 and Policy B1 of the NPS

\(^7\) Policy B6, Ibid

\(^8\) Memorandum of Counsel for Canterbury Regional Council, tabled 30 September 2014, paragraphs 6, 20 and 27: ...the provisions in Variation 1 that require...the reduction in over-allocation must still be considered through the filter of section 5 and Part 2 in terms of how they give effect to the higher order directions in the NPSPM 2014.

\(^9\) CRPS, Principal Reasons and Explanation to Policy 7.3.4: What is an appropriate timeframe for reducing the over-allocation of water for abstraction will vary in each catchment depending on the severity of the over-allocation and its effects, and the costs of remedial options.
Allocation Limits – Table 11(e)

Scope

18 Perhaps the first issue to address in respect of Table 11(e) is scope. A comment is included in the s42A report alluding to this issue:

Arguably, submissions that reserve the right to bring further evidence at the hearing do not give precise details of the decision sought and any change made to Variation 1 in reliance on such a submission may be without jurisdiction.10

19 INZ filed a primary submission on Table 11(e). This was supported by the Dunsandel Group in further submissions. Incidentally, the Dunsandel Group also opposed the Forest and Bird submission on Table 11(e) - despite it not specifying limits either - on the basis the entirety of that submission indicated it would be requesting lower limits.

20 INZ’s precise submission on Table 11(e) was:

| 11.7.2 | The proposed groundwater limits contained in tables 11(e) through 11(h) are not sound as the science used to derive them is not technically robust. Technical evidence will be provided at the hearings to demonstrate this alongside the provision of more robust limits. | Oppose and delete Alternative table to be provided at the hearings |

21 The submission was summarised as:

52278 Irrigation New Zealand Inc V1pLWRP-1095 11.7.2 Oppose Delete Table 11(e) to (h), as the science used to derive is not technically robust, and replace with alternative table to be provided at the hearing.

22 Form 5 of the Resource Management (Forms, Fees and Procedure) Regulations 2003 provides:

...I seek the following decision from the local authority:

[give precise details]...

10 Variation 1 pLWRP – Section 42A Report at para 7.169

ACL-014398-3-117-V1
The words "[give precise details]" have been in the Form since the Regulations commenced in 2003. Accordingly, it is submitted case law since that time concerning the requirements for submissions on RMA plans is relevant. Counsel for Forest and Bird has already referred the Commission to various authorities\(^{11}\). In addition, there is the relatively recent General Distributors\(^{12}\) decision of Justice Wylie's, which refers to the cases also referred to by Counsel for Forest and Bird.

Summarily, the submissions advanced on behalf of Forest and Bird and Fish and Game are supported. The essential test is not whether the relief now being presented was specified in the submission, but whether all are sufficiently informed about what is proposed.\(^{13}\) To ascertain this, the Commissioners must be satisfied the relief now particularised was reasonably and fairly raised in the submissions\(^{14}\). This is a question of degree, and perhaps even of impression\(^{15}\), to be approached in a realistic and workable fashion\(^{16}\) and within the whole relief package detailed in submissions\(^{17}\). Recourse may be had to the entire submission\(^{18}\).

In the case of INZ, the submission as a whole demonstrated concern for availability and reliability of irrigation water. A challenge to the limits would only make sense if its request were to increase them (based on evidence), so as to further the perspective of the submitter. INZ's submission challenged the science behind the setting of the groundwater limits. It stated it would provide technical evidence to support that position at the hearing and also provide alternative tables setting out what INZ considers the limits should be.

In addition, the submission for INZ directly raised the request for higher allocation limits. In its submission on policy 11.4.22 INZ stated:

> Technical evidence will be provided at the hearing that will potentially demonstrate, with the increased recharge from new irrigated land combined with the introduction of alpine water to replace groundwater takes, that no further reduction in allocation is required. Policies (b) & (c) therefore serve no purpose and should be deleted. However, if a further reduction in water allocation is shown to be still required post the technical evidence, an alternative enabling transfer regime will be provided that also deals with the over-allocation concerns.

[Emphasis added]

\(^{11}\) Joint Memorandum of Counsel (dated 22 September 2014), paragraphs 9 to 16
\(^{12}\) General Distributors Ltd v Waipa District Council (2006) 15 ELRNZ 59, Wylie J
\(^{13}\) General Distributors Ltd at [55]
\(^{14}\) At [58]
\(^{15}\) At [64]
\(^{16}\) At [59]
\(^{17}\) At [60]
\(^{18}\) Implicit in the Court's finding at [61]: The submission as a whole did not contain anything which approximates the wording or the approach contained in the proposed explanation.
The two underlined sentences elicit INZ’s position that:

27.1 The catchment will not be over-allocated after irrigation from CPW is accounted for; and

27.2 With increased limits in place, the Selwyn-Te Waihora catchment does not require measures to reduce water allocation.

The submission also, responsibly, acknowledged the role of technical advice in INZ’s position and the fact precise numbers cannot be given until such advice is obtained.

It is submitted all parties were sufficiently informed as to INZ’s desire to see scientifically robust, yet higher, limits in the Variation. The Dunsandel Group supported its submission to this end (and opposed Forest and Bird’s submission to similar, but opposite, effect). INZ’s submission clearly resisted the suggestion that allocation reduction measures were necessary at all. This could only be the case if limits were increased to accommodate the amount of water allocated.

It is respectfully submitted the s42A Report’s approach to submissions like INZ’s is unduly narrow. A requirement to provide precise numbers at the submission stage would be unfair and would have the effect of hindering, rather than enhancing, public participation in planning documents. This would undermine a fundamental tenet of the Act. Whereas a council has months or even years to formulate numbers as vital as allocation limits, INZ in this case had only 20 working days to file its submission in response, on what is a technically complex issue. The suggestion that it should have re-written that aspect of the Variation in that timeframe is unrealistic.

I submit a reasonable approach to this issue is even more important in the context of these particular hearings. Unlike the Environment Court, the Commission does not have a power equivalent to that under section 293. Therefore, even meritorious suggestions are destined to fail in the absence of scope. As such, a determination as to lack of scope acquires greater significance and should be approach with relative caution.

Alternative limits

The Council purports to have set limits:

32.1 Which will achieve an environmental target of a measured but relatively small reduction in lowland stream flows (80%-90% 7DMALF); and

32.2 Which take into account recharge from a fully commissioned CPW as well as other flow-enhancing measures such as Managed Aquifer Recharge and Targeted Stream Augmentation.
The Submitters are frustrated at the lack of transparency around the numbers arrived at. Mr McIndoe has been unable to identify a clear statement of how the numbers have actually been derived or how those numbers specifically link to a reduction in lowland stream low flows\textsuperscript{19}. This belies the absolute centrality of these numbers to the water quantity provisions of the Variation.

Although direct comparisons are not possible, it is noted the groundwater limit alone for the Selwyn-Waimakariri and Rakaia-Selwyn zones was previously 336Mm\textsuperscript{3} per year\textsuperscript{20}. After boundary adjustments, the combining of surface and groundwater limits, CPW recharge from 60,000 hectares (an approximate 66\% increase over existing irrigable area\textsuperscript{21}) of irrigation, some Managed Aquifer Recharge and some Targeted Stream Augmentation, Council suggests this increase by less than 40Mm\textsuperscript{3} per year.

The NPS does not just require allocation limits to be set – I submit it also requires those limits to be sound and robust given the implications of "over-allocation". Categorising a water resource as over-allocated compels the introduction of methods to bring usage into line with limits in order to give effect to the NPS. The process of phasing out over-allocation inevitably carries a cost to the community, no matter the methods by which it is achieved.

The NPS implicitly (in the prescription of consequences) and expressly (in the Preamble and Objective B3) recognises the importance of getting these limits right:

\ldots The quality, health, availability and economic value of our fresh waters are under threat.\ldots

To respond effectively to these challenges and issues we need to have a good understanding of our freshwater resources, the threats to them and provide a management framework that enables water to contribute both to New Zealand's economic growth and environmental integrity...

Setting enforceable quality and quantity limits is a key purpose of this national policy statement. This is a fundamental step to achieving environmental outcomes and creating the necessary incentives to use fresh water efficiently, while providing certainty for investment...The process for setting limits should be informed by the best available information and scientific and socio-economic knowledge.

The Submitters do not challenge the outcome sought by the water quantity provisions of Variation 1 (being 80\%-90\% 7DMALF in lowland streams\textsuperscript{22}). They also do not dispute at this

\textsuperscript{19} Statement of Evidence of Ian McIndoe on behalf of Irrigation NZ Inc and Dunsandel Groundwater Users Association Inc at [33]-[36]
\textsuperscript{20} Variation 1 pLWRP – section 32 Evaluation Report at pg 137
\textsuperscript{21} Statement of Evidence of Ian McIndoe at 39
\textsuperscript{22} Section 32 Report at pg 141

ACL-014398-3-117-V1
hearing (but nor do they accept) the notified limits as appropriate if CPW water were not being introduced into the catchment.

38 Their argument is (in reliance on the evidence) that:

38.1 Some effect (albeit relatively small) on the 7DMALF of lowland streams is an acceptable community and environmental outcome;

38.2 Factors other than abstraction play a role in lowland stream levels, and in fact stream levels may not be declining as significantly as stated by Environment Canterbury (ECan) or may even be trending upwards.

38.3 Groundwater limits are established and implemented in order to address the cumulative effects of abstraction on lowland stream flows, but not specific flows in specific streams. Specific streams need to be catered for by flow regimes and/or targeted stream augmentation;

38.4 The introduction of CPW water into the catchment will effectively naturalise the groundwater resource in the catchment, even with the existing level of consented abstraction;

38.5 If a degree of effect on lowland stream flows can be accommodated, some reduction from the naturalised state can be countenanced. Therefore, abstraction beyond the status quo could be accommodated and may take the form of CPW shareholders being able to transfer no-longer-required groundwater.

39 The Submitters advance alternative limits on the basis of the above.

40 Their alternative limits include recognition of the "B" permits, being those granted more latterly and subject to adaptive management conditions. It appears accepted these permits are of a different type and effect. If the Submitters limits are accepted, a consequential amendment to Schedule 13 will be necessary so it is clear how the B Allocation Block is to be calculated.

41 The Submitters have not sought any specific changes to Schedule 13. Nor do the two submissions which address Schedule 13 directly request a change such as this. However, it is submitted jurisdiction arises due to the consequential nature of the change required.

---

23 Statement of Evidence of Ian McIndoe at [19]-[30]
24 Statement of Evidence of Ian McIndoe at [26]
25 Section 42A Report at 13.4 and 13.10; Statement of Evidence of Ian McIndoe at [107]
26 Statement of Evidence of Ian McIndoe at [83] and [107]
27 Statement of Evidence of Ian McIndoe at [104] and [111]
28 At [117]
30 Bowden Environmental and Ellesmere Irrigation Society
The fundamental change is setting limits for a B Block. Any amendments to Schedule 13 only arise as a result of that change and to assist with its implementation.

Over-allocation

Related to the above - but relevant whether the alternative limits are adopted or not – is the Submitters position the Council has overstated the degree of over-allocation in the catchment. More particularly:

42.1 Accurate data on consented volume has not been provided\(^{32}\) as allocation figures relied on by the Council differ as to consented irrigated area\(^{33}\) and disagree with Aqualinc's mapping\(^{34}\).

42.2 There appears to be double-counting of some consents\(^{35}\).

42.3 Adaptive management ("B Block") consents have been included in the overall allocation figure. These consents contain conditions specifically designed to protect streams, so will have a negligible impact on the 80-90% 7DMALF target\(^ {36}\). It is submitted their inclusion overstates just how drastic the situation is by approximately 60Mm\(^3\) per year and therefore skews the section 32 assessment.

42.4 The water quantity effects of the CPW scheme have been understated. Even if only Stage 1 of CPW proceeds and a limited number of groundwater consents are retired, over-allocation will mostly be eliminated\(^ {37}\). If the entire scheme is implemented and further groundwater consents are retired, further allocation may be possible\(^ {38}\).

Because the state of over-allocation in the catchment is misstated, it is submitted the measures proposed to address over-allocation impose a disproportionate cost on the community and are not necessary to give effect to the NPS\(^ {39}\).

Methods to address over-allocation

Transfer

The Submitters contend over-allocation will be addressed by CPW. However, even if this is not accepted, the Submitters oppose the transfer restrictions proposed as a means to reduce allocation.

\(^{32}\) Statement of Evidence of Ian McInroe at [42]

\(^{33}\) At [39] and [41]

\(^{34}\) At [38]

\(^{35}\) At [40] and Statement of Evidence of Andrew Robert Curtis on behalf of Irrigation NZ Inc at [17](c)

\(^{36}\) Statement of Evidence of Ian McInroe at [109] and [110]

\(^{37}\) At [102] and [103]

\(^{38}\) At [104] and [116]

\(^{39}\) Objective B3, we note the Board in Tukituki found at [620] ...while NPSFM requires over-allocation to be avoided, it also requires the efficient allocation and efficient use of the water to be improved and maximised...
The Council’s position on these provisions is, with respect, somewhat contradictory. The Council proffers a 50% surrender requirement in order to discourage transfers but then advances it as an integral component of the package to reduce allocation. If transfers do not occur, the provisions will be of no assistance.

In any event, the Submitters maintain the view the provisions are inefficient and inequitable as:-

46.1 Transfer is not always, or even often, of surplus or ‘dry’ water. Typically, transfers arise out of subdivision of land or efficiency gains. Preventing or disincentivising transfer of water in these circumstances discourages water moving to its highest value use or discourages investment in on-farm infrastructure to achieve those efficiency gains. Either way, the outcome does not align with the reasons given for the provisions by the Council or the NPS.

46.2 Water is not always sourced to convert dryland or facilitate an increase in irrigation. It is often a means to improving reliability. Preventing transfer will prevent reliability gains, including for particular farming systems or for holders of ‘B’ class permits looking to upgrade.

46.3 CPW shareholders will effectively be paying twice for their water allocation as the transfer prohibition does not recognise the significant investment shareholders have made in their existing groundwater consents.

46.4 Dynamic efficiency, where water moves to its best use, is best achieved by allowing transfer and is consistent with the goals of the CWMS and Objective B3 of the NPS.

Initially, the Submitters had differing requests in respect of the transfer provisions. There were, however, common themes – such as opposition to the 50% surrender requirement. Through discussions with each other and their advisors, they present a common request for changes.

With respect to CPW shareholders, they have taken the advice of Mr McIndoe. In this regard they are proposing a prohibition on any such transfers until water is being supplied from Stage 2 (or greater) of the Scheme. At that time an intended transfer becomes restricted discretionary, with a suggested matter of discretion being whether the amount of recharge

40 Section 32 Evaluation Report at pg 176
41 Section 42A Officer’s Report at 14.50
42 Statement of Evidence of Andrew Curtis at [18(b)
43 Statement of Evidence of Ian McIndoe at [71]; Statement of Evidence of Andrew Curtis at [14]
44 Statement of Evidence of Andrew Curtis at [20]
45 Statement of Evidence of Errol Begg
46 Statement of Evidence of Leo Donkers
47 Statement of Evidence of Andrew Curtis [19] and [20]
48 CWMS, Annex G – CWMS Revised Targets, 6. Water use efficiency goals at pg 18

ACL-014398-3-117-V1
occurring at that time is sufficient to offset the transfer. This recognises Mr McIndoe’s expert opinion that at some time after Stage 1 is commissioned but before CPW’s full commissioning, there will be enough groundwater available for all existing irrigation plus the transfer of 30,000 hectares worth of groundwater from CPW shareholders.

49 If the catchment is over-allocated, the Submitters appreciate a balance must be achieved between enabling the community to provide for its economic wellbeing and achieving the limits in Table 11(e). The Submitters are of the view their relief better achieves this balance by recognising the role transfers have in achieving efficient use of water within the catchment.

Consented Volumes

Demonstrated use

50 There is a sense of déjà vu for the Submitters in arguing this. They have been participating in RMA processes on this subject for at least a decade now.

51 The Submitters support the recommendation of the s42a report that demonstrated use should be amended to reasonable use to avoid inconsistency with the PLWRP. The Submitters continue to oppose the restriction in calculation of consent volumes to Method 1 in Schedule 10.

52 The Council propose this based on data gathered in the last three years that suggests only 50% of the allocated volume of water is used in the catchment. The Submitters are of the view that comparing consented volumes with actual use, particularly over such a short time span, gives a false impression of unused water in the catchment. In particular:

52.1 A consented volume is an absolute maximum that is only intended to be drawn on in extreme years.

52.2 Efficient irrigation demands that not all water is used all the time. However, to enable reliable supply and certainty for investment, certainty of access to water is required.

52.3 Three seasons is too short for an accurate assessment of the amount of surplus water in the catchment, as:

(a) At least three to ten years data is required to account for climatic cycles.

(b) Rotational cropping farming systems run on a four to eight year cycle.

49 Section 42A Officer’s Report at [13.4]
50 Statement of Evidence of Ian McIndoe at [27], [57] and [9]; Statement of Evidence of Andrew Curtis at [17]
51 Statement of Evidence of Andrew Curtis at [59]
52 At [24]
53 At [17]
54 At [17]
Also concerning to the Submitters is the number of uncertainties with Method 1. The s42A Report highlights this. There is no answer yet as to how records of past use should be “moderated”;

The length of record required to determine reasonable use under Method 1 has not yet been figured out – if and “expert efficiency audit approach” were adopted (whatever that is), the length of record would be a matter for expert opinion (emphasis added);

Matters such as climate variability and rotational cropping are not justified arguments against Method 1, they just identify some of the factors that would need to be taken into account if an “expert water use efficiency audit approach was adopted” (emphasis added).

This leaves the Submitters unable to fully test or apprehend what is being proposed. They are also none-the-wiser as to what is wrong with the other Methods in Schedule 10. Methods they are familiar with.

Reliability

Variation 1 reduces reliability of supply from 9 to 8.5 years in in 10. This is intended to help bring allocation into line with the limits in Table 11(e).

The Submitters consider this achieves little benefit as compared to the cost it imposes on farming in the catchment. They contend the Council has failed to quantify the effects. An analysis carried out by Mr McIndoe suggests a 4.5% reduction in allocation, in the order of 22 million m³ per year. This cost will not achieve a significant benefit to lowland streams.

The Council argues against this contention on the basis:

The reduction from 9 to 8.5 years means that in extreme years the annual allocation may not meet the demands for irrigation. These are also the years when flows in streams are most likely to be at their lowest and most likely not to meet the desired values. So this reduction in reliability will be of benefit at times the environment is most stressed.

Mr McIndoe addresses this scenario in his evidence. Summarily, high demand years and low groundwater levels do not usually coincide. This contrasts starkly with Mr Clark’s assertion of “likeliness”. Mr McIndoe explains for this situation to eventuate, low groundwater levels going into a winter are needed in combination with next to no recharge that winter as
well as a serious summer drought following the winter. He states it is hard to find a sequence where that would have happened - 1988/89 is probably the closest to this situation.

In addition, it is submitted the proposal fails to give effect to the CRPS, which emphasises the importance of reliable supply. It is also inconsistent with the CWMS target reliability of 95%.

Adaptive Management

The adaptive management provisions were of concern to all Submitters, albeit for different reasons. The Dunsandel Group did not want to see adaptive management conditions imposed on consents which have not borne them previously. The s42A Report has accepted this position and the recommended amendments are supported to that degree.

Erralyn currently holds adaptively managed consents. Its concern was to ensure such conditions could be dispensed with when the catchment moves back into allocation. This request carries greater impetus in light of the Submitters broader case about allocation.

The s42A Report indicates agreement with that request. However, it also recommends an amendment to Rule 11.5.32, Matter of Discretion 7(v), which would remove the words “appropriateness of applying”. Erralyn opposes this recommendation on the basis it removes the ability to argue against the continuing application of adaptive management conditions once over-allocation is addressed. To this end, Erralyn requests replacing those words with “continuing need for”, so an applicant has the ability to argue there is no longer a need for such conditions.

Participation in CPW – Alternative water supply

Throughout Variation 1 and its supporting documents, emphasis is placed on encouraging uptake of CPW water to enable its shareholders to reduce reliance on groundwater permits in the catchment.

The Submitters acknowledge and draw upon the value of CPW water in addressing numerous issues including water quantity. However, Erralyn perceived a risk in Rule 11.5.32, Matter of Discretion 3, that groundwater consent holders within the Scheme Area may be effectively forced to take up CPW water.

Availability of CPW water is a relatively objective matter to have regard to. However, the practicality of using CPW water introduces more subjective and personal considerations, such as the economics of subscribing to CPW water. Erralyn simply seeks to retain autonomy over that decision.

---

60 Policies 7.3.8(4) and 7.3.10 of the CRPS
62 Statement of Evidence of Errol Begg
Conclusion

The Submitters have been involved in planning and consent processes within the catchment for many years now. Despite a degree of “fatigue” on the issues, they recognise the water balance of this particular catchment is poised to change significantly for the first time in recent history. It is because of this they are requesting the Commissioners to scrutinise and, ultimately, alter the groundwater allocation limits set.

They seek to retain the reliability they have made investment decisions on. The Rakaia-Selwyn zone has already had its reliability reduced through the review process. Variation 1 suggests a further reduction still.

They seek reasonable provision for transfers on the basis this can provide long-term benefits for efficient and maximum water use, within limits.

A C Limmer
Counsel for the Submitters
Appendix A – Amendments sought to notified provisions

Key:

Section 42A Officer’s report recommendations

Erryn Farms Limited, Dunsandel Groundwater Users Association Incorporated and Irrigation New Zealand preferred version (as a result of their combination of submissions)

* Denotes that jurisdiction arises directly from the HydroTrader submission

Policy 11.4.22 Manage* Restrict the transfer of water permits within the Rakaia-Selwyn and Selwyn-Waimakariri water allocation zones to minimise the cumulative effects on flows in hill-fed lowland and spring-fed plains rivers from:

(a) the use of allocated but-unused water that was not reasonably required; or

(b) the transfer of permits to take and use groundwater by Irrigation Scheme shareholders within the Irrigation Scheme Area shown on the Planning Maps, before adequate recharge from the Irrigation Scheme is occurring to offset the transfer.

But allow for transfers of groundwater permits in the Rakaia-Selwyn or Selwyn-Waimakariri Combined Surface and Groundwater Allocation Zones if the permit transferred is intended to fully or partially replace an existing permit, and:

(a) no more water is transferred than that authorised for extraction pursuant to the existing permit; and

(b) the amount of water able to be taken under the existing permit is reduced by the same amount as is being transferred.

by requiring that:

(a) irrigation scheme shareholders within the Irrigation Scheme Area shown on the Planning Maps do not transfer their permits to take and use groundwater; and

(b) no permit to take and use groundwater is transferred from down-plains to up-plains; and

(c) in all other cases, except in relation to a community water supply 50% of any transferred water is surrendered.

Policy 11.4.23 Only reallocate water to existing resource consent holders at a rate and volume that reflects demonstrated reasonable use as calculated in accordance with Schedule 10 to provide a volume required to meet demand conditions in eight-and-a-half nine out of ten years for a system with an application efficiency of 80%.

Policy 11.4.25 Prior to the transfer of any existing resource consent to take and use water for irrigation to another site, if no annual volume has been applied to the resource consent, then an annual volume shall be applied in accordance with method 1 in Schedule 10.

Policy 11.4.26 Where a consent applicant holds shares in an irrigation scheme, limit any additional consented volumes to the volume required to meet demand conditions in eight-and-a-half out of ten years for a system with an application efficiency of 80%.
Policy 11.4.27 Until such time as the allocation limits in Tables 11(e) and 11(f) are no longer exceeded, apply adaptive management conditions to—upon replacement of any groundwater resource consents that have previously been subject to adaptive management conditions on the same or similar terms as the pre-existing conditions where proposed use of water remains the same.

Policy 11.4.31 Prohibit—in-stream damming of the full flow on the main stem of the Selwyn River/Waikirikiri and the main stem of the Waiāniwaniwa River above its confluence with the Selwyn River/Waikirikiri is a discretionary activity.

Policy 11.4.32 Enable the storage of water from the Rakaia River and Waimakariri River to improve the reliability of supply of Irrigation Scheme water and support a reduction in the use of groundwater provided:

(a) A Ngāi Tahu cultural impact assessment has been undertaken; and

(b) The mixing of water from different water bodies is avoided or mitigated through site specific design; and

(c) Adverse effects on cultural values, including those associated with unnatural mixing of waters, are satisfactorily avoided, remedied or mitigated having particular regard to in accordance with the recommendations in the cultural impact assessment; and

(d) Adverse effects on the availability and quality of existing and proposed community drinking water supplies are avoided; and

(e) Inundation of existing wetlands is avoided, remedied or mitigated through site specific design; and

(f) Adverse effects on fish passage are avoided, remedied or mitigated; and

(g) Inundation of river reaches with significant indigenous vegetation or significant habitat of indigenous biodiversity is avoided. There is no net loss of significant indigenous vegetation or significant habitat of indigenous biodiversity from the inundation of river reaches; and

(h) Inundation of known significant trout and salmon spawning areas is avoided, remedied or mitigated; and

(i) Infrastructure is designed to accommodate the effects of climate change.

Rule 11.5.32 Note: The taking and using of surface water from the Rakaia River or the Waimakariri River and groundwater with a hydraulic connection to the Rakaia River or the Waimakariri River must comply with the National Water Conservation (Rakaia River) Order 1988 or the relevant provisions in the Waimakariri River Regional Plan 2004.

The taking and use of surface water from a river, lake or wetland or groundwater within the Selwyn Te Waihora catchment and including all areas within the Little Rakaia Combined Surface and Groundwater Allocation Zone is a restricted discretionary activity, provided the following conditions are met:

1. The take in addition to all existing resource consented takes, does not result in any exceedance of any of the allocation limits in Table 11(e), 11(f) and 11(g); or

2. The proposed take is the replacement of a lawfully established surface water or groundwater take for which an application to continue the activity has been made under s124 of the RMA and there is no increase in the proposed rate of take or annual volume; and
3. A surface water or a groundwater take with a direct or high degree of stream depletion effect greater than 5 L/s determined in accordance with Schedule 9, complies with the minimum flow and restriction regime in Tables 11(c) and 11(d); and

4. A groundwater take within the West Melton Special Zone as shown on the Planning Maps complies with the level restrictions in Table 11(h); and

5. Unless it is associated with the artificial opening of a hāpua, lagoon or coastal lake to the sea, the take is not from a wetland or hāpua; and

6. For the renewal of an existing irrigation take the annual volume and maximum rate of take has been calculated in accordance with method 4 in Schedule 10; and

7. The take is not a surface water or groundwater take with a direct or high degree of stream depletion effect greater than 5 L/s, determined in accordance with Schedule 9, within the Waikewai Creek and Taumutu Creek catchments; and

8. The bore interference effects are acceptable, as determined in accordance with Schedule 12; and

8.9 The take does not conflict with the National Water Conservation (Rakaia River) Order 1988 or the relevant provisions of the Waimakariri River Regional Plan 2004–.

The exercise of discretion is restricted to the following matters:

1. The rate, volume and timing of the water take; and

2. For new resource consent applications that are not a renewal of an existing consent, whether the amount of water to be taken and used is reasonable for the proposed use. In assessing reasonable use for irrigation purposes, the CRC will consider the matters set out in Schedule 10; and

3. The availability and practicality of using alternative supplies of water; and

4.3 The application efficiency where water is to be taken and used for irrigation; and

5.4 The proximity and actual or potential adverse environmental effects of water use on any significant indigenous biodiversity and adjacent dryland habitat; and

6.5 For a surface water takes:
   i. The effects the take has on any other authorised takes or diversions; and
   ii. Whether and how fish are prevented from entering the water intake; and
   iii. The provisions of any relevant Water Conservation Order; and

7.6 For groundwater takes:
   i. The maximum rate of take, including the capacity of the bore or bore field to achieve that rate, and the rate required to service any irrigation system; and
   ii. the actual or potential adverse environmental effects the take has on any other authorised takes, including interference effects as set out in Schedule 12; and
   iii. whether salt-water intrusion into the aquifer or landward movement of the salt water/fresh water interface is prevented; and
   iv. the protection of groundwater sources, including prevention of backflow of water and contaminants; and
v. the appropriateness of applying continuing need for and nature of any adaptive management conditions on new consents or replacement consents where the consent being replaced is already subject to adaptive management conditions; and

9.7. Any adverse effects on mahinga kai, wāhi tapu or wāhi taonga within the Cultural Landscapes/Values Management Area;

Rule 11.5.33 Despite Rule 11.5.32 the taking and use of groundwater within the Selwyn Waikora catchment and including all areas within the Little Rakaia Combined Surface and Groundwater Allocation Zone is a restricted discretionary activity provided the following conditions are met:

1. The applicant holds a resource consent to take and use surface water or groundwater with a direct or high stream depletion effect greater than 5 L/s; and

2. The existing resource consent referred to in condition 1 is surrendered; and

3. The groundwater take will be abstracted from the same property as the existing resource consent and there is no increase in the proposed rate of take or annual volume; and

4. If the abstraction is from an up-plains location, it is below 50 m deep; or

5. If the abstraction is from a down-plains location, it is below 30 m deep or from the second confined aquifer; and

6. For an irrigation take the annual volume and maximum rate of take sought has been calculated in accordance with Method 1 in Schedule 10; and

7. The bore interference effects are acceptable, as determined in accordance with Schedule 12.

The exercise of discretion is restricted to the following matters:

1. The maximum rate of take, including the capacity of the bore or bore field to achieve that rate, and the rate required to service any irrigation system; and

2. Whether the amount of water to be taken and used is reasonable for the proposed use assessed in accordance with Method 1 in Schedule 10; and

3. The effects the take has on any other authorised abstraction, including interference effects as indicated by a Step Test undertaken in accordance with the requirements of Schedule 11 and well interference calculated in accordance with the method in Schedule 12; and

4. Where the take is less than 2 km from the coast, whether salt-water intrusion into the aquifer or landward movement of the salt water/fresh water interface is prevented; and

5. The protection of groundwater sources, including the prevention of backflow of water or contaminants.

6. Any adverse effects on mahinga kai, wāhi tapu or wāhi taonga within the Cultural Landscape/Values Management Area.

Notification

Pursuant to sections 95A and 95B of the RMA an application for resource consent under this rule will be processed and considered without public or limited notification.
Rule 11.5.37  The temporary or permanent transfer, in whole or in part, (other than to the new owner of the site to which the take and use of water relates and where the location of the take and use of water does not change) of a water permit to take or use surface water or groundwater within the Selwyn Te Wahora catchment, is a restricted discretionary activity, provided the following conditions are met:

1. The reliability of supply for any other lawfully established water take is not reduced; and

2. In the case of surface water, the point of take remains within the same surface water catchment and the take complies with the minimum flow and restriction regime in Tables 11(c) and 11(d); or

3. In the case of groundwater:
   (a) the point of take is within the same groundwater allocation zone or combined surface and groundwater allocation zone; and
   (b) the bore interference effects as set out in Schedule 12 are acceptable; and
   (e) the transfer is not from down-plains to up-plains; and
   (d) the transfer is not from a person who holds shares in an Irrigation Scheme in the Irrigation Scheme Area as shown on the Planning Maps unless the Irrigation Scheme is supplying water from Stage 2 or subsequent stages;
   (e) In addition for stream depleting groundwater takes:
      i. the transfer is within the same surface water catchment; and
      ii. the take complies with the minimum flow and restriction regime in Table 11(c) and 11(d); and
      iii. the stream depletion effect is no greater in the transferred location than in the original location unless at least an equivalent volume to surface water allocation from the affected water body can be surrendered alongside the transfer, for at least the duration of the transferred take; and

4. If the transfer is within the Rakaia Selwyn or Selwyn-Waimakariri Combined Surface and Groundwater Allocation Zones 50% of the volume of transferred water is to be surrendered.

The exercise of discretion is restricted to the following matters:

1. The nature of the transfer, whether short term, long term, partial or full, and the apportioning of the maximum rate of take and annual volume in the case of a partial transfer; and

2. The appropriateness of conditions, including conditions on minimum flow, annual volume and other restrictions to mitigate effects; and

3. The reasonable need for the quantities of water sought, the intended use of the water and the ability of the applicant to abstract and use those quantities; and

4. The efficiency of the exercise of the resource consent; and
5. The reduction in the rate of take in times of low flow; and

6. The method of preventing fish from entering any water intake; and

7. Whether the rate of take and annual volume of the water being transferred, and any not being transferred, can be demonstrated as being physically taken reasonably required, and used in an efficient manner, in the past.

8. If the transfer is from a person who holds shares in an Irrigation Scheme in the Irrigation Scheme Area as shown on the Planning Maps, whether:
   i. Irrigation from Stage 2 (or beyond) of the Irrigation Scheme is occurring; and
   ii. The recharge from such irrigation is sufficient to offset the transfer.

7.9 The extent to which the transfer will improve and maximise the efficient allocation of water.

Rule 11.5.39 The transfer, in whole or in part, of a water permit to take or use surface water or groundwater in the Selwyn Te Waihora catchment that does not meet the terms of one of the conditions of Rule 11.5.37, Rule 11.5.37A or Rule 11.5.38 is a prohibited discretionary activity.

Rule 11.5.42 The damming of the full-flow of water within the bed of the main stem of the Selwyn River/Waihikiri between the mouth at or about map reference BX23: 5559-5636 to BW21:9667-9703 and BX21:9752-8937, and within the bed of the main stem of the Waianiwaniwa River above the confluence with the Selwyn River/Waihikiri at or about map reference BX22: 2494-7347 to BW21:1130-9083 is a prohibited discretionary activity.

Table 11(e): Combined Surface Water and Groundwater Allocation Limits for Selwyn-Waimakariri, Rakaia-Selwyn, and Little Rakaia Combined Surface and Groundwater Allocation Zones

<table>
<thead>
<tr>
<th>Allocation Zone (see Planning Maps)</th>
<th>A Block Allocation Limit and Targets without CPW irrigation (million m³/year)</th>
<th>B Block Allocation Limit and Targets without CPW irrigation (million m³/year)</th>
<th>A Block Allocation Limit and Targets upon full commissioning of Stage 1 CPW (million m³/year)</th>
<th>A Block Allocation Limit upon commissioning of subsequent Stages of CPW (million m³/year)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Selwyn-Waimakariri</td>
<td>193</td>
<td>25</td>
<td>219</td>
<td>308</td>
</tr>
<tr>
<td>Rakaia-Selwyn</td>
<td>180</td>
<td>35</td>
<td>215</td>
<td>305</td>
</tr>
<tr>
<td>Little Rakaia</td>
<td>85.9</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Schedule 10 – Reasonable Use Test

Within the Selwyn-Waihora catchment method 1 shall determine seasonal irrigation demand based on eight and a half years out of ten

ACL-014398-3-108-V1
Appendix A – Amendments sought to notified provisions

Key:

Section 42A Officer's report recommendations

Erralyn Farms Limited, Dunandel Groundwater Users Association Incorporated and Irrigation New Zealand preferred version (as a result of their combination of submissions)

* Denotes that jurisdiction arises directly from the HydroTrader submission

Policy 11.4.22 Manage * Restrict the transfer of water permits within the Rakaia-Selwyn and Selwyn-Waimakariri water allocation zones to minimise the cumulative effects on flows in hill-fed lowland and spring-fed plains rivers from:

(a) the use of allocated but-unused water that was not reasonably required; or

(b) the transfer of permits to take and use groundwater by Irrigation Scheme shareholders within the Irrigation Scheme Area shown on the Planning Maps, before adequate recharge from the Irrigation Scheme is occurring to offset the transfer;

But allow for transfers of groundwater permits in the Rakaia-Selwyn or Selwyn-Waimakariri Combined Surface and Groundwater Allocation Zones, if the permit transferred is intended to fully or partially replace an existing permit, and:

(a) No more water is transferred than that authorised for extraction pursuant to the existing permit, and

(b) The amount of water able to be taken under the existing permit is reduced by the same amount as is being transferred,

by requiring that:

(a) Irrigation scheme shareholders within the Irrigation Scheme Area shown on the Planning Maps do not transfer their permits to take and-use groundwater; and

(b) No permit to take and use groundwater is transferred from down-plains to up-plains; and

(c) In all other cases, except in relation to a community water supply, 50% of any transferred water is surrendered;

Policy 11.4.23 Only reallocate water to existing resource consent holders at a rate and volume that reflects demonstrated reasonable use as calculated in accordance with Schedule 10 to provide a volume required to meet demand conditions in eight-and-a-half nine out of ten years for a system with an application efficiency of 80%.

Policy 11.4.25 Prior to the transfer of any existing resource consent to take and use water for irrigation to another site, if no annual volume has been applied to the resource consent, then an annual volume shall be applied in accordance with method 1 in Schedule 10.

Policy 11.4.26 Where a consent applicant holds shares in an irrigation scheme, limit any additional consented volumes to the volume required to meet demand conditions in eight-and-a-half nine out of ten years for a system with an application efficiency of 80%.
Policy 11.4.27 Until such time as the allocation limits in Tables 11(e) and 11(f) are no longer exceeded, apply adaptive management conditions upon replacement of any groundwater resource consents that have previously been subject to adaptive management conditions on the same or similar terms as the pre-existing conditions where proposed use of water remains the same.

Policy 11.4.31 Prohibit in-stream damming of the full flow on the main stem of the Selwyn River/Waikīkīkī and the main stem of the Waikāniwaniwa River above its confluence with the Selwyn River/Waikīkīkī is a discretionary activity.

Policy 11.4.32 Enable the storage of water from the Rakaia River and Waimakariri River to improve the reliability of supply of Irrigation Scheme water and support a reduction in the use of groundwater provided:

(a) A Ngāi Tahu cultural impact assessment has been undertaken; and

(b) The mixing of water from different water bodies is avoided or mitigated through site specific design; and

(c) Adverse effects on cultural values, including those associated with unnatural mixing of waters, are satisfactorily avoided, remedied or mitigated, having particular regard to in accordance with the recommendations in the cultural impact assessment; and

(d) Adverse effects on the availability and quality of existing and proposed community drinking water supplies are avoided; and

(e) Inundation of existing wetlands is avoided, remedied or mitigated through site specific design; and

(f) Adverse effects on fish passage are avoided, remedied or mitigated; and

(g) Inundation of river reaches with significant indigenous vegetation or significant habitat of indigenous biodiversity is avoided. There is no net loss of significant indigenous vegetation or significant habitat of indigenous biodiversity from the inundation of river reaches; and

(h) Inundation of known significant trout and salmon spawning areas is avoided, remedied or mitigated; and

(i) Infrastructure is designed to accommodate the effects of climate change.

Rule 11.5.32 Note: The taking and using of surface water from the Rakaia River or the Waimakariri River and groundwater with a hydraulic connection to the Rakaia River or the Waimakariri River must comply with the National Water Conservation (Rakaia River) Order 1988 or the relevant provisions in the Waimakariri River Regional Plan 2004.

The taking and use of surface water from a river, lake or wetland or groundwater within the Selwyn Te Waihora catchment and including all areas within the Little Rakaia Combined Surface and Groundwater Allocation Zone is a restricted discretionary activity, provided the following conditions are met:

1. The take in addition to all existing resource consented takes, does not result in any exceedance of any of the allocation limits in Table 11(e), 11(f) and 11(g); or

2. The proposed take is the replacement of a lawfully established surface water or groundwater take for which an application to continue the activity has been made under s124 of the RMA and there is no increase in the proposed rate of lake or annual volume; and
3. A surface water or a groundwater take with a direct or high degree of stream depletion effect greater than 5 L/s determined in accordance with Schedule 9, complies with the minimum flow and restriction regime in Tables 11(c) and 11(d); and

4. A groundwater take within the West Melton Special Zone as shown on the Planning Maps complies with the level restrictions in Table 11(h); and

5. Unless it is associated with the artificial opening of a hāpua, lagoon or coastal lake to the sea, the theke is not from a wetland or hāpua; and

6. For the renewal of an existing irrigation take the annual volume and maximum rate of take has been calculated in accordance with method 4 in Schedule 10; and

7. The take is not a surface water or groundwater take with a direct or high degree of stream depletion effect greater than 5 L/s, determined in accordance with Schedule 9, within the Waikekawai Creek and Taumutu Creek catchments; and

8. The bore interference effects are acceptable, as determined in accordance with Schedule 12; and

8.9. The take does not conflict with the National Water Conservation (Rakaia River) Order 1988 or the relevant provisions of the Waimakariri River Regional Plan 2004.

The exercise of discretion is restricted to the following matters:

1. The rate, volume and timing of the water take; and

2. For new resource consent applications that are not a renewal of an existing consent, whether the amount of water to be taken and used is reasonable for the proposed use. In assessing reasonable use for irrigation purposes, the CRC will consider the matters set out in Schedule 10; and

3. The availability and practicality of using alternative supplies of water; and

4. The application efficiency where water is to be taken and used for irrigation; and

5. The proximity and actual or potential adverse environmental effects of water use on any significant indigenous biodiversity and adjacent dryland habitat; and

6. For a surface water takes:
   i. The effects the take has on any other authorised takes or diversions; and
   ii. Whether and how fish are prevented from entering the water intake; and
   iii. The provisions of any relevant Water Conservation Order; and

7. For groundwater takes:
   i. The maximum rate of take, including the capacity of the bore or bore field to achieve that rate, and the rate required to service any irrigation system; and
   ii. the actual or potential adverse environmental effects the take has on any other authorised takes, including interference effects as set out in Schedule 12; and
   iii. whether salt-water intrusion into the aquifer or landward movement of the salt water/fresh water interface is prevented; and
   iv. the protection of groundwater sources, including prevention of backflow of water and contaminants; and

ACL-014386-3-108-V1
v. the appropriateness of applying continuing need for and nature of any adaptive management conditions on new consents or replacement consents where the consent being replaced is already subject to adaptive management conditions; and

6.7. Any adverse effects on mahinga kai, wāhi tapu or wāhi taonga within the Cultural Landscapes/Values Management Area:

Rule 11.5.33

Despite Rule 11.5.32 the taking and use of groundwater within the Selwyn Waihora catchment and including all areas within the Little Rakaia Combined Surface and Groundwater Allocation Zone is a restricted discretionary activity provided the following conditions are met:

1. The applicant holds a resource consent to take and use surface water or groundwater with a direct or high stream depletion effect greater than 5 L/s; and

2. The existing resource consent referred to in condition 1 is surrendered; and

3. The groundwater take will be abstracted from the same property as the existing resource consent and there is no increase in the proposed rate of take or annual volume; and

4. If the abstraction is from an up-plains location, it is below 50 m deep; or

5. If the abstraction is from a down-plains location, it is below 30 m deep or from the second confined aquifer; and

6. For an irrigation take the annual volume and maximum rate of take sought has been calculated in accordance with Method 1 in Schedule 10; and

7. The bore interference effects are acceptable, as determined in accordance with Schedule 12.

The exercise of discretion is restricted to the following matters:

1. The maximum rate of take, including the capacity of the bore or bore field to achieve that rate, and the rate required to service any irrigation system; and

2. Whether the amount of water to be taken and used is reasonable for the proposed use assessed in accordance with Method 1 in Schedule 10; and

3. The effects the take has on any other authorised abstraction, including interference effects as indicated by a Step Test undertaken in accordance with the requirements of Schedule 11 and well interference calculated in accordance with the method in Schedule 12; and

4. Where the take is less than 2 km from the coast, whether salt-water intrusion into the aquifer or landward movement of the salt water/fresh water interface is prevented; and

5. The protection of groundwater sources, including the prevention of backflow of water or contaminants.

6. Any adverse effects on mahinga kai, wāhi tapu or wāhi taonga within the Cultural Landscape/Values Management Area.

Notification

Pursuant to sections 95A and 95B of the RMA an application for resource consent under this rule will be processed and considered without public or limited notification.
Rule 11.5.37 The temporary or permanent transfer, in whole or in part, (other than to the new owner of the site to which the take and use of water relates and where the location of the take and use of water does not change) of a water permit to take or use surface water or groundwater within the Selwyn Te Waihora catchment, is a restricted discretionary activity, provided the following conditions are met:

1. The reliability of supply for any other lawfully established water take is not reduced; and

2. In the case of surface water, the point of take remains within the same surface water catchment and the take complies with the minimum flow and restriction regime in Tables 11(c) and 11(d); or

3. In the case of groundwater:
   
   (a) the point of take is within the same groundwater allocation zone or combined surface and groundwater allocation zone; and
   
   (b) the bore interference effects as set out in Schedule 12 are acceptable; and
   
   (c) the transfer is not from down-plains to up-plains; and
   
   (d) the transfer is not from a person who holds shares in an Irrigation Scheme in the Irrigation Scheme Area as shown on the Planning Maps unless the Irrigation Scheme is supplying water from Stage 2 or subsequent stages;

   (e) In addition for stream depleting groundwater takes:

   i. the transfer is within the same surface water catchment; and
   
   ii. the take complies with the minimum flow and restriction regime in Table 11(c) and 11(d); and

   iii. the stream depletion effect is no greater in the transferred location than in the original location unless at least an equivalent volume to surface water allocation from the affected water body can be surrendered alongside the transfer, for at least the duration of the transferred take; and

4. If the transfer is within the Rakaia-Selwyn or Selwyn-Waimakariri Combined Surface and Groundwater Allocation Zones 50% of the volume of transferred water is to be surrendered.

The exercise of discretion is restricted to the following matters:

1. The nature of the transfer, whether short term, long term, partial or full, and the apportioning of the maximum rate of take and annual volume in the case of a partial transfer; and

2. The appropriateness of conditions, including conditions on minimum flow, annual volume and other restrictions to mitigate effects; and

3. The reasonable need for the quantities of water sought, the intended use of the water and the ability of the applicant to abstract and use those quantities; and

4. The efficiency of the exercise of the resource consent; and
5. The reduction in the rate of take in times of low flow; and

6. The method of preventing fish from entering any water intake; and

7. Whether the rate of take and annual volume of the water being transferred, and any not being transferred, can be demonstrated as being physically taken reasonably required, and used in an efficient manner, in the past.

6.8 If the transfer is from a person who holds shares in an Irrigation Scheme in the Irrigation Scheme Area as shown on the Planning Maps, whether:

i. Irrigation from Stage 2 (or beyond) of the Irrigation Scheme is occurring; and

ii. The recharge from such irrigation is sufficient to offset the transfer.

7.9 The extent to which the transfer will improve and maximise the efficient allocation of water.

Rule 11.5.39 The transfer, in whole or in part, of a water permit to take or use surface water or groundwater in the Selwyn Te Waihora catchment that does not meet the terms of one of the conditions of Rule 11.5.37, Rule 11.5.37A or Rule 11.5.38 is a prohibited discretionary activity.

Rule 11.5.42 The damming of the full-flow of water within the bed of the main stem of the Selwyn River/Waikirikiriki between the mouth at or about map reference BX23: 5559-5638 to BW21:9667-9703 and BX21:9752-8937, and within the bed of the main stem of the Waiānīwanwa River above the confluence with the Selwyn River/Waikirikiriki at or about map reference BX22: 2494-7347 to BW21:1130-9083 is a prohibited discretionary activity.

Table 11(e): Combined Surface Water and Groundwater Allocation Limits for Selwyn-Waimakariri, Rakaia-Selwyn, and Little Rakaia Combined Surface and Groundwater Allocation Zones

<table>
<thead>
<tr>
<th>Allocation Zone (see Planning Maps)</th>
<th>A Block Allocation Limit and Targets without CPW irrigation (million m³/year)</th>
<th>B Block Allocation Limit and Targets without CPW irrigation (million m³/year)</th>
<th>A Block Allocation Limit and Targets upon full commissioning of Stage 1 CPW (million m³/year)</th>
<th>A Block Allocation Limit upon commissioning of subsequent Stages of CPW (million m³/year)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Selwyn-Waimakariri</td>
<td>193</td>
<td>25</td>
<td>213</td>
<td>308</td>
</tr>
<tr>
<td>Rakaia-Selwyn</td>
<td>180</td>
<td>35</td>
<td>215</td>
<td>305</td>
</tr>
<tr>
<td>Little Rakaia</td>
<td>85.9</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Schedule 10 – Reasonable Use Test

Within the Selwyn-Waihora catchment method 1 shall determine seasonal irrigation demand based on eight and a half years out of ten
Appendix A – Amendments sought to notified provisions

Key:

Section 42A Officer’s report recommendations

Erryn Farms Limited, Dunsandel Groundwater Users Association Incorporated and Irrigation New Zealand preferred version (as a result of their combination of submissions)

* Denotes that jurisdiction arises directly from the HydroTrader submission

Policy 11.4.22 Manage * Restrict the transfer of water permits within the Rakaia-Selwyn and Selwyn-Waimakariri water allocation zones to minimise the cumulative effects on flows in hill-fed lowland and spring-fed plains rivers from:

(a) the use of allocated but-unused water that was not reasonably required; or

(b) the transfer of permits to take and use groundwater by Irrigation Scheme shareholders within the Irrigation Scheme Area shown on the Planning Maps, before adequate recharge from the Irrigation Scheme is occurring to offset the transfer.

But allow for transfers of groundwater permits in the Rakaia-Selwyn or Selwyn-Waimakariri Combined Surface and Groundwater Allocation Zones, if the permit transferred is intended to fully or partially replace an existing permit, and:

(a) No more water is transferred than that authorised for extraction pursuant to the existing permit, and

(b) The amount of water able to be taken under the existing permit is reduced by the same amount as is being transferred.

by requiring that:

(a) Irrigation scheme shareholders within the Irrigation Scheme Area shown on the Planning Maps do not transfer their permits to take and use groundwater; and

(b) No permit to take and use groundwater is transferred from down-plain to up-plain; and

(c) In all other cases, except in relation to a community water supply, 60% of any transferred water is surrendered.

Policy 11.4.23 Only reallocate water to existing resource consent holders at a rate and volume that reflects demonstrated reasonable use as calculated in accordance with Schedule 10 to provide a volume required to meet demand conditions in eight and a half nine out of ten years for a system with an application efficiency of 80%.

Policy 11.4.25 Prior to the transfer of any existing resource consent to take and use water for irrigation to another site, if no annual volume has been applied to the resource consent, then an annual volume shall be applied in accordance with method 1 in Schedule 10.

Policy 11.4.26 Where a consent applicant holds shares in an irrigation scheme, limit any additional consented volumes to the volume required to meet demand conditions in eight and a half out of ten years for a system with an application efficiency of 80%.

ACL-014398-3-108-V1
Policy 11.4.27 Until such time as the allocation limits in Tables 11(e) and 11(f) are no longer exceeded, apply adaptive management conditions to—upon replacement of any groundwater resource consents that have previously been subject to adaptive management conditions on the same or similar terms as the pre-existing conditions where proposed use of water remains the same.

Policy 11.4.31 Prohibit—in-stream damming of the full flow on the main stem of the Selwyn River/Waitiri and the main stem of the Waikaramea River above its confluence with the Selwyn River/Waitiri; is a discretionary activity.

Policy 11.4.32 Enable the storage of water from the Rakaia River and Waimakariri River to improve the reliability of supply of Irrigation Scheme water and support a reduction in the use of groundwater provided:

(a) A Ngāi Tahu cultural impact assessment has been undertaken; and

(b) The mixing of water from different water bodies is avoided or mitigated through site specific design; and

(c) Adverse effects on cultural values, including those associated with unnatural mixing of waters, are satisfactorily avoided, remedied or mitigated, having particular regard to in accordance with the recommendations in the cultural impact assessment; and

(d) Adverse effects on the availability and quality of existing and proposed community drinking water supplies are avoided; and

(e) Inundation of existing wetlands is avoided, remedied or mitigated through site specific design; and

(f) Adverse effects on fish passage are avoided, remedied or mitigated; and

(g) Inundation of river reaches with significant indigenous vegetation or significant habitat of indigenous biodiversity is avoided. There is no net loss of significant indigenous vegetation or significant habitat of indigenous biodiversity from the inundation of river reaches; and

(h) Inundation of known significant trout and salmon spawning areas is avoided, remedied or mitigated; and

(i) Infrastructure is designed to accommodate the effects of climate change.

Rule 11.5.32 Note: The taking and use of surface water from the Rakaia River or the Waimakariri River and groundwater with a hydraulic connection to the Rakaia River or the Waimakariri River must comply with the National Water Conservation (Rakaia River) Order 1988 or the relevant provisions in the Waimakariri River Regional Plan 2004.

The taking and use of surface water from a river, lake or wetland or groundwater within the Selwyn Te Walhora catchment and including all areas within the Little Rakaia Combined Surface and Groundwater Allocation Zone is a restricted discretionary activity, provided the following conditions are met:

1. The take in addition to all existing resource consented takes, does not result in any exceedance of any of the allocation limits in Table 11(e), 11(f) and 11(g); or

2. The proposed take is the replacement of a lawfully established surface water or groundwater take for which an application to continue the activity has been made under s124 of the RMA and there is no increase in the proposed rate of take or annual volume; and

ACL-014398-3-108-V1
3. A surface water or a groundwater take with a direct or high degree of stream depletion effect greater than 5 L/s determined in accordance with Schedule 9, complies with the minimum flow and restriction regime in Tables 11(c) and 11(d); and

4. A groundwater take within the West Melton Special Zone as shown on the Planning Maps complies with the level restrictions in Table 11(h); and

5. Unless it is associated with the artificial opening of a hāpua, lagoon or coastal lake to the sea, the take is not from a wetland or hāpua; and

6. For the renewal of an existing irrigation take the annual volume and maximum rate of take has been calculated in accordance with method 1 in Schedule 10; and

7. The take is not a surface water or groundwater take with a direct or high degree of stream depletion effect greater than 5 L/s, determined in accordance with Schedule 9, within the Walkekewai Creek and Taumutu Creek catchments; and

8. The bore interference effects are acceptable, as determined in accordance with Schedule 12; and

8.9. The take does not conflict with the National Water Conservation (Rakaia River) Order 1989 or the relevant provisions of the Waimakariri River Regional Plan 2004.

The exercise of discretion is restricted to the following matters:

1. The rate, volume and timing of the water take; and

2. For new resource consent applications that are not a renewal of an existing consent, whether the amount of water to be taken and used is reasonable for the proposed use. In assessing reasonable use for irrigation purposes, the CRC will consider the matters set out in Schedule 10; and

3. The availability and practicality of using alternative supplies of water; and

4. The application efficiency where water is to be taken and used for irrigation; and

5. The proximity and actual or potential adverse environmental effects of water use on any significant indigenous biodiversity and adjacent dryland habitat; and

6. For a surface water takes:
   i. The effects the take has on any other authorised takes or diversions; and
   ii. Whether and how fish are prevented from entering the water intake; and
   iii. The provisions of any relevant Water Conservation Order; and

7. For groundwater takes:
   i. The maximum rate of take, including the capacity of the bore or bore field to achieve that rate, and the rate required to service any irrigation system; and
   ii. the actual or potential adverse environmental effects the take has on any other authorised takes, including interference effects as set out in Schedule 12; and
   iii. whether salt-water intrusion into the aquifer or landward movement of the salt water/fresh water interface is prevented; and
   iv. the protection of groundwater sources, including prevention of backflow of water and contaminants; and
v. the appropriateness of applying continuing need for and nature of any adaptive management conditions on new consents or replacement consents where the consent being replaced is already subject to adaptive management conditions; and

8.7 Any adverse effects on mahinga kai, wāhi tapu or wāhi taonga within the Cultural Landscapes/Values Management Area:

Rule 11.5.33 Despite Rule 11.5.32 the taking and use of groundwater within the Selwyn Waibreak catchment and including all areas within the Little Rakaia Combined Surface and Groundwater Allocation Zone is a restricted discretionary activity provided the following conditions are met:

1. The applicant holds a resource consent to take and use surface water or groundwater with a direct or high stream depletion effect greater than 5 L/s; and

2. The existing resource consent referred to in condition 1 is surrendered; and

3. The groundwater take will be abstracted from the same property as the existing resource consent and there is no increase in the proposed rate of take or annual volume; and

4. If the abstraction is from an up-plains location, it is below 50 m deep; or

5. If the abstraction is from a down-plains location, it is below 30 m deep or from the second confined aquifer; and

6. For an irrigation take the annual volume and maximum rate of take sought has been calculated in accordance with Method 1 in Schedule 10; and

7. The bore interference effects are acceptable, as determined in accordance with Schedule 12.

The exercise of discretion is restricted to the following matters:

1. The maximum rate of take, including the capacity of the bore or bore field to achieve that rate, and the rate required to service any irrigation system; and

2. Whether the amount of water to be taken and used is reasonable for the proposed use assessed in accordance with method 1 in Schedule 10; and

3. The effects the take has on any other authorised abstraction, including interference effects as indicated by a Step Test undertaken in accordance with the requirements of Schedule 11 and well interference calculated in accordance with the method in Schedule 12; and

4. Where the take is less than 2 km from the coast, whether salt-water intrusion into the aquifer or landward movement of the salt water/fresh water interface is prevented; and

5. The protection of groundwater sources, including the prevention of backflow of water or contaminants.

6. Any adverse effects on mahinga kai, wāhi tapu or wāhi taonga within the Cultural Landscape/Values Management Area.

Notification

Pursuant to sections 95A and 95B of the RMA an application for resource consent under this rule will be processed and considered without public or limited notification.
Rule 11.5.37  The temporary or permanent transfer, in whole or in part, (other than to the new owner of the site to which the take and use of water relates and where the location of the take and use of water does not change) of a water permit to take or use surface water or groundwater within the Selwyn Te Waihora catchment, is a restricted discretionary activity, provided the following conditions are met:

1. The reliability of supply for any other lawfully established water take is not reduced; and

2. In the case of surface water, the point of take remains within the same surface water catchment and the take complies with the minimum flow and restriction regime in Tables 11(c) and 11(d); or

3. In the case of groundwater:

   (a) the point of take is within the same groundwater allocation zone or combined surface and groundwater allocation zone; and

   (b) the bore interference effects as set out in Schedule 12 are acceptable; and

   (c) the transfer is not from down-plains to up-plains; and

   (d) the transfer is not from a person who holds shares in an Irrigation Scheme in the Irrigation Scheme Area as shown on the Planning Maps unless the Irrigation Scheme is supplying water from Stage 2 or subsequent stages;

   (e) In addition for stream depleting groundwater takes:

      i. the transfer is within the same surface water catchment; and

      ii. the take complies with the minimum flow and restriction regime in Table 11(c) and 11(d); and

      iii. the stream depletion effect is no greater in the transferred location than in the original location unless at least an equivalent volume to surface water allocation from the affected water body can be surrendered alongside the transfer, for at least the duration of the transferred take; and

4. If the transfer is within the Rakaia Selwyn or Selwyn-Waimakariri Combined Surface and Groundwater Allocation Zones 50% of the volume of transferred water is to be surrendered.

The exercise of discretion is restricted to the following matters:

1. The nature of the transfer, whether short term, long term, partial or full, and the apportioning of the maximum rate of take and annual volume in the case of a partial transfer; and

2. The appropriateness of conditions, including conditions on minimum flow, annual volume and other restrictions to mitigate effects; and

3. The reasonable need for the quantities of water sought, the intended use of the water and the ability of the applicant to abstract and use those quantities; and

4. The efficiency of the exercise of the resource consent; and
5. The reduction in the rate of take in times of low flow; and

6. The method of preventing fish from entering any water intake; and

7. Whether the rate of take and annual volume of the water being transferred, and any not being transferred, can be demonstrated as being physically taken reasonably required, and used in an efficient manner, in the past.

6.8. If the transfer is from a person who holds shares in an Irrigation Scheme in the Irrigation Scheme Area as shown on the Planning Maps, whether:

i. Irrigation from Stage 2 (or beyond) of the Irrigation Scheme is occurring; and

ii. The recharge from such irrigation is sufficient to offset the transfer.

7.9. The extent to which the transfer will improve and maximise the efficient allocation of water.

Rule 11.5.39 The transfer, in whole or in part, of a water permit to take or use surface water or groundwater in the Selwyn Te Wairau catchment that does not meet the terms of one of the conditions of Rule 11.5.37, Rule 11.5.37A or Rule 11.5.38 is a prohibited discretionary activity.

Rule 11.5.42 The damming of the full flow of water within the bed of the main stem of the Selwyn River/Waihiri/kiri between the mouth at or about map reference BX23: 5559-5636 to BW21:9667-9703 and BW21:9752-9837, and within the bed of the main stem of the Waianiwana River above the confluence with the Selwyn River/Waihiri/kiri at or about map reference BX22: 2494-7347 to BW21:1130-9083 is a prohibited discretionary activity.

Table 11(e): Combined Surface Water and Groundwater Allocation Limits for Selwyn-Waimakariri, Rakaia-Selwyn, and Little Rakaia Combined Surface and Groundwater Allocation Zones

<table>
<thead>
<tr>
<th>Allocation Zone (see Planning Maps)</th>
<th>Allocation Limit and Targets without CPW irrigation (million m³/year)</th>
<th>Block Allocation Limit and Targets without CPW irrigation (million m³/year)</th>
<th>Allocation Limit upon full commissioning of Stages 1 CPW (million m³/year)</th>
<th>Allocation Limit upon commissioning of subsequent Stages of CPW (million m³/year)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Selwyn-Waimakariri</td>
<td>193</td>
<td>25</td>
<td>218</td>
<td>300</td>
</tr>
<tr>
<td>Rakaia-Selwyn</td>
<td>180</td>
<td>35</td>
<td>215</td>
<td>305</td>
</tr>
<tr>
<td>Little Rakaia</td>
<td>85.9</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Schedule 10 – Reasonable Use Test

Within the Selwyn-Wairau catchment method shall determine seasonal irrigation demand based on eight and a half years out of ten