

**TABLED AT HEARING**

**BEFORE THE CANTERBURY REGIONAL COUNCIL  
AND THE ASHBURTON DISTRICT COUNCIL**

Application: ..... *RPRM* .....  
- *first hearing* .....  
Date: ..... *2/5/2018* .....

**IN THE MATTER** of the Resource Management Act 1991

**AND**

**IN THE MATTER** of resource consent applications by  
**Rangitata Diversion Race Management  
Limited** to the Canterbury Regional  
Council and Ashburton District Council for  
resource consents for the construction,  
operation and maintenance of the  
Klondyke Water Storage Facility, its  
associated water takes from and  
discharges to the Rangitata River, and all  
associated activities

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**LEGAL SUBMISSIONS ON BEHALF OF RANGITATA WATER LIMITED**

**Dated 2 May 2018**

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**MAY IT PLEASE THE PANEL:**

1. These submissions are presented on behalf of Rangitata Water Limited (**RWL**).  
RWL was a submitter to each of the two suites of applications lodged by Rangitata Diversion Race Management Limited (**RDRML**) in relation to the Klondyke Water Storage Project. Its first submission in particular raised wide-ranging issues with two key concerns relating to:
  - 1.1 The proposal to put water able to be taken under RDRML's existing consents into storage; and
  - 1.2 The proposal to take an additional 10m<sup>3</sup>/s of flood flow water.
2. The submission lodged in relation to the second suite of applications further addressed those two issues, inter alia.
3. For the purpose of this hearing, RWL's case is primarily focused on those two key issues. In support of its case, it will be calling evidence from two witnesses:
  - 3.1 Mr Gary Rooney, a director of Rooney Group Limited of which RWL is a subsidiary;
  - 3.2 Mr Ian McIndoe, Soil and Water Engineer with particular expertise in hydrology, groundwater and irrigation related work.
4. Other issues of concern to RWL discussed in Mr Rooney's evidence pertain to:
  - 4.1 The potential for increased level of sedimentation in the discharges into the Rangitata River and the potential for that to have adverse effects on RWL's down-stream intake infrastructure;
  - 4.2 The completeness of the dam break assessment and in particular, as to the potential effects of a cascade failure whereby a possible KSD failure scenario instigates a failure of one or more of the RWL storage dams;
  - 4.3 Whether the proposed conditions for public liability insurance are adequate to protect the interests of downstream landowners in the event of a dam breach that results in damage.

## Background

5. RDRML currently operates on a 'run of river' basis. It holds existing 'take and use' consents that authorise the take and use of water for hydroelectricity generation, commercial water supply, and for the irrigation of land in connection with farming.
6. Authorised uses are specified in the substantive grant of the take and use consent as opposed to being specified in conditions. None of their existing 'take and use' consents enable the water to be put into storage. The application for the flood flow take proposed (initially) that the water would be used for existing authorised uses.
7. In the second suite of applications lodged by RDRML, stand-alone 'use' consents have been sought to enable the use of existing and proposed new water for storage as an intermediary use to its ultimate use for either hydroelectricity or irrigation.

## RWL's interests in these proceedings

8. RWL own and operate a number of large dams downstream of the KSD on the true right (south) side of the Rangitata River. The command area comprises 30,000 hectares between the Rangitata and Orari Rivers. The scheme was originally consented in 2010 and commissioning commenced in late 2013.
9. The RWL scheme is unique in that it harvests almost entirely flood flows into Scheme storage and distributes the harvested water to individual on-farm storage ponds. The majority of RWL's consented water is from flood flows (above 110m<sup>3</sup>/s) in the Rangitata River.
10. Before the RWL Scheme was constructed, a hectare of land in the Scheme command area was worth \$10,000. Since the RWL Scheme has been constructed, a hectare of land irrigated by RWL is worth approximately between \$35,000 and \$55,000, depending on land use type and standard of infrastructure installed.
11. Taking account of the 'on-farm' investments in on-farm infrastructure by the RWL water users (primarily in the form of on-farm storage with a minimum capacity of 250m<sup>3</sup> per hectare watered) Mr Rooney estimates that the ball park investment made by RWL and its users in the Scheme command area is approximately \$340M.

12. After the initial grant of the RWL consents in 2010, RDRML was granted consent (CRC110225) in January 2011 to take and use RWL's consented water during RWL scheme construction. In 2013 RWL and RDRML entered into a reciprocal water share arrangement whereby each party would have the right to use the other's unused consented water. The agreement informed how the sharing regime would be jointly consented and managed on an ongoing basis. This included mandatory notification of when one party's water would be available to the other (**Water Exchange Agreement**).
13. The parties' respective rights under that Water Exchange Agreement were subsequently converted into statutory rights with the grant of the resource consents to each of the parties. Consent CRC134810 (water sharing consent) in particular enables RWL to take water when RDRML is not 'fully' exercising its consent (CRC011237) in the event of a shutdown of the power stations for maintenance or for irrigation (either because it is not required or in the event of race or intake maintenance).
14. The Water Exchange Agreement does not contemplate RDRML amending its run-of river scheme to a water storage scheme, and nor does it prevent either party from submitting in support or opposition to the others existing or future consents. CRC134810 was consented *before* RDRML lodged its applications to convert to storage.

#### **Issues to be determined by the Panel**

15. RWL's submissions raises the following issues:
  - 15.1 Whether a consent is required to enable the existing 'run of river' take and use consents to convert to a regime of consents that allow water to be put into storage as an 'intermediary' use to the ultimate authorised uses (hydro and irrigation/farming);
  - 15.2 If so, does the storage proposal give rise to the need for a reasonable use assessment in terms of Policy 4.53 and Schedule 10 of the Land and Water Regional Plan (**LWRP**)?

- 15.3 Has RDRML made out a need-based case for the grant of the additional 10m<sup>3</sup>/s of flood flow water in terms of Policy 4.53 and Schedule 10 LWRP and other LWRP policies?
- 15.4 Does RDRML's proposal to put all water taken under existing consents into storage 'derogate' from RWL's existing resource consent to use unused RDRML water, and if so, should the consent recognise RWL's priority to that water ahead of RDRML's right to put that water into storage?
- 15.5 Is there sufficient information on the potential effect on RWL's infrastructure in a dam breach scenario to enable the Panel to undertake a thorough s104 evaluation?
- 15.6 Is RWL's infrastructure potentially affected by an increase in the sediment discharged into the Rangitata River?

#### Relevant legal principles

16. The decision of the Court of Appeal in *Hampton v Canterbury Regional Council*<sup>1</sup> is an instructive decision in the context of the submissions by RWL to RDRML's applications. The appeal involved competing claims for water already allocated to a consent holder (Simon) for the irrigation of his land and the adjoining land of another person (Robert).
17. An issue to be decided by the Court related to the question of whether the Council had been correct in its processing of an application to transfer part of Robert's allocation to another property owned by a third party. The challenge raised was that the transfer was approved without any assessment of the reasonable needs of the transferee for that water, inter alia. A second question was whether a subsequent resource consent issued only to Robert for the take and use of water for the irrigation of his land was a derogation of the rights enjoyed by Simon.
18. On the first question, the Court emphasised that *any* RMA application<sup>2</sup> will have to be assessed in terms of any actual and potential effects on the environment and the Act's purpose of sustainable management in s5 will be an important

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<sup>1</sup> [2015] NZCA 509

<sup>2</sup> A transfer under s136(2)(b)(ii), a s127 application or a fresh consent

consideration. Notably, for present purposes, the Court also held that a proper consideration must also be given to the adverse effects on the environment including the impacts of consent on already established activities. This would include the effects arising from any proposal to cease or change the exercise of any permit under its current conditions.

19. The Court then referred to the relevance of policies in the planning instruments against which the particular applications will need to be considered. In the context of the case before it, specific reference was made to the issue of the 'need' for the water in terms of the area of land proposed for irrigation as a wholly relevant matter.
20. The Court drew attention to the allocation framework under the then proposed NRRP pursuant to which water allocation fell to be determined. Specific reference was made to the policies addressing 'reasonable and efficient use of water', and to the focus on the intended use of the water to justify the allocation sought to be taken.
21. For present purposes, the Court's observations on these matters serve to demonstrate the requirement that a specific use must be identified where any new take is sought, and for that to be assessed in terms of all relevant objectives and policies in order to meet the Act's sustainable management purpose.
22. Although the LWRP policies now in force are worded differently, the need to ensure that allocation of water is made in accordance with reasonable need, and that it is an efficient use of that water remain relevant themes, and accordingly the Court's observations are instructive in the current context.
23. The LWRP is not able to be applied in any meaningful way to RDRML's current proposal for the additional flood flow water given that no firm proposal (or site) for use of that water has been identified, least of all put to the Panel for an evaluation.
24. The Court also emphasises the importance of undertaking that thorough assessment where any change in the exercise of a permit is proposed from its "current conditions". This observation must also have relevance to RDRML's proposal to convert from a 'run of river' scheme to a 'take and use' into storage, in terms of the application of Policy 4.53 in an evaluation of the storage proposal.

25. In deciding the 'derogation' question, the Court referred to the decision of *Aoraki Water Trust v Meridian Energy Limited*.<sup>3</sup> The Court expressed reservation about the analogies drawn by the Court in the *Aoraki* case to profit a prendre and the principle of 'non-derogation from grant' as it did not agree that once a water permit is granted it creates a right to property. The Court emphasised that the right was simply the right to carry out the activity under the Act, being in that case (as here) the right to take and use water.

26. The Court did not disagree with the outcome in *Aoraki* but simply its reasoning. The Court acknowledged that the consents already held by Meridian (and some others) meant that the available resource was fully allocated, and it considered that there was sufficient authority in the statutory regime and the principles in *Fleetwing*<sup>4</sup> (the 'first in time principle') to reject Aoraki's central propositions.

27. Notably, the Court held that in enacting s122 RMA, the legislature's objective was plainly to allow a holder only those incidents of property that the Act itself conferred and then subject to the Act's conditions. It accepted that consents manifestly have a value, but the legislature did not seek to create a world in which consents could be freely traded independently of the site for which they were granted.

28. As to the 'derogation' issue raised by RWL, this issue should be considered in light of the 'first in time' principle in *Fleetwing* as applied in *Aoraki*; that is, where there is competition for the same resource (as here), the first permit in time of grant (RWL) also has priority (over RDRML's later (consent) applications) in terms of the right to use the resource in issue.

#### **Opposition to storage/derogation issue**

29. As a 'run of river' scheme (under current consents) RDRML cannot practically use its entire allocation of water as that is only enabled by the current proposal to put that water into storage. As Mr McIndoe notes, any maintenance carried out on the RDRML scheme intake requires the whole scheme to be turned off. If the water cannot physically be taken by RDRML, this water will remain in the river. It is then available to be taken by RWL under RDRML's current consented

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<sup>3</sup> [2005] 2 NZLR 268

<sup>4</sup> *Fleetwing Farms Ltd v Marlborough District Council* [1997] 3 NZLR 257

arrangements. However, with storage, water could still be run into the proposed storage (by RDRML) if maintenance was being carried out downstream of the storage pond and in the situation where Montalto is undergoing maintenance.

30. RWL has relied upon the rights enjoyed under that water sharing consent to achieve much improved reliability for the RWL scheme farmers. This is addressed in some detail in the evidence of both Mr McIndoe and Mr Rooney. Suffice to say, the use of that water has provided enormous benefit to RWL in some of the driest seasons on record where that additional water was critical to the success of those irrigation seasons in alleviating the severe drought conditions in the RWL scheme area.

31. Mr McIndoe is critical of RDRML's failure to adequately assess this impact on RWL by using historical RDRML 'take' data and 'consented' data and comparing the situation 'with and without' storage. Although he cannot quantify the potential effect on RWL, in his opinion there will be a difference in the amount of water taken under the storage proposal versus the current situation that could lead to an adverse effect on RWL in terms of a reduction in the availability of unused RDRML water.

#### **RDRML's response to the derogation issue**

32. On the derogation issue, RDRML's legal submissions acknowledge (implicitly) that it would be a derogation of rights enjoyed by RWL under that consent if RDRML were to enter into any other similar exchange agreement with a third party given that RWL will have a right to use RDRML's unused water until the consent's expiry in 2042.
33. The same concession is warranted (but not made by RDRML) in relation to this later proposal by RDRML to (effectively) take back the rights to the water (to be put into storage).
34. However, without much explanation at all as to how, Counsel submits that there is nothing to prevent RDRML from using its full allocation. However, this assertion ignores the inherent limits in a 'run of river' scheme due to the requirement to shut down for maintenance (for both the hydro and irrigation components). The ability to use the water allocated to RDRML has to be understood in the 'run of



river' context as that is the context (or environment) applying at the time CRC134810 was granted to RWL.

35. RDRML does not have any proprietary right to claim ownership of all water allocated to it where it is not practically able to be taken under current scheme conditions.
36. The implications of the water exchange arrangements are also referred to in the legal submissions of RDRML. Much store is placed on the fact that the Water Exchange Agreement can be terminated (by RDRML) on ten days' notice. However, and while that is true, RDRML cannot terminate RWL's rights under its water sharing consent.

#### **Relief sought by RWL on this issue**

37. As an outcome of its submission, RWL seeks that its priority to the unused RDRML water be protected. For the avoidance of doubt, RWL is not seeking any entitlement to the new 10m<sup>3</sup>/s of flood flow water (if granted). It has no basis for a claim on that (in terms of a priority/derogation argument).

#### **Is storage a 'use' of water for s14 purposes?**

38. In the s42A Report the Council planning officer has stated that the legal advice obtained by the Council is that storage is not a use of water in a s14 RMA context. On that basis, it is said that application CRC182630 cannot be granted. In opening legal submissions, RDRML's Counsel has adopted the Council position that no consent is required for water able to be taken under its existing consents to be taken into storage, although application CRC182670 remains in front of the Panel.
39. RWL does not agree with this unduly narrow view as to what is captured by reference to 'use' in a s14 context. The use of water for storage as an intermediary use for hydro or irrigation is no less a use of water in a s14 context than (say) the putting of water in bottles for the ultimate consumption by humans. This is a use of water and has been consented as such by the Council.
40. The storage or damming of water requires a change to RDRML's existing suite of consents (in this case to be sought by way of a fresh stand-alone consent), because storage is not expressly identified as a permissible 'use' in terms of its

existing consents or the regional plan; the consents being issued on the basis that they were to operate on a 'run of river' basis.

41. Section 14 restricts certain activities relating to water and 'use' is separately listed as one of those activities in addition to damming, inter alia. 'Use' is different from the activity of damming or diversion, nevertheless all of these activities require a resource consent if they contravene a national environmental standard or a regional rule.
42. This narrow approach to 'use' also overlooks that the LWRP specifically contains a policy (Policy 4.53) which treats storage on a conversion of a 'run of river' abstraction for irrigation to a 'take to storage' as an activity triggering a resource consent process. This policy states (relevantly):

Any change to a resource consent to abstract surface water for irrigation as a "run-of-river" take to a "take to storage", is subject to the following conditions to mitigate any adverse effects: ... ..
43. RWL's case is that the restricted discretionary rule (5.123) implements this policy where the proposal to convert to storage is sought as a standalone use consent to be exercised in conjunction with the existing take and use consent that authorises the ultimate use of the water for irrigation (inter alia) (as here).
44. Where an existing 'take and use' consent contains conditions that address the use component, conceivably the use to storage as an intermediary use could be achieved by way of a s127 amendment. In either event, Policy 4.53 is broad enough in its terms to capture a 'change' either by way of a fresh consent to be exercised in conjunction with an existing take and use, or by way of a formal s127 change to existing take and use conditions.
45. If ECan and RDRML are correct that no consent is required for the storage proposal, Policy 4.53 would be wholly redundant, if not ultra vires.
46. That 'jurisdictional' issue aside, a further key plank of RDRML's case is that the storage will enable water to be used by the irrigators within its scheme area more efficiently. However, Policy 4.53 contemplates that on a conversion for efficiency reasons, the consent authority will examine the volume of water able to be put into storage in light of its efficient use (for irrigation) in terms of the matters identified in that policy.

## **Opposition to the additional 10m<sup>3</sup>/s flood flow water**

47. RWL's opposition to the additional flood flow take and use is raised on a principled basis. Its case is simply that the need for it has not been made out in terms of relevant planning provisions. RDRML will gain rights to the additional 10m<sup>3</sup>/s flood flow despite there being no demonstrated need for that additional water in terms of the existing size of its scheme area. It will be a valuable tradeable asset in RDRML's hand if it has no (consented) need for the water in the context of its scheme's requirements, which in RWL's view is not an outcome contemplated by the legislature.
48. The additional water is (seemingly) justified by RDRML on the two alternative grounds that:
- 48.1 Farmers within the existing scheme area will be able to increase application rates (up to 0.60 L/s) in response to climate change; and/or
- 48.2 If not taken up by the farmers within the scheme area, it will be available for "other uses" (yet to be identified), possibly irrigation outside the existing scheme areas and/or other environmental enhancement initiatives (as yet only conceptual and unconsented).
49. RWL submits that the claimed benefits (increased reliability and efficiency) flow directly from the proposal to put water into storage without the additional water. This issue is discussed in the evidence of Mr McIndoe. He notes that introducing a large 53 million m<sup>3</sup> storage into the system near the top of the RDR will allow scheme managers to take water into storage that they would have otherwise not been able to take under current conditions.
50. In terms of the second justification, applications for fresh consents will have to be made for any expansion outside of the scheme area, and for any environmental enhancement initiatives. There is no guarantee that any such application would be successful. Moreover, in terms of the specific environmental enhancement initiatives expressly referred to (TSA and MAR), RDRML is not obliged to 'dedicate' any of the new water for these future uses if consent for this is granted.
51. Finally, on this issue, in RDRML's legal submissions it is also said that the current water exchange arrangements present no benefit to RDRML and the consent that it has obtained in light of those arrangements have not been implemented.

RDRML has stated that it intends to surrender that consent and seeks the additional flood flow take in substitution for that RWL water.

52. However, RDRML is not presently able to use RWL's spare water due to 'race' capacity constraints and due to the lack of storage. RWL anticipates that there will be some water available to RDRML under the water exchange in a 'with storage' scenario, because RWL's infrastructure is also constrained in its capacity (particularly its storage size) and does not take all the flood flow available to be taken.
53. RDRML's failure to fully exercise that consent is not due to the fact that there has never been any unused RWL water. RWL considers that the availability of its unused flood flow water in a "with storage" RDRML scenario further calls into question their need for the additional 10m<sup>3</sup>/s flood flow water.

#### **Dam break issue**

54. In its original submission RWL noted that the Dam Break assessment did not identify the RWL intake as a matter to be considered as an essential component of the RWL infrastructure or as an element of the RWL Scheme that could sustain damage in a dam failure situation. No predicted depth or speed of the flood flow had been provided. As such RWL has been unable to assess or consider the risk to its intake (if any) in the event a breach of the proposed facility occurred. This aspect of RWL's submission has been addressed in the review undertaken by Tonkin + Taylor (TT) for the Council as part of the s42A process.
55. As TT notes, in its submission RWL questioned the potential effects of a cascade failure whereby a possible KSD failure scenario instigates a failure of one or more of the RWL storage dams i.e. a domino effect. On this issue, TT referred to the NZSOLD Guidelines which recommend that when one or more dams are located downstream of the dam being analysed, the dam-break flood hazard assessment should consider the potential for a cascade failure where the failure of the upstream dam could cause failure of the downstream dams. TT queried RDRML about this matter from 30 June 2016.
56. In response to that approach, RDRML had commissioned a very 'high level' qualitative assessment of this matter as outlined in sections 6.4 and 7 of its dam break assessment. However, TT notes that the authors appeared to acknowledge

that there was still a need to undertake further modelling work and that has not yet been undertaken.

57. RWL is particularly concerned to read that TT agrees that this further work needed may lead to the result that the estimated zone of potential inundation, PAR, PLL and assessed damage may increase from the present estimates. TT states:

We consider that there is uncertainty with the applicant's estimate of PAR, PLL and damage level associated with the hypothetical dam break scenarios adopted by the applicant. It is very unlikely, for the proposed 53 Mm<sup>3</sup> storage, that refinement of these parameters will alter the proposed High PIC. However, refinement of these parameters is considered necessary to inform emergency action planning and, potentially, to better understand effects associated with the proposal.

58. RWL would go further than that as it considers that in light of that information vacuum, the dam proposal is not a 'consentable' proposition as potential effects are not able to be properly evaluated by the Panel. Although the probability of failure of the proposed dam is low, the impacts are catastrophic. In terms of RWL's interests, a failure could completely destroy the RWL scheme in its entirety, including much of the on-farm infrastructure owned by individual farmers. That destruction alone, would run into the hundreds of millions of dollars.
59. RDRML have placed undue reliance on the fact that the additional information would serve no purpose as in terms of the NZSOLD Guidelines; the dam already has the highest classification for Building Act purposes. However, that does not lead to the result that it is a consentable proposition in a resource consent context. The Panel has a discretion to decide that the remaining risk (and consequences) is unacceptable due to the catastrophic result in a breach situation. It may consider that these are not acceptable consequences to the community affected in a s5 RMA context, as they are not able to be completely avoided.

#### **Sediment issue**

60. I don't propose to spend time in any great detail on the sediment issue. As Mr Rooney notes, in the time available and due to RWL's inability to find an available expert, RWL has had to rely on the evidence of Mr Hicks filed by Central South Island Fish & Game. On this issue, RWL's interests are in common with that party in so far as RWL's concern is to ensure that its intake, fish screen and fish spawning

race in particular remain "fit for purpose" and are not affected by any increase in sediment concentrations arising from the proposed additional take.

61. RWL is particularly concerned to ensure that its maintenance costs do not increase as a consequence of RDRML's proposal. On that issue, it supports the recommendation in the evidence of Mr Hicks that a condition be imposed requiring monitoring and adaptive management.
62. RWL further seeks a consent mechanism whereby the applicant either has to cease its discharge, reduce to its existing levels or require a contribution to the maintenance of RWL's intake, fish screen and spawning race in the event that the monitoring discloses an adverse effect on RWL's infrastructure.

**P A Steven QC**

Counsel for Rangitata Water Limited

**Attachment: Possible Conditions**

## **Possible Conditions**

### **Water Storage**

1. The Consent Holder shall not take water into storage unless that water has first been offered to RWL under CRC134810 and in accordance with the conditions set out in this consent.
2. The Consent Holder shall before the first exercise of this consent install a separate measuring device to continuously measure the rate of take into storage to within an accuracy of plus or minus ten percent.
3. The rate of flow taken shall be recorded by electronic means, at no greater than fifteen-minute intervals, by a tamper-proof recording device such as a data logger. The recording device shall:
  - a. Be set to wrap the data from the measuring devices such that the oldest data will be automatically overwritten by the newest data; and
  - b. Store the entire year's data in each one 12-month period from 1 July to 30 June in the following year, which the consent holder shall then download and store in a commonly used format and provide, or make available, to the Canterbury Regional Council and RWL annually by 31 August and at any other time upon request; and
  - c. Shall be connected to a telemetry system which collects and stores all the data continuously; and
  - d. No data in the recording device shall be deliberately changed or deleted.
4. The measuring and recording devices shall be accessible by the Canterbury Regional Council at all times for inspection and/or data retrieval.

### **Total Take**

5. In the event that RDRML ceases taking (or is due to cease taking) all of the water allocated under the RDRML Consents, RDRML shall offer the water allocation to RWL. In either event:
  - a. When offered, the water will be available to RWL from 0600 (local time) the following day and for a period specified by RDRML ("Water Exchange Period").
  - b. RDRML will not recommence abstracting its consented water allocation until the Water Exchange Period has expired.

### **Partial Take**

6. In the event that RDRML ceases taking (or is due to cease taking) a partial amount of the water allocated under the RDRML Consents, RDRML shall, provided it is reasonably practicable to do so, offer the balance of the water allocation to RWL.

7. In that event:

- a. When offered, the water will be available to RWL from 0600 (local time) the following day and for a period specified by RDRML ("Water Exchange Period").
- b. RDRML will not recommence abstracting its consented water allocation until the Water Exchange Period has expired.

For the avoidance of doubt, this condition does not apply to any flood water taken by RDRML when the Rangitata River is flowing at greater than 142.6 m<sup>3</sup>/s under resource consent CRC170654 (flood flow water).

RWL notes that this qualification would only be required if the Panel grants consent for that aspect of RDRML's proposal.

RWL proposed amendments to the Applicants proposed insurance provisions are in [blue below](#):

	<b>PUBLIC LIABILITY INSURANCE</b>
21	The consent holder shall, at least three months prior to <del>construction the initial-filling</del> of the Dam under this resource consent, and at all times thereafter, have in place public liability insurance on terms <del>suitable approved</del> (in all respects) <del>to be by</del> the Canterbury Regional Council.
21A	<u>The consent holder shall not, at any time, fill, store or convey water through the Dam unless the public liability insurance required by Condition (21) is current and in force.</u>
22	The public liability insurance required by Condition (21) shall be sufficient to cover all reasonable insurable contingent risks associated with the construction and operation of the Dam, including offsite impacts to third party property, including but not limited to any assets, infrastructure or otherwise of the Canterbury Regional Council, Ashburton District Council, Transpower, Kiwirail, Rangitata Water Limited and the New Zealand Transport Authority, associated with any reasonable foreseeable failure of any part of the proposed dam, together with a reasonable provision for reconstruction and reinstatement; and the proceeds of the insurance policy shall be applied for those purposes only.
23	The public liability insurance required by condition (21) shall be on the following terms: <ol style="list-style-type: none"> <li>a. The Canterbury Regional Council <u>and Ashburton District Council and Rangitata Water Limited</u> shall be an additional insured party of the insurance policy with respect to liability arising out of the actions of the consent holder and able to enforce its terms;</li> <li>b. The Consent Holder shall ensure that the insurer is required to copy all relevant information regarding the insurance to the Canterbury Regional Council <u>and Ashburton District Council and Rangitata Water Limited</u>. This obligation includes an express term that the insurer must immediately notify the Canterbury Regional Council <u>and Ashburton District Council and Rangitata Water Limited</u> of any non- performance of the terms of insurance by the Consent Holder.</li> <li>c. In the event of non-performance of any term of the insurance, the Canterbury Regional Council or <u>Ashburton District Council</u> shall be given the opportunity to rectify the non-performance before the insurance is cancelled.</li> </ol>



24	The Consent Holder shall supply to Canterbury Regional Council: Attention Regional Leader Monitoring and Compliance, a Certificate of Currency within 10 working days after any premium payment is due.
25	The consent holder shall, prior to arranging the public liability insurance required by Condition (21), obtain advice from an appropriately qualified and experienced expert within the insurance industry (that is independent of the consent holder) to determine the limit of indemnity and coverage required to be provided for by the insurance policy. In providing that advice, that person is to ensure the purpose of the policy is met, which is to provide coverage and protection in the instance of a failure of the works authorised under this consent to third parties whose properties and possessions may be damaged.
25A	<u>The consent holder shall, prior to arranging the public liability insurance required by Condition (21) consult with the parties identified by the final dam breach as affected by the worst case failure scenario, as to the value of their investments for insurance purposes.</u>
26	The consent holder shall provide a copy of the advice required by condition (25) and (25A) to the Regional Leader - Monitoring and Compliance at the Canterbury Regional Council for review and comment. <u>The Canterbury Regional Council shall provide a copy of the advice required by condition (25) to, and consult with, Rangitata Water Limited prior to providing any comment or suggestions to the consent holder.</u> The consent holder shall, when establishing the public liability insurance required by condition (21), take account of, and provide for any comments and suggestions that are made by the Canterbury Regional Council.
27	<del>If the parties cannot agree on the terms of insurance cover, the coverage, or indemnity value, the dispute shall be referred to arbitration.</del>
28	The limits of indemnity and coverage and terms of the public liability insurance policy put in place as a requirement of condition (22) are to be reviewed, by the consent holder, at least once every three years. If that review results in amendment or alteration to the insurance cover, then the consent holder shall provide a copy of the review and recommendations to the Canterbury Regional Council, Attention: Regional Leader - Monitoring and Compliance for certification that the amendments still achieve the requirements of conditions (21), (22) and (23). <u>The Canterbury Regional Council shall consult with Rangitata Water Limited prior to certifying the amended or altered insurance policy.</u> Any amendments to the insurance cover may only occur after the consent holder has received the Regional Council's certification.