

## Memo

Date	9 August 2018
To	Orari-Temuka-Orari-Pareora Zone Committee
CC	
From	Craig Davison

**Subject: Potential Consenting Pathway for the Formation of Global Water User Groups in the Orari-Temuka-Orari-Pareora Zone**

### Purpose

The purpose of this paper is to:

- a. Provide the Orari-Temuka-Orari-Pareora (OTOP) Zone Committee (ZC) with an overview of Water User Groups (WUGs), and the current regulatory framework that enables their formation;
- b. Answer questions that the OTOP ZC has asked regarding consent holders that form a water user group being able to hold a “global” consent that enables members of WUGs to increase their instantaneous rates of take;
- c. Provide the OTOP ZC with a potential recommendation for a “global” water user group consenting pathway for inclusion in its Draft Zone Implementation Programme Addendum (dZIPA).

### Water Users Groups

The Land and Water Regional Plan (LWRP) defines a Water Users Group (WUG) as “*a group of users with existing authorisations<sup>1</sup> to take water, voluntarily grouped together to collectively manage the water resource allocated to them, primarily during times of restriction*”. When a group of abstractors operate as a WUG, each member is still bound to their respective consent conditions relating to maximum rates of take, annual volumes, and any applicable environmental flow and allocation regime, including partial restrictions. However, WUGs provide the flexibility for members to share their maximum, or partially reduced, instantaneous rates of take primarily during times of restriction.

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<sup>1</sup> In the context of the OTOP Zone, a water permit to take and use surface, or stream depleting groundwater

## Forming a Water Users Group

Although WUG's are considered a voluntary initiative, the policy framework of the LWRP requires consent holders to meet some prerequisites before a WUG can be formed. These relate to:

- All abstractions within a WUG being telemetered<sup>2</sup>;
- The total rate of take under the WUG not resulting in an exceedance of an applicable environmental flow and allocation regime<sup>3</sup>;
- All abstractions being located within the same catchment, or sub-catchment<sup>3</sup>;
- All water permits being subject to conditions that specify a maximum rate of take, daily volume, and an annual volume<sup>3</sup>;
- The water permits that will form the WUG being subject to the same minimum flow restriction conditions (i.e. minimum flows and partial restrictions)<sup>3</sup>.

Water permits that form a WUG must also all include a condition that stipulates the consent holder may form, or enter into, a WUG in consultation with the Environment Canterbury. An example of this condition is provided below:

*“When the Canterbury Regional Council, in consultation with a Water User Committee representing water users who are subject to the same restrictions, has determined a water sharing regime that restricts the taking of water to that available to those consent holders who are members of the same Water User Committee is above the minimum flow in clause (x<sup>4</sup>), then the taking of water in accordance with that determination shall be deemed to be in compliance with clause (xx<sup>5</sup>)”*

In the situation where a water permit does not have one or more of the conditions of consent specified above, the consent holder is required to seek a change of conditions under Section 127 of the Resource Management Act 1991 (RMA) before a WUG can be formed. Once these requirements have been fulfilled, consent holders are able to apply to become a registered WUG with Environment Canterbury.

In becoming a registered Water Users Group with Environment Canterbury, the proposed WUG must supply details of all consent holders and water permits that will form part of the WUG; evidence all takes are telemetered and have been exercised; and must supply a Flow Sharing Agreement detailing the roster arrangements of who will take water, and when, during times of low flow (Appendix One). Once these criteria have been satisfied, a WUG is able to be registered with Environment Canterbury and are managed and administered via the relevant zone delivery team.

Where existing members of a WUG want to renounce their membership, and/or if new consent holders want to join an existing WUG, an application is required to be made to Environment Canterbury that details the water permits that are being withdrawn and/or are joining the WUG, as

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<sup>2</sup> Policy 4.54

<sup>3</sup> Policy 4.67

<sup>4</sup> x represents the minimum flow at which abstraction must cease

<sup>5</sup> xx represents the partial restriction regime that must be adhered with to avoid the minimum flow being breached.

well as an updated Flow Sharing Agreement detailing the roster arrangements for water sharing as described above.

### **Consenting Pathway for Global Water Users Groups**

At a workshop on 2 July 2018, the OTOP ZC raised potential limitations of the current structure in which WUGs are administered and managed. Those limitations primarily related to the members of a WUG still being bound by the instantaneous rates of take specified on their respective consents even though, depending on the flow in a river and agreements reached with other members of a WUG, there may be the ability for members to increase their instantaneous rate of take above that specified on individual consents<sup>6</sup>. The ZC requested that staff investigate whether it is possible to include a “global” consenting pathway in the sub region plan change for the OTOP Zone for the formation of WUGs that enable members to increase their maximum instantaneous rates of take. Essentially pooling their existing consented instantaneous rates of take<sup>7</sup> for an overall maximum instantaneous rate of take to share between members.

To answer this question, it must first be noted that any such resource consent application made under a future bespoke rule for the OTOP zone would be required to comply with any applicable environmental flow and allocation regime, including partial restrictions. Where surface water bodies and/or catchments are deemed over-allocated, or fully allocated, the requirements of the National Policy Statement for Freshwater Management (NPSFM) and the objectives of the LWRP, would preclude a consenting pathway of this nature from being included in the plan change for the OTOP Zone.

The recommendation the ZC have made to date in the dZIPA for allocation is to cap abstraction at the current consented level. Therefore, the first requirement of establishing a consenting framework for global WUGs would be to ensure that it would not result in a net increase in the amount of water being abstracted under the global WUG consent, and the individual consents held by the members. To ensure sufficient certainty around this, the consenting pathway for a global WUG consent would require members to surrender their individual water permits prior to the global WUG consent being exercised. In other words, the members of the WUG would be joint consent holders and would operate under a single consent.

A global WUG consent would also remain subject to the same prerequisites that WUGs are required to comply with under the current regulatory regime. Those relate to the water permits that will be surrendered to form the WUG being subject to the same minimum flow and partial restriction regime; all abstractions being telemetered; all abstractions being located within the same catchment or sub-catchment, and the preparation of a Flow Sharing Agreement.

The global WUG consent would still be required to contain conditions stipulating a maximum rate of take, daily volume, and annual volumes specific to the areas of land being irrigated under the members

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<sup>6</sup> The instantaneous rate of take on an individual’s consent may still be limited by a daily, weekly, or consecutive day return period volume restrictions.

<sup>7</sup> As limited by any daily, weekly, or consecutive day return period volume restrictions.

existing water permits. While a global WUG consent could enable members to increase their rate of take, the amount of water applied to existing irrigation areas would still be required to comply with the reasonable use test<sup>8</sup> as set out in the LWRP to ensure water is being used efficiently.

The process for existing members joining the WUG would require a change of conditions to the global consent under Section 127 of the RMA. Where a member of the WUG wants to leave the WUG, and operate under an individual consent, a partial site to site transfer application would need to be made in accordance with Section 136 of the RMA. Both processes would incur costs, and may not offer immediate relief for consent holders and/or members who want to join or leave the WUG promptly due to the time constraints surrounding the preparation and processing of resource consent applications.

### **Potential Recommendation for Inclusion in the Orari-Temuka-Orari-Pareora Draft Zone Implementation Programme Addendum**

If the ZC are comfortable with the bounds described in this paper for a potential global water user group consenting pathway, the following recommendation could be included in its dZIPA as Recommendation 4.9.8: Global Water User Groups

#### **Suggested Recommendation 4.9.8**

*The formation of Global Water User Groups allowing members to increase their instantaneous rate of take above the rates specified on the members existing individual consents is enabled via a consenting pathway, provided there is no net increase in the total instantaneous rate of take and volume abstracted from the subject water body as authorised by the individual existing consents, and the take under the Global Water User Group consent complies with the applicable environmental flow and allocation regime, including partial restrictions.*

### **References**

Canterbury Land and Water Regional Plan (Environment Canterbury, 2017)

Resource Management Act 1991

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<sup>8</sup> Schedule 10

# WATER SHARING AGREEMENT

FOR OFFICE USE ONLY

  
  
  
  
  
  
  
  
  
  

Accepted: YES / NO

If you need help in filling-out this form, please contact our Customer Services staff on (03) 353-9007 or toll free 0800 EC INFO (0800 324 636). They will be able to provide some general assistance.

Email the completed application to: [ecinfo@ecan.govt.nz](mailto:ecinfo@ecan.govt.nz)  
Or send to Environment Canterbury, PO Box 345, Christchurch 8140

## Parties – collectively known as the consents holders

Name:		Consent Number:	
Name:		Consent Number:	
Name:		Consent Number:	
Name:		Consent Number:	
Name:		Consent Number:	
Name:		Consent Number:	
Name:		Consent Number:	
Name:		Consent Number:	
Name:		Consent Number:	
Name:		Consent Number:	
Name:		Consent Number:	
Name:		Consent Number:	

## Data Hosting Provider:

Contact person:	
Postal address:	
Phone (work):	
Email address:	
Company:	
Postcode:	
Cell phone:	

## Definitions

- (1) The following matters are defined for the purpose for this Agreement.
  - **(NameWUG)** – Name Water Users Group
  - **Day** – 24 hour period midnight to midnight.
  - **CLP** – Communications Liaison Person for the Consent Holders.
  - **Irrigation Season** – is between the months of September and May inclusive.
  - **Working Days** as per the definition in the RMA (1991).
  - **Exceeding an Order** – occurs when the water taken is above the threshold specified in the Resource Management (Measurement and Reporting of Water Takes) Regulations 2010.

## Background

- (2) The **(NameWUG)** Water User Group was formed after enquiries were made by consent holders to Environment Canterbury about forming a Water User Group. The aim was to assist the group to manage its water takes to minimise the time spent on restriction for each consent holder, and to more sustainably manage the water resource of the **(name)** drain/stream/river.

## Operational rules

**Delete the operational rules that do not apply to the Water Users Group and/or add rules specific to the Group in the text box.**

- (3) Order for water can be placed by typing in the amount requested on the *(Name Data Hosting Provider)* web site at a time; no earlier than *(enter number of days)* before, and no later than *(enter time)* on the day before; the consent holder takes water. Any order cannot be cancelled or modified after *(enter time)* on the day before the consent holder takes water.
- (4) If a consent holder has not ordered water by *(enter time)* they are NOT entitled to take any the next day.
- (5) Each consent holder shall use their best endeavours to restrict the amount ordered to what is required.
- (6) Multiple orders can be placed simultaneously.

Please enter operational procedures specific to the Group

## Calculating available water

**Delete the conditions to calculate available water that do not apply to the water users group and/or add conditions specific to the group in the text box.**

- (7) *(Name Data Hosting Provider)* will check flow restrictions on the Environment Canterbury website the day before and prior to enter time.
- (8) The criteria for calculating water *(Name(s) Consent Holder's)* are:  
*(Insert minimum flow condition(s) or combined volume etc and refer to Appendix # [consent condition/pro rata restriction graph etc]).*
- (9) The water allocation for each consent holder will be updated by *(enter time)* (or shortly afterwards) each day for the following day's water, on the *(Name Data Hosting Provider)* website.
- (10) Each consent holder shall comply with their own consent conditions with regard to telemetry.

(11)

Please enter the conditions to calculate the available water specific to the Group

**Notice of allocation**

**Delete the conditions that do not apply to the water users group and/or add condition specific to the group in the text box.**

(12) An email confirming each individual's allocation for the following day will be sent by \_\_\_\_\_ (*Name Data Hosting Provider*) automatically and shortly after \_\_\_\_\_ (*enter time*).

Please enter the notice of allocation specific to the Group

**No notice**

**Delete the conditions that do not apply to the water users group and/or add condition specific to the group in the text box.**

- (13) If for any reason the email is not received by the Consent Holders, they will first phone around to check if it is a problem with an individual email. If it is not then each consent holder must observe the conditions of their own resource consent.

Please enter the condition specific to the Group

**Breach of contract**

**Delete the conditions that do not apply to the water users group and/or add conditions specific to the group in the text box.**

- (14) If a consent holder's telemetry is not responsive for (enter number of days) sequential working days, the consent holder is unable to order water and must observe the conditions of their own consent, whilst the telemetry is not working.
- (15) The parties among themselves agree on the consequences for non-compliance.

Please enter the conditions specific to the Group



**Data provision**

**Delete the conditions that do not apply to the water users group and/or add conditions specific to the group in the text box.**

- (16) (Name Data Hosting Provider) will supply a summary report to Environment Canterbury at the end of each irrigation season highlighting the non-compliances including date and rate/volume exceeded for the Water User Group and each individual belonging to the Water User Group. The raw data for each take will be supplied as an Appendix of the Report.

Please enter the conditions specific to the Group

**Specified non-compliance**

- (17) The incidents that comprise non-compliance and dealt with by the CLP are:
- Breach of consent holder's own resource consent conditions in terms of rate of take.
  - Exceedance of the allocation of "x" Water.
  - Underutilisation by more than (enter number) % of the average flow rate of the amount ordered, for 2 consecutive non-restrictions days of the amount ordered for any given day.

The non-compliances described above (in 16 a) and 16 b)) have to exceed the 5% margin of error threshold specified in the Resource Management (Measurement and Reporting of Water Takes) Regulations 2010 before being considered a non-compliance.

**Consequences of specified non-compliance**

- (18) The consequences of non-compliance detailed in clause 14 are as follows:
- Any consent holder that has (enter number) exceedances in the irrigation season will be removed from the Water User Group.
  - CLP in conjunction with Environment Canterbury has the discretion to require the immediate removal of a consent holder from the group for a single incidence of a gross breach of any resource consent.
  - All of these instances of non-compliance will be dealt with by the CLP. However, in addition Environment Canterbury reserves its discretion to act on any serious non-compliance through its usual methods; warning, abatement notice, infringement or prosecution.
  - The Water User Group, any person involved in the management of the Water User Group, including the CLP, and each resource consent holder that is part of the Water User Group may be liable for the offence.

**Other non-compliance**

- (19) Any minor non-compliance that does not come within clause 15 will be dealt with at the discretion of the CLP or Environment Canterbury.
- (20) Environment Canterbury will reserve its discretion to act on any other non-compliance through its usual methods; warning, abatement notice, infringement or prosecution.

**Identification and reporting of breaches**

- (21) Any breach will be reported by (Name Data Hosting Provider) to the CLP, and (Name, RMA Monitoring & Compliance Officer at Environment Canterbury) within two working days of the incident.
- (22) The CLP will inform by telephone and email any consent holder who breaches the contract, of the sanctions being placed as per clause 15.

**Monitoring charges**

- (23) The Water User Group monitoring and administration charges will be paid under Environment Canterbury’s Terms of Trade. All accounts will be paid by 20th of the following month. Should the account remain unpaid within 30 days after the due date, Environment Canterbury reserves the right to refer the account onto a collection agency and any costs incurred in doing this will be passed onto the CLP as the account holder.

**General**

- (24) Nominated consent holder for CLP is (Name consent holder). In lieu of (Name CLP) the alternate person is (Name consent holder).
- (25) There is to be no financial exchange for water.
- (26) Any party may assign their interest under this contract to the transferee of their resource consent and shall give written notice to the CLP signed by the transferor and the transferee.
- (27) If a party gives (enter number) months written notice of its intention to withdraw from this agreement, any obligations and liabilities incurred up to the date of the notice will remain valid.

Name of <b>consent holder</b>	<b>Consent holder</b> signature	Name of <b>witness</b>	<b>Witness</b> signature	Position
Name of <b>consent holder</b>	<b>Consent holder</b> signature	Name of <b>witness</b>	<b>Witness</b> signature	Position
Name of <b>consent holder</b>	<b>Consent holder</b> signature	Name of <b>witness</b>	<b>Witness</b> signature	Position
Name of <b>consent holder</b>	<b>Consent holder</b> signature	Name of <b>witness</b>	<b>Witness</b> signature	Position
Name of <b>consent holder</b>	<b>Consent holder</b> signature	Name of <b>witness</b>	<b>Witness</b> signature	Position
Name of <b>data hosting provider</b>	<b>Data hosting provider</b> signature	Name of <b>witness</b>	<b>Witness</b> signature	Position

**Appendix 1**

Attached consent condition/pro rata restriction graph etc here