

Memo

Date	9/11/2018	Revision	(r1)
To	Waimakariri Water Zone Committee		
CC	Technical Team, Planning Team		
From	Mark Megaughin and Alastair Picken		

Surface water quantity recommendations review | Supporting material

Provided below is information which support the main recommendations table. The relevant sections of this memo should be read in conjunction with the cross-references provided in the recommendations table.

The intent of this memo is to help the committee navigate through the available information such that a consensus recommendation can be reached for inclusion in the final ZIPA.

Section 1 – Recovery of over-allocation

Summary

Recommendation 4.1 states that in over-allocated SWAZ Environment Canterbury should recover at least 20 % of the total allocated water.

Grant Edge considered that this position does not go far enough. Other feedback supported this figure, and the intent of recovering over-allocation. Staff are concerned that the 20 % figure creates uncertainty in what will be achieved by the recommendation.

Table 1 below shows the efficacy of a 20 % reduction, against the currently proposed allocation limits.

Way forward

A discussion is required to determine the committee's preferred way forward on this matter.

We believe that the 20 % is a distracting feature of this recommendation.

We suggest that the reference to 20 % is removed to simplify the recommendation. The intent would still be to reduce and where possible eliminate over-allocation by 2032. We also believe that this addresses Grant's concern that 20% is insufficient, as the recommendation would signal that attempts will be made to recover all over-allocation, regardless of its quantum.

Table 1 – Efficacy of 20 % recovery in overallocated catchments

River	Current allocated water (L/s)	Recommended allocation limit (L/s)	Allocation achieved by 20% reduction (L/s)	Reduction required to meet limit
Ashley River / Rakahuri (A)	1,095	700	876	36 %
Saltwater Creek	516	417	413	19 %
Waikuku Stream	983	831	786	15 %
Taranaki Creek	275	149	220	54 %
Cust River	366	290	293	21 %
Cust Main Drain	804	690	643	14 %

Section 2 – Cap at current approach to allocation

Summary

Recommendation 4.7 states that in under-allocated catchments Environment Canterbury should cap the allocation at the currently allocated amount, so no further surface water can be allocated. Grant Edge considered that this position does not go far enough.

The Zone Committee recognised the contribution allocation makes to the health of instream ecosystems and also the negative impact a large allocation can have on reliability.

The basic philosophy followed was to cap at current where an allocation block was at or below its current limit, and to recover over-allocation where it exists within a defined timeframe.

This approach will prevent further degradation of waterways through increased uptake of water and will prevent further reductions in reliability. It also avoids the potentially significant economic effects of requiring water users to surrender all or part of their consented rate within the 10 year life of the plan.

The ecological recommendation is based on a rough rule of thumb approach only and must be applied with caution. Other important parts of a healthy ecosystem include lower temperatures, higher dissolved oxygen levels, lower sediment inputs, lower concentrations of runoff contaminants and increased habitat availability through riparian planting and channel modifications. All of these things are recommended in the ZIPA and will contribute

to values. Table 2 shows the committee’s allocation limit recommendation (green box) as a percentage of the ecological allocation recommendation (based on a rule of thumb).

Table 2 –dZIPA recommendations as percentage of ecological allocation recommendation

River	Current allocated water (L/s)	Current allocation limit (L/s)	Ecological recommendation (L/s)	dZIPA recommendation as % of ecological
Cam River/Ruataniwha	155	700	311	50 %
North Brook	269	200	183	147%
Middle Brook	29	30	8	375%
South Brook	81	100	47	172 %
Cust River	427	290	54	537 % (Over-allocated)
Cust Main Drain	876	690	90	766% (Over-allocated)
No.7 Drain	69	130	44	156 L/s
Ohoka Stream	458	500	199	230 %
Silverstream	449	1,000	479	94 %
Courtenay Stream	134	140	108	124 %
Greigs Drain	24	70	83	29 %

Note: Green shading denotes the recommendation the committee selected for their recommendation

Way forward

The Zone committee have a wide range of ‘levers’ which they can pull to achieve outcomes. In the case of allocation it was decided to halt further uptake of the allocation, rather than suffer the economic implications of reducing allocation. This does not mean that the committee are doing nothing however, as the recommendations for higher minimum flows and partial restrictions will, along with nitrate reductions and riparian setbacks/instream works recommendations, contribute towards positive outcomes for the waterways.

A discussion is required as to whether the Zone Committee want to change the cap at current approach.

Section 3 – Water Allocation for Mahinga Kai Purposes

Summary

Recommendation 4.15 and 4.17 state that Environment Canterbury should designate an allocation for mahinga kai enhancement purposes equal to 50% of the allocation available at plan notification.

Purpose

To provide committee members with information on what mahinga kai enhancement means and the precedent for this in the Waitaki Catchment Water Allocation Regional Plan (Waitaki Catchment Plan).

Background

The draft ZIPA recommends that Environment Canterbury designate an allocation for mahinga kai enhancement purposes from the Ashley River/Rakahuri “B” and “C” allocation blocks and Cam River/Ruataniwha “A” allocation block. The amount that would be allocated is 50% of the currently available water (Recommendations 4.15 and 4.17 respectively).

The recommendations stem from the cultural values (COMAR) report for the zone which includes a recommendation for a cultural allocation from all waterways (COMAR, p.73):

Allocation of water for cultural purposes is to be put in place for all streams where an allocation regime exists. In the first instance an allocation is to be made for the Rakahuri and the Cam.

The Zone Committee supported the allocation of water for mahinga kai enhancement from the Ashley River and Cam Rivers is on the basis that these rivers are of high cultural importance and are under-allocated against current plan limits. However, some committee members requested further clarification on what this means.

Submissions on draft ZIPA

One person provided feedback on the proposal to allocate water from the Cam River for cultural values. They are opposed to the concept primarily because of the potential to impact on the reliability of their water take and consider that effect is too large in proportion to the gain to iwi.

Instead, the submitter advocates investigating a proposal for Waimakariri Irrigation Limited to augment lowland streams, including Southbrook and Cam River, as part of a "farmer goodwill" and community engagement process. They highlight that infrastructure is in place to augment Southbrook and Cam River without major capital cost.

Waitaki Catchment Water Allocation Regional Plan

Plan Change 3 to the Waitaki Catchment Plan sets a precedent for allocating water for cultural purposes. It reserves water for projects, either within or outside the Waitaki catchment, that enhance mahinga kai and align with Ngāi Tahu values. The operative plan does this by:

- Including a definition of mahinga kai
- Policy that adds the enhancement of mahinga kai as an activity for which an allocation is established (Policy 12)
- Reserving an allocation rate of 10 m³/s for mahinga kai enhancement within the available allocation (i.e. no additional water)
- A (complex) flow regime that includes flows at which taking water for mahinga kai enhancement and other abstractions must stop (called cessation flows in the plan)
- Requiring a consent application for any proposal (no applications lodged to date)
- Policy that requires the effects on tāngata whenua values to be considered thereby reinforcing the need for applicants to consult with rūnanga before an application is made (Policy 11)

Why did Plan Change 3 propose an allocation for mahinga kai enhancement?

Providing for mahinga kai is a key outcome in the Lower Waitaki South Coastal Canterbury ZIP. There was a risk that the remaining water within the Lower Waitaki River would be allocated to other uses prior to any proposal for mahinga kai enhancement unless water was reserved specifically for that purpose.

The intention is that the water is used for projects that enhance mahinga kai values held by tāngata whenua, both within and beyond the Waitaki catchment and includes augmentation of Wainono Lagoon.

Can water be allocated for mahinga kai enhancement in a plan?

Yes. The RMA expressly allows the allocation of water among competing types of activities. The hearing panel determined that enhancement of mahinga kai is an “activity” and one that can be provided for in a regional plan.

What does mahinga kai enhancement include?

Mahinga kai defined in section 10 of the Waitaki Catchment Plan as “*Food and other resources, the gathering of those resources and the areas that they are sourced from*”.

What Mahinga kai enhancement includes appears deliberately unconstrained so that how the water is used for can be assessed on a case by case basis. In the evidence presented to the hearing Ngāi Tahu was of the view it is inappropriate to restrict the meaning of mahinga kai or limit how the mahinga kai allocation can or should be used. Evidence presented highlights

changes in land use that have resulted in habitat and species loss as well as laws that dictate “where, when and how” what is fished. Mahinga kai practices have also adapted over time with many artificial drains, canals and storage ponds becoming substitute mahinga kai places. Freshwater is highlighted as being crucial to the maintenance of mahinga kai and cultural materials can be enhanced by artificial intervention.

The panel were persuaded that the practice of mahinga kai evolves and adapts over time to meet changes in the environment and legal access to resources and adoption of new technology including commercial activity, and to restrict this would be unreasonable.

Examples of mahinga kai enhancement activities mentioned in evidence include:

- Allowing water to remain instream where this contributes to mahinga kai and environmental enhancement and not used for extraction downstream.
- Reinstating or creating wetlands
- Reintroducing, relocating or farming species
- Creating substitute habitats using artificial waterways

The importance of “cultural context” was stressed with an example that a farmer may create a wetland, but unless the development was within a cultural context it may never be mahinga kai.

Who can apply for a mahinga kai allocation?

The hearing decision confirms that the RMA does not authorise a regional council to include provisions in a plan that would set aside allocation for exclusive use by a person or group of people. The panel noted this would be akin to granting resource consent or transferring responsibility for managing water. Under the RMA anyone can apply for a resource consent irrespective ownership or relationship (cultural or otherwise).

However, policies and rules in the Waitaki Allocation Plan require applicants to show that mahinga kai is really going to be enhanced and accurately reflect the values of rūnanga in any proposal.

The panel notes there is nothing to prevent policies or rules that give effect specifically to cultural aspects of Part 2 of the RMA¹.

Is the concept transferrable to the Waimakariri zone?

Yes. While the Ashley/Rakahuri and Cam/Ruataniwha rivers have different flow characteristics to the Lower Waitaki (which is a highly modified river), like the Waitaki both of these rivers are significant culturally and have allocation available. This presents the Zone Committee with an opportunity to reserve an allocation for mahinga kai purposes.

¹ Notably s6(e) the relationship of Maori and their culture and traditions within their ancestral lands, water, sites, waahi tapu, and other taonga and s7(a) Kaitiakitanga.

The Committee may wish to recommend that Environment Canterbury works with Ngāi Tahu and Ngāi Tūāhuriri rūnanga to develop clear policy and parameters around the allocation for mahinga kai enhancement when drafting the Waimakariri plan change. This could include for example being more specific about what activities mahinga kai enhancement includes and the area where the water is to be used.

Recommendation

1. That the zone committee retains its recommendations 4.15 and 4.17
2. That Environment Canterbury consults with Ngāi Tahu and Ngāi Tūāhuriri to develop policy and parameters around the allocation of water for mahinga kai enhancement purposes.

References

1. Waitaki Catchment Water Allocation Regional Plan - Proposed Plan Change 3 and Section 32 Assessment (see sections 2.3 and 5.6)
2. Report and recommendations of the hearing commissioners on proposed Plan Change 3 to the Waitaki Catchment Water Allocation Regional Plan (13 June 2016) (see paras [493] to [553] and [588] to [603])
3. Waitaki Catchment Water Allocation Regional Plan (Incorporating Changes 1, 2, and 3)

The above documents can be found here: <https://ecan.govt.nz/your-region/plans-strategies-and-bylaws/waitaki-catchment-plan/>

Section 4 – Implementation date change

Summary

Rec 4.16 and Rec 4.18 recommend that the changes in minimum flow and allocation become active from the date the plan becomes operative. Staff would like the committee to reflect on the consequences of this. We are concerned that there could be a disproportionate impact on a small group of water users whose consents expire before the early 2030's. By way of example: Most consents expire in the early to mid 2030's. If the committee's recommendations come into effect from the operative date of the plan (2021 for example) then those consents which expire in the mid 2020's will be required to comply with the higher minimum flows. This means that they will be at a disadvantage to their neighbours, potentially for a significant period.

One of the important mitigations for higher minimum flows which the committee are recommending is the formation of water user groups. However, to be part of such a group all parties need to be on the same minimum flow. Those with a higher minimum flow would therefore be effectively excluded from the mitigation measures proposed.

Section 5 – Cust water users feedback

Summary

The draft ZIPA did not provide the full range of allocation and minimum flow recommendations for Cust River. The committee have previously been provided revised information upon which to base their recommendations. The committee's revised recommendations were provided to the Cust River water users such that they could provide comment. The groups comments are provided at the back of this memo.

The committee should consider this feedback when making their final recommendations.

Section 6 – Updated recommendation tables

Summary

Recommendations 4.16 and 4.18 provide the details of the recommended minimum flow and allocation regime.

Key discussion points, if not already agreed above, are:

1. Representation of committee's intent on future goals
2. Minimum flow recommendations which have large economic impact relative to other recommendations
3. B blocks on Spring-fed streams
4. Implementation date for regimes
5. Cust River A block minimum flow and allocation limit
6. Cust River B block minimum flow and allocation limit