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To: [Plan Hearings](#)
Cc: [Glenire Farm](#); ["Andrew Mockford"](#); [Julia Crossman](#); [Greg Ryder](#); [Richard Measures](#); [Keri Johnston](#); [Tim Ensor](#)
Subject: Plan Change 7: Opuha Water Limited - Evidence
Date: Friday, 17 July 2020 5:22:45 pm
Attachments: [Evidence in chief of Ryan O'Sullivan \(OWL\) 17.7.20.pdf](#)
[Evidence in Chief of Andrew Mockford \(OWL\) 17.7.20.pdf](#)
[Evidence in Chief of Julia Crossman \(OWL\) 17.7.20.pdf](#)
[Quick reference guide \(Annexure A to Evidence in Chief of Julia Crossman \(OWL\)\).pdf](#)
[Evidence in Chief of Richard Measures \(OWL\) 17.7.20.pdf](#)
[Evidence in Chief of Keri Johnston \(OWL\) 17.7.20.pdf](#)
[Evidence in Chief of Dr Gregory Ryder \(AMWG & OWL\) 17.7.20.pdf](#)
[Evidence in Chief of Tim Ensor \(OWL\) 17.7.20.pdf](#)

Dear Tavisha

We act for Opuha Water Limited (**OWL**), submitter no. PC7-381.

We **attach** for filing, in relation to the above matter, statements of evidence in chief of the following witnesses on behalf of OWL:

1. Ryan O'Sullivan (OWL Board Chair)
2. Andrew Mockford (OWL CEO)
3. Julia Crossman (OWL Environmental Manager)
4. Dr Greg Ryder (Lake Opuha - water quality) – note this statement of evidence addresses matters also pertaining to the submissions of the Adaptive Management Working Group (AMWG) and has also been filed with other AMWG evidence today.
5. Richard Measures (water quality)
6. Keri Johnston (hydrology/allocation)
7. Tim Ensor (planning)

We note that:

- Annexure A to the evidence of Ms Crossman comprises a "Quick Reference Guide" providing a location map and key information regarding the Opuha Scheme. This is also attached as a separate document for the assistance of the Hearings Commissioners.
- a flyover video of the Opihi catchment accompanies Mr Mockford's evidence. A link is provided within Mr Mockford's evidence by which the video can be accessed (<https://youtu.be/Kp6luxCqWsk>). The video is also downloadable in mp3 format from the following link, which can then be shared/posted (e.g. on ECan's PC7 webpage):
<https://we.tl/t-YgyExCMmGF>

Kind regards

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**BEFORE INDEPENDANT HEARING COMMISSIONERS
APPOINTED BY THE CANTERBURY REGIONAL COUNCIL**

UNDER: the Resource Management Act 1991

IN THE MATTER OF: Proposed Plan Change 7 to the
Canterbury Land and Water Regional
Plan – Section 14: Orari-Temuka-Opihi-
Pareora

**STATEMENT OF EVIDENCE IN CHIEF OF TIMOTHY ALASTAIR DEANS ENSOR
ON BEHALF OF
OPUHA WATER LIMITED (SUBMITTER NO. PC7-381)**

Dated: 17 July 2020

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1. INTRODUCTION

- 1.1 My full name is Timothy Alastair Deans Ensor. I am currently a Principal Planner with Tonkin & Taylor Limited having previously been employed by AECOM New Zealand Limited and its predecessor, URS New Zealand Limited. I have been a consultant planner for approximately 13 years. Prior to consulting I was employed by Environment Canterbury for approximately two and a half years as a consents planner.

Qualifications and experience

- 1.2 I hold a Bachelor of Science and a Bachelor of Arts with honours majoring in Geography, obtained from the University of Canterbury in 2002. In 2012 I graduated with a Post Graduate Diploma in Planning from Massey University. I am an associate member of the New Zealand Planning Institute.
- 1.3 I have worked throughout the South Island assisting private and public sector clients with obtaining statutory approvals, undertaking environmental impact assessment and policy analysis for projects, and providing expert planning evidence at plan and consent hearings. These clients include the Department of Conservation, the NZ Transport Agency, Environment Canterbury, the Canterbury Aggregate Producers Group, Fulton Hogan Limited and ANZCO Foods Limited.

Background

- 1.4 I am familiar with the provisions of PC7 to which these proceedings relate. I assisted Opuha Water Limited (OWL) through the pre-notification consultation period and assisted with the preparation of submissions.
- 1.5 In preparing my evidence, I have reviewed the relevant parts of the section 32 Report and the section 42A Report. In preparing my evidence, I have also reviewed:
- (a) Evidence of Ms Keri Johnston on behalf of OWL
 - (b) Evidence of Ms Julia Crossman on behalf of OWL
 - (c) Evidence of Ms Keri Johnston on behalf of the Opihi Flow and Allocation Working Party (FAWP)

(d) Evidence of Dr Greg Ryder on behalf of the FAWP

Code of conduct

1.6 I confirm that I have read the Code of Conduct for expert witnesses contained in the Environment Court's Practice Note as updated in 2014. My evidence has been prepared in compliance with that Code. In particular, unless I state otherwise, this evidence is within my area of expertise and I have not omitted to consider material facts known to me that might alter or detract from the opinions I express.

2. SCOPE OF EVIDENCE

2.1 My evidence discusses provisions in PC7 that relate to the operational aspects of PC7 as they affect OWL and its shareholders. Evidence focusses on definitions for the various water permit types, the way PC7 recognises water allocation blocks, the transfer of water permits within the Opihi Freshwater Management Unit (FMU) and rules relating to the take and use of water.

2.2 My evidence is structured as follows:

- (a) Statutory context
- (b) Definitions
- (c) FMU Allocation
- (d) Transfer of water
- (e) Take and use of surface water
- (f) Other policies and rules
- (g) Conclusion

3. EXECUTIVE SUMMARY

3.1 The definitions for the various water permit types in PC7 are critical to setting the framework for water management within the Opihi FMU. Shareholders of OWL, along with consent holders who have another entitlement or agreement

with OWL to take and use water are entitled to the priority to water afforded to 'affiliated' water permits. Amendments are made to these definitions in order to recognise this priority and so as to form the basis for the allocation and flow regimes for the FMU.

3.2 Under PC7 allocation blocks were specified for the various catchments within the Opihi FMU. There are several advantages associated with also specifying an FMU wide allocation limit.

- (a) First it makes it clear, in one location in the plan what the allocation blocks are for the FMU.
- (b) Secondly, the FMU allocation limit would provide a consenting pathway for existing takes from surface water bodies not currently included as part of the allocation regime to be replaced on expiry that are otherwise classified as a prohibited activity.
- (c) Thirdly, subject to amendments to PC7 Rule 14.5.12 addressing the transfer of water permits the FMU allocation block assists in managing the transfer of affiliated water permits from tributary catchments to the Opihi mainstem.
- (d) Finally, an FMU allocation block assists in providing for abstraction from Lake Opuha directly.

3.3 PC7 does not differentiate between affiliated and non-affiliated water permits in the context of site to site water transfers. This results in transferees having to surrender water in order to assist in reducing overallocation. This rule does not recognise the role of Opuha Dam in supplying the water requirements for these abstractors. The PC7 transfer rules also prohibit the transfer of water from a tributary to mainstem. The proposed FMU allocation limit will assist in providing for these transfers without contributing to over allocation.

3.4 OWL also made several submissions on the rules controlling the take and use of surface water. Particularly the submission sought the recognition of lake levels in the flow and allocation regime, provision of takes from Lake Opuha and amendments to matters of discretion so as to recognise the role of Opuha Dam in providing water for permit holders (for example on the renewal of resource consent). These amendments are supported as they provide a more complete

picture of how water permits operate within the FMU and avoid unwarranted restrictions and associated economic costs without providing correlating environmental benefits.

- 3.5 Overall, the amendments proposed to PC7 by OWL in its submission contribute to a more effective and efficient plan by limiting costs associated with regime restrictions that do not lead to environmental, social or cultural benefits of any significance. My opinion is that PC7 incorporating the OWL proposed amendments provide the most appropriate methods to achieve the relevant objectives and therefore the purpose of the RMA.
- 3.6 The changes to PC7 addressed in my evidence are set out in **Attachment B** to this evidence.

4. STATUTORY CONTEXT

- 4.1 This section highlights the statutory context for my evidence. The objectives and policies referred to are contained in **Attachment A** to this evidence.

National policy

- 4.2 PC7 must give effect to any relevant National Policy Standard. The National Policy Standard for Freshwater Management 2014 (NPSFW) contains national level objectives and policies and “*provides a National Objectives Framework to assist regional councils and communities to more consistently and transparently plan for freshwater objectives*”.¹ Consequently the NPSFW contains national level objectives for water quantity and quality, and policies addressing the same to assist in achieving these objectives through limit setting and other processes.
- 4.3 Key to setting flow and allocation regimes in the Opihi FMU are Objective AA1 and Policy AA1. Objective AA1 is: “*To consider and recognise Te Mana o te Wai in the management of fresh water.*” Te Mana o te Wai was the subject of some discussion in the s42A report and I have addressed this in my evidence on behalf of the Adaptive Management Working Group.
- 4.4 Objectives A1, A2, A3 and A4 provide national level direction in relation to water quality. These policies are relevant to this evidence in so far as they relate to

¹ NPSFW, page 4
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achieving water quality outcomes through the development and implementation of flow and allocation regimes (as opposed to land use and discharge related limit setting). Objectives A1, A2, A3 and A4 carry several key themes that will be picked up in this evidence: safeguarding the life-supporting capacity of ecosystems and ecosystem processes of fresh water; and enabling communities to provide for their economic well-being in sustainably managing freshwater quality within limits.

- 4.5 Objective B1, B2, B3, B4 and B5 of the NPSFW and associated policies provide direction for PC7 in relation to water quantity. These objectives also carry the key themes identified above and provide additional specific directives of particular relevance to this evidence “to avoid any further overallocation and phase out existing overallocation”.
- 4.6 Of particular relevance to the Opihi FMU given the presence of the Opuha Dam, is Objective B5 which is: “*To enable communities to provide for their economic well-being, including productive economic opportunities, in sustainably managing fresh water quantity, within limits.*” The presence of the dam means that the starting point for certain decisions is not the same as for an FMU without this existing infrastructure.

Canterbury objectives

- 4.7 The NPSFW must be given effect to by the LWRP and therefore PC7. The requirement within the NPSFW to safeguard the life-supporting capacity of ecosystems and ecosystem processes of fresh water is reflected strongly in the LWRP through Objective 3.8 and 3.16. These objectives are also complimented by Objective 3.17 requiring significant indigenous biodiversity values to be protected and Objective 3.19 requiring the protection of the natural character of fresh water bodies.
- 4.8 Objectives 3.7 and 3.12 of the LWRP requires an explicit recognition of the competing interests for fresh water and that regard needs to be had to community outcomes when managing fresh water. The Canterbury Water Management Strategy and the Zone Implementation Programme (ZIP) process is a key element for achieving these objectives.

- 4.9 Objective B5 of the NPSFW is given effect to through Objective 3.11 and 3.12 of the LWRP. As discussed above in relation to Objective B5, the presence of Opuha Dam has a large influence on the approach taken to achieving Objectives 3.11 and 3.12.

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- 4.10 PC7 contains no new objectives, and the objectives in the LWRP are unaltered by PC7. Therefore, for the purposes of S32(1)(b) of the RMA, the objectives of the LWRP are the relevant objectives.
- 4.11 PC7 proposes Policy 14.4.35. This is particularly directive and almost plays the role of an objective in the context of flow and allocation regimes for the Opihi FMU. Policy 14.4.35 is discussed in more detail later but provides a lens through which to view the Objectives of the LWRP in the context of PC7.

5. DEFINITIONS

- 5.1 The OWL submission sought amendments to the definitions of: AA Permit, AN Permit, BA Permit and BN Permit so as to recognise the differentiators between permits as follows:

“...where the consent holder ~~holds shares in~~ has an entitlement to be supplied water by Opuha Water Limited by way of shares, agreements or other entitlements.”

- 5.2 If a consent holder has another entitlement or agreement with OWL to take and use water, these consent holders are also entitled to the same priority (within the relevant allocation block) as a shareholder. This is an important component of the allocation regime for the Opihi FMU and has historically been reflected through conditions of resource consent on water permits affiliated to OWL. Ms Julia Crossman’s evidence on behalf of OWL describes situations where this occurs.
- 5.3 The proposed amendment to the definitions has been rejected by the s42A officer because it has the *“potential to result in over allocation of water”*².

² S42A Report Paragraph 9.41
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- 5.4 As discussed in the evidence of Ms Keri Johnston, the allocation blocks for PC7 have been determined based on consented volumes within each catchment. The consented volumes for each catchment are greater than the sum of the allocation currently associated with shares, entitlements, and water supply agreements³. Water currently taken and used under affiliated water permits is done within the consented volume, and therefore within the allocation limit for the catchment and the Opihi FMU generally. If additional water is taken and used under shares, entitlements, and water supply agreements in the future, overallocation will continue to be avoided provided the consented limits are complied with.
- 5.5 On this basis, my opinion is the amendments proposed by OWL will not lead to further overallocation and therefore will not be contrary to Objective B2 of the NPSFW. The amendments will not require the recalculation of the allocation blocks within the Opihi FMU and in my view are appropriate as they better reflect the reality of the water permit structure in the Opihi FMU.
- 5.6 The OWL submission also sought that all references in PC7 to the term “KIL Permit” are replaced with “Kakahu Permit”. As highlighted in the OWL submission, KIL refers to an irrigation company called Kakahu Irrigation Limited which no longer exists. The submission then suggests it is more appropriate to use the term Kakahu Permit to reflect this. In my opinion this change in reference is a practical change that removes continued reference to an entity that does not exist, and helps to clarify the water permit structure in the OTOP sub-regional chapter.

6. FMU ALLOCATION

- 6.1 Table 14(u) of PC7 contains the allocation block for AN permits in the Opihi FMU. This allocation block has been set through totalling the allocation across all AN permits. The OWL submission raised concern that Table 14(u) did not reflect the correct volume of the allocation block. The s42A report has recommended that Table 14(u) is amended to remove the allocation block and just communicate the minimum flow restrictions for AN permits. In order to communicate the allocation blocks for the Opihi FMU, the s42A officer has

³ The details surrounding OWL affiliation, shareholding and water entitlements is discussed in the evidence of Ms Julia Crossman on behalf of OWL.

recommended that an additional table, Table 14(ua), is added setting out the allocation limit for the whole FMU. The allocation block in this recommended table is made up of AA+AN+BA permits.⁴

- 6.2 In her evidence on behalf of OWL, Keri Johnston has undertaken an analysis of what volume of water should be attributable to the permits within the Opihi FMU, and therefore the allocation block for the FMU. Ms Johnston's analysis shows that the volume of 5,600 L/s is the correct volume for the AA and AN allocation, but that the BA permits have not been included in this volume as indicated in the s42A officer's recommended changes to Table 14(ua). Ms Johnston has also identified that the allocation block does not include the BN permits.
- 6.3 I am supportive of including a table within PC7 that sets out the allocation blocks for the whole Opihi FMU (on the basis that the volumes included are correct). Having an FMU wide allocation has several advantages. First it makes it clear, in one location in the plan what the allocation blocks are for the FMU. Secondly, the FMU allocation limit would provide a consenting pathway for existing takes from surface water bodies not currently included as part of the allocation regime to be replaced on expiry⁵. Thirdly, subject to amendments to PC7 Rule 14.5.12 addressing the transfer of water permits (discussed below), the FMU allocation block assists in managing the transfer of affiliated water permits from tributary catchments to the Opihi mainstem. Further, the OWL submission sought amendments to Rule 14.5.4, or the inclusion of a new rule, to provide for the take and use of water from Lake Opuha,⁶ which will be discussed later. The inclusion of an FMU allocation limit also helps provide for this option.
- 6.4 Takes from a tributary of the Opihi River would be subject to the allocation limits for both the tributary and the Opihi FMU. If water is transferred off a tributary to the Opihi mainstem or to Lake Opuha, the volume of water being taken from the tributary allocation block decreases, but there is no change to the volume of water being taken from the FMU allocation block (and the allocation status of the FMU allocation block remains the same). While the transfer would provide headroom in the tributary allocation block, any proposed new take from the

⁴ Table 14(ua), Update2toAppendixEPart1Updated26June2020.pdf

⁵ Takes from an unnamed stream discharging to Lake Opuha, Station Stream and Deep Stream are currently prohibited by Rule 14.5.6 as they cannot comply with the allocation limits as none have been included in PC7. This would prevent resource consent applications being made for 'renewal' of these takes.

⁶ Submission PC7-381.60

tributary would also be subject to the FMU allocation limit. As the transfer has not changed the volume of water available from the FMU allocation block, no new allocation from the tributary would be possible⁷.

- 6.5 The FMU allocation block provides a belts and braces approach to avoiding further overallocation and provides greater opportunity for phasing out overallocation on tributaries of the Opihi River by not enabling headroom created by transfers on these rivers to be taken up by new takes. Consequently, my opinion is that the addition of the FMU allocation increases PC7s efficiency in achieving Objective B2 of the NPSFW.

7. TRANSFER OF WATER

Site to site transfer

- 7.1 Policy 14.4.13 and Rule 14.5.12 provides for the temporary or permanent transfer of water permits. Policy 14.4.13 is focused on phasing out over allocation by imposing several requirements on the potential transfer of water permits including requiring that where water is being transferred in an overallocated catchment, a percentage of the water is surrendered.⁸ Additional restrictions are introduced through Condition 6 of Rule 14.5.12, which requires any transfer of water to remain in the same surface water catchment in which the permit is located. The transfer of water outside of a surface water catchment is classified as a prohibited activity under Rule 14.5.13.
- 7.2 OWL lodged a submission on Policy 14.4.13 and sought an exemption for AA, and BA permits from the requirement to surrender water on transfer.⁹ OWL also lodged a submission on Rule 14.5.12 and sought that an exemption is included in the rule to allow AA, BA and Kakahu Permits to be transferred outside the surface water catchment.¹⁰ OWL sought these exemptions in order to allow resource consent applications to be made so as to transfer water permits from tributary catchments to the mainstem of the Opihi River, and to recognise the role of OWL in augmenting flows in the Opihi River in order to compensate for

⁷ Prohibited by PC7 Rule 14.5.6

⁸ PC7 Policy 14.4.13(b)

⁹ PC7-381.42

¹⁰ PC7-381.72

water abstracted by AA and BA permit holders. Based on the s42A report¹¹, and confirmed through the email response from Imogen Edwards in relation to questions to the s42A officer regarding the application of Rule 14.5.12¹², the tributary catchments are treated by ECan as separate catchments under Rule 14.5.12, and therefore water permit holders on the tributaries of the Opihi River are unable to apply for a resource consent to undertake this transfer.

- 7.3 This interpretation does not appear to accord with other parts of the LWRP where the term sub-catchment and catchment are used to differentiate tributaries from the main stem of a river. For example, Policy 4.62 of the LWRP provides for actions within sub-catchments so as to prevent flows falling below the minimum flow for the catchment. There is a clear hierarchy of catchment and sub-catchment in this policy. The interpretation in Ms Edwards email mentioned above does not demonstrate this same hierarchy. My opinion, in light of the use of the word catchment in Policy 4.62, is that a reasonable interpretation of 'catchment' in the context of Rule 14.5.12, is that this includes the Opihi River mainstem and its tributaries.
- 7.4 The OWL submission highlights the benefit of allowing resource consents to be sought for this type of transfer; which is to reduce allocation pressure on the tributaries in the case that affiliated water permits are transferred from a tributary to the mainstem.¹³ Because OWL already augments flow in the mainstem of the Opihi River to compensate for water taken by affiliated users in the tributaries (in order to maintain minimum flows at Saleyards Bridge), transferring water permits to the mainstem does not increase the risk of a breach of minimum flows for affiliated permits.
- 7.5 The Opihi River is considered by ECan to be fully allocated¹⁴ and therefore it is important that transfers of both affiliated or unaffiliated water permits do not cause overallocation. Because no water is being released from Opuha Dam so as to compensate for the water taken, any BN (unaffiliated 'high flow' water

¹¹ S42A report – PC7 to CLWRP and PC2 to WRRP – Part 4: Submissions on PC7 Part B, para 5.67

¹² Email from Imogen Edwards of Wynn Williams to Georgina Hamilton of Gresson Dorman and Co, subject: PC7 - s42A Report questions [WW-ACTIVE.FID352344], dated 25 June 2020

¹³ If the transfer of water permits from tributaries to the mainstem were to occur, I understand this is unlikely to occur on a permit by permit basis given the costs associated with conveying an individual take from the mainstem to the water permit holders property. Any transfer would therefore likely be part of a wider scheme infrastructure upgrade.

¹⁴ S32 Report, page 154

permits) would be unable to comply with Condition 5a of Rule 14.5.12; requiring transferred water permits to comply with the allocation limit in Table 14(y). This means BN water permit holders would be unable make an application to transfer due to the prohibited activity status of the classifying rule; PC7 Rule 14.5.13.

- 7.6 The OWL submission sought amendments to Table 14(y) to “...*fully account for all BA and BN surface water and stream depleting groundwater takes (being those assessed as having either direct or high stream depleting effect) within the Opihi FMU.*”¹⁵ Specifying an allocation limit for AN permits for the Opihi River mainstem along with BN water permits, would protect the allocation status of the Opihi mainstem by prohibiting the transfer of AN and BN permits that cannot comply with the mainstem allocation limit, and therefore meet Condition 5a of Rule 14.5.12.
- 7.7 The augmentation of flows to compensate for affiliated permits, the proposed FMU wide allocation limit (discussed above), and an allocation limit for both AN and BN water permits in Table 14(y) eliminates any risk of allocation limits on the mainstem of the Opihi River being breached. In addition, the augmentation of flows to compensate for affiliated permits means that minimum flows will continue to be met for these permits. Unaffiliated permits (if transfer is possible) have a minimum flow for the relevant tributary and for the mainstem (at SH1). On transfer, the tributary minimum flow would no longer be relevant, but the permit holder would still need to comply with the mainstem minimum flow. Provided these minimum flows are achieved, the transfer of unaffiliated permits will not result in over allocation.
- 7.8 The amendment to Policy 14.4.13 and Rule 14.5.13 proposed in the OWL submission would mean a resource consent application could be made, as a restricted discretionary activity, to transfer water to the mainstem of the Opihi River or Lake Opuha without surrendering allocated water. The matters for discretion for Rule 14.5.13, combined with the conditions of Rule 14.5.13 (subject to the amendments proposed through the OWL submission) provide adequate scope to address the effects associated with transferring water from the tributaries to the mainstem of the Opihi River. Of particular relevance are effects on the reliability of supply of other water users (Condition 2) and compliance with the applicable flow and allocation regimes (Condition 5a), along

¹⁵ PC7-381.109
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with whether existing resource consent conditions remain appropriate at the new location (matter of discretion 2).

- 7.9 As mentioned previously, for affiliated permits there is no change to the risk of the transferred take meeting minimum flows at Saleyards Bridge as OWL releases water to compensate for the affiliated tributary takes already. The OWL's proposed amendments to Table 14(y), and the resulting allocation status for the Opihi River means unaffiliated takes that do not comply with allocation limits are unable make an application for resource consent to transfer. In addition, the proposed FMU allocation limit discussed previously, will not allow new takes from the tributaries despite a transfer opening up 'headroom' within the allocation block, as this would result in an increase in the overall allocation from the FMU.
- 7.10 In terms of a consideration of costs and benefits in accordance with s32(b)(ii) of the RMA, the main costs are likely to be associated with the administration and processing of any resource consent to transfer a water permit. This is largely borne by the consent applicant who has full discretion as to whether they wish to bear this cost by making the application. As mentioned above there are no environmental costs associated with not achieving minimum flows or breaching allocation limits, and therefore contributing to overallocation¹⁶, due to the role of Opuha Dam, the augmentation undertaken by OWL, and the allocation limits for both the Opihi River mainstem and the Opihi FMU¹⁷.
- 7.11 The most prominent benefit associated with not foreclosing the opportunity for transfers to the mainstem or Lake Opuha is the potential to reduce abstraction from tributary catchments, with the associated ecological benefits. By prohibiting transfers of this type, the realisation of these potential benefits will not occur without some other significant intervention (for example a consent review process) which is likely to add significant administrative cost, thereby reducing efficiency. It is on this basis that my view is that the proposed amendment increases the efficiency and effectiveness of Rule 14.5.13 by

¹⁶ NPSFW Objective B2

¹⁷ provided the amendments proposed by OWL are accepted.

providing opportunity to better achieve LWRP objectives seeking to address sustainable allocation and safeguard flow related freshwater values¹⁸.

- 7.12 On this basis, my opinion is that providing the option to transfer water permits from tributary catchments to the mainstem of the Opihi River or Lake Opuha is a worthy inclusion in the OTOP Sub-regional chapter.

Transfer to Principal Water Supplier

- 7.13 Policy 14.4.40 provides for the transfer of AA and BA surface water permits to a principal water supplier. This ‘global consenting’ approach is supported by OWL as it provides an alternative option for managing the perceived complexity of the scheme and ensuring compliance with the flow and allocation regimes. However, Policy 14.4.40 omits reference to Kakahu permits alongside AA and BA permits, and appears to require any ‘global consent’ to authorise all AA and BA surface water permits through reference to “*a single permit authorising the AA and BA permit abstractions*”¹⁹.
- 7.14 Given the logistical challenges involved, it is conceivable that some but not all AA, BA and Kakahu water permits could be transferred to the principal water supplier even if there was agreement in principle to do so. It may also be that some AA, BA and Kakahu water permit holders may not wish to transfer their water which would mean the remaining transfers could not go ahead.
- 7.15 The possibility of transferring only some AA BA and Kakahu water permits to the principal water supplier does not mean that the idea does not have merit. Simply reducing the number of consents in the FMU, thereby reducing the number that need to be monitored, has its advantages. On this basis it seems unnecessary to limit the approach to requiring a single permit following the transfer. On this basis my opinion is that the amendments proposed by OWL to Condition 4 of Rule 4.5.3 to refer to ‘any’ transfers is of assistance. Ideally, amendments would be included within Policy 14.4.40 to clarify that multiple permits authorising AA, BA and Kakahu water permits can be held by the principal water supplier. Suggested wording is:

¹⁸ For example Objective 3.7 and 3.8 of the LWRP.

¹⁹ Policy 14.4.40

“Contribute to the overall management of surface water flows within the Opihi Freshwater Management Unit, by providing for the transfer of AA, and BA and Kakahu surface water permits to a principal water supplier where this will result in a single permit authorising the abstraction of all transferred AA and BA abstractions of surface water.”

- 7.16 There is also the possibility of transferring water to a principal water supplier under Rule 14.5.12. However as discussed above, without an exemption for affiliated permits, a percentage of water needs to be surrendered on transfer. If the relief sought by OWL is accepted, my view is Rule 14.5.12 provides a suitable consenting pathway for transferring water to a principal water supplier.
- 7.17 OWL’s submission also sought amendments to Rules 14.5.31 and 14.5.32 in order to recognise the role of carriage water. Carriage water, as discussed in the evidence of Ms Crossman, is a necessary component of OWL’s operations and is therefore consented. However, carriage water is not for the most part covered by shares, entitlements or water supply agreements. By Rule 14.5.31 including the requirement to only transfer the lesser of the consented instantaneous rate or the shareholding entitlement, the carriage water is lost and the amount of water that will be able to be taken at the farm gate will be reduced (for example).
- 7.18 The carriage water is a necessary and consented part of OWL operations. OWL augments flow in the Opihi River to compensate for the carriage water requirements thereby maintaining minimum flows. On this basis my view is the amendment sought by OWL to Condition 2 of Rule 14.5.31 is more efficient as it does not impact the ability to achieve environmental flows and therefore continues to achieve the relevant objectives²⁰, through a method that is less restrictive.

8. TAKE AND USE OF SURFACE WATER

- 8.1 OWL made submissions on the PC7 rules controlling the take and use of surface water (Rules 14.5.4 and 14.5.6). The submission focused on amendments to Rule 14.5.4 and the addition of a new rule to provide for the take and use of water from Lake Opuha, amendments to Rule 14.5.4 to include

²⁰ Objective B1 of the NPSFW and Objectives 8.7
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lake levels as a consideration when classifying the status of a consent application, and a new rule to provide a consenting pathway for BN permit abstractions not complying with the lake level limit proposed by OWL. The submission also sought several amendments to the matters for discretion for Rule 14.5.4.

Lake level limits in Rule 14.5.4

- 8.2 Table 14(y) contains minimum flows, allocation limits and lake level limits for BN permits in the Opihi FMU. The lake level limit is in place to ensure that water abstracted upstream of the dam does not impact the flows downstream, thereby reinforcing the purpose of the BN permits for the harvesting of high flows. By including this lake limit in Table 14(y), there is a clear intention that PC7 requires that BN permits are restricted by lake level as well as minimum flows. On this basis it is appropriate that Rule 14.5.4 includes a specific condition referencing this lake level limit alongside reference to the minimum flows.

Takes from Lake Opuha

- 8.3 No allocation limit is included within PC7 for Lake Opuha. As discussed above, including an FMU wide allocation for the Opihi FMU provides several advantages, including providing for takes from Lake Opuha. The s42A report recognises that any takes from waterways that do not have a minimum flow or allocation limit are prohibited from taking water under PC7²¹. The inclusion of an Opihi FMU allocation limit, and a method specifically providing for the take and use of water from Lake Opuha would provide a consenting pathway for takes from the lake. This provides greater flexibility (in terms of take location) while continuing to manage effects through compliance with allocation and flow regimes.
- 8.4 OWL has proposed a restricted discretionary rule addressing the take and use of water from Lake Opuha. If the inclusion of an FMU allocation block is favoured by the panel, compliance with this allocation would form part of the allocation compliance requirements of PC7 Rule 14.5.4, provided the rule was amended

²¹ S42A report paragraph 9.72, page 318.
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to reference the Opihi FMU allocation table.²² In this situation, no new rule would be required to address abstractions from Lake Opuha.

- 8.5 Alternatively, if OWL's new rule is deemed the appropriate method for providing for abstractions from Lake Opuha, the sole condition proposed is that the resource consent applicant holds shares, an agreement with, or other entitlements from Opuha Water Limited for the proposed take. My opinion is that it would also be appropriate to include the requirement for any take to comply with the relevant flow and allocation regime for the Opihi FMU and mainstem.

Matters of discretion for Rule 14.5.4

- 8.6 The OWL submission raised three points in relation to the matters of discretion for Rule 14.5.4. The first of these, in relation to matter of discretion 2, questioned the scope of the matter and suggested that it appears to duplicate matters addressed through a land use consent. The third point raised suggests that a matter of discretion relating to adherence to allocation and flow limits may be appropriate.
- 8.7 I agree with the OWL submission in relation to the scope of matter of discretion 2. The LWRP contains rules controlling land use for the purposes of managing water quality and therefore there is no need to duplicate these rules through Rule 14.5.4. Taking water from a surface water body does have the potential to impact water quality by reducing flows. However, the flow and allocation regimes for the Opihi FMU already address these issues and therefore in my view there is no reason to include a matter of discretion doing the same. What is more appropriate is to include reference to the relevant flow and allocation regimes as suggested in the OWL submission.
- 8.8 The second point raised by OWL relates to the replacement of a lawfully established take affected by S124 – 124C of the RMA, in an over allocated catchment. Matter of discretion 13 requires that on 'replacement', the rate of take and volume of any abstraction in an over allocated catchment is reduced to enable a reduction in over allocation. OWLs submission sought an exemption for AA, BA and Kakahu Permits from this rate and volume reduction in line with

²² Rule 14.5.4(1)(a) and (b) both require any take, in addition to all existing takes to not exceed the allocation limits in Table 14(h) to Table 14(za). The Opihi FMU table would need to be included in these conditions.

PC7 Policy 14.4.12, and Zone Implementation Programme Addendum (ZIPA) recommendation 4.9.5(ii).

- 8.9 ECan has suggested that the Opihi FMU is fully allocated but not overallocated.²³ The rules within PC7 prohibit the further allocation of water from the FMU and therefore the allocation status is unlikely to change over the life of the OTOP sub-regional chapter. Further, in relation to AA, BA or Kakahu permits, the role of Opuha Dam means that allocation is assured. It would therefore seem unnecessary to require a reduction in rate or volume unless it was linked to Policy 14.4.12. On this basis my view is that Rule 14.5.4 should align with the policy intent of Policy 14.4.12 and include a specific exemption for AA, BA or Kakahu permits.

New Rule for BN takes

- 8.10 As discussed above, Table 14(y) contains lake level limits for BN permits in the Opihi FMU alongside minimum flows and allocation limits. OWL is seeking that this is recognised in Rule 14.5.4 to preserve lake storage and flows downstream of the dam. However, there are very specific occasions where water may be abstracted within the BN allocation for the North and South Opuha Rivers (and the overall FMU allocation for BN Permits if adopted) for the harvesting of high flows where the lake level limit may not need to be complied with. The most obvious of these is where OWL is spilling water for flood buffering purposes. In this instance it may be appropriate to for BN Permit holders to harvest water even though Lake Opuha is below the Table 14(y) limit.
- 8.11 The OWL submission sought the inclusion of a new rule specifically addressing this eventuality. The main potential environmental cost associated with this proposal is that water harvested under these circumstances will not increase flows below the dam as they might otherwise have in a scenario such as flood buffering. However, the BN allocation block for the North and South Opuha Rivers is relatively small (1,300 L/s²⁴), meaning that the additional flows that may eventuate downstream of the dam if the lake limit is applied will also be relatively small. In addition, any relevant effects associated with the take will need to be addressed through a non-complying resource consent application

²³ S32 Report, page 154

²⁴ As reported in the evidence of Ms Keri Johnston for the Opihi Flow and Allocation Working Party.

process under the proposed new rule. On this basis, provided water is taken from within the existing BN allocation, my view is the relief sought provides some efficiency gains for the flow and allocation regime by increasing flexibility and making the most of the available water, while avoiding, remedying or mitigating environmental costs.

9. OTHER POLICIES AND RULES

Policy 14.4.6B

- 9.1 Policy 14.4.6B provides for the taking of water for storage in order to offset decreases in reliability that may result of the implementation of the PC7 flow and allocation regimes. Policy 14.4.6B as notified applied to AA, BA, AN, BN and KIL (Kakahu) permits. The OWL submission supported including a mechanism in the OTOP Sub-regional chapter to enable storage and also sought that A and B Kakahu Permits are included under the policy²⁵.
- 9.2 This relief was rejected by the s42A officer who has also recommended that the inclusion of Kakahu C Permits within Policy 14.4.6B through PC7 is deleted. The officers reasoning centres on the fact that: *“...submitters that seek these policies be further opened to a wider range of water takes or new water takes would seem to be exacerbating existing problems.”* In addition, the s42A officer states: *“...with the potentially significant delays until minimum flows and partial restrictions are implemented it is likely there would be an interim period where a further worsening of overallocation could occur.”*
- 9.3 The s42A officer’s reasoning appears to be based on the premise that the Opihi FMU is over allocated, and the ‘current’ and 2025 flows are insufficient. As highlighted by Dr Ryders evidence for the Flow and Allocation Working Party (FAWP), the ‘current’ and 2025 flows are adequate, and proposed increases beyond these (2030 flows) have limited ecological benefit. In addition, the s32 evaluation report for PC7 states that *“Freshwater resources in the Opihi FMU are generally considered to be fully allocated...²⁶”* rather than over allocated.

²⁵ This was not clearly shown in the OWL submission through tracked changes.

²⁶ Section 32 Evaluation Report for Plan Change 7 (Omnibus, Orari-Temuka-Opihi-Pareora and Waimakariri) to the Canterbury Land and Water Regional Plan and Plan Change 2 to the Waimakariri River Regional Plan, page 154

- 9.4 On this basis it is not clear why retaining Kakahu C Permits and including Kakahu A and B Permits within Policy 14.4.6B is problematic. Provided water taken for storage is done so within the relevant flow and allocation limits, no over allocation will occur thereby achieving Objective B2 of the NPSFW. In my view, providing for storage will increase the efficiency of the flow and allocation provisions by decreasing the costs associated with the loss of reliability (economic and associated social costs) while not increasing environmental costs.

Rule 14.5.7

- 9.5 The OWL submission raised an issue regarding the application of rules within PC7 to small takes and community supply takes. OWL sought the inclusion of a new note above Rule 14.5.7 so as to clarify that the region wide rules addressing these takes prevailed over the PC7 rules. The rationale for this relief is that capturing small takes and community supply takes under the general water abstraction rules proposed under PC7 would be a significant change from the status quo and would likely make many takes of this type non-complying activities under PC7.
- 9.6 The s42A officer has recommended that the relief sought by OWL be adopted. On the basis that requiring small takes and community supply takes to gain consent as a non-complying activity in a policy environment that has not accounted for the allocation associated with these takes (where existing) will add unnecessary (and likely unintended) cost, my view is the relief sought by OWL and the subsequent recommendation by the s42A officer is appropriate.

Rules 14.5.9 and 14.5.10

- 9.7 OWL submitted on Rules 14.5.9 and 14.5.10 and sought that matter of discretion 7 is removed as it cross references to a rule (Rule 14.5.7) with the same matters of discretion thereby serving no purpose. This relief was accepted by the s42A officer. For the reasons stated in the OWL submission my view is the matter should be deleted as it provides no additional information or discretion than is covered by Rules 14.5.9 and 14.5.10 already.

10. CONCLUSION

- 10.1 The amendments proposed through the OWL submission seek to improve the efficiency of PC7 by limiting unnecessary restriction and therefore costs. This is achieved by including appropriate recognition of the role of Opuha Dam and exemptions from specific actions on this basis. These amendments are supported through the evidence of the OWL witnesses.
- 10.2 Based on this evidence, my conclusion is that the proposed changes in the OWL submission and discussed in my evidence are:
- (a) The most appropriate way to achieve the objectives; and
 - (b) Assist in achieving the purpose of the RMA.
- 10.3 The changes to PC7 addressed in my evidence are set out in **Attachment B** to this evidence.

TIMOTHY ALASTAIR DEANS ENSOR

17 July 2020

Attachment A – Planning provisions referred to

National Policy Statement for Freshwater Management

A. Water Quality

Objective A1

To safeguard:

- a) the life-supporting capacity, ecosystem processes and indigenous species including their associated ecosystems, of fresh water; and
- b) the health of people and communities, as affected by contact with fresh water; in sustainably managing the use and development of land, and of discharges of contaminants.

Objective A2

The overall quality of fresh water within a freshwater management unit is maintained or improved while:

- a) protecting the significant values of outstanding freshwater bodies;
- b) protecting the significant values of wetlands; and
- c) improving the quality of fresh water in water bodies that have been degraded by human activities to the point of being over-allocated.

Objective A3

The quality of fresh water within a freshwater management unit is improved so it is suitable for primary contact more often, unless:

- a) regional targets established under Policy A6(b) have been achieved; or
- b) naturally occurring processes mean further improvement is not possible.

Objective A4

To enable communities to provide for their economic well-being, including productive economic opportunities, in sustainably managing freshwater quality, within limits.

B. Water Quantity

Objective B1

To safeguard the life-supporting capacity, ecosystem processes and indigenous species including their associated ecosystems of fresh water, in sustainably managing the taking, using, damming, or diverting of fresh water.

Objective B2

To avoid any further over-allocation of fresh water and phase out existing over-allocation.

Objective B3

To improve and maximise the efficient allocation and efficient use of water.

Objective B4

To protect significant values of wetlands and of outstanding freshwater bodies.

Objective B5

To enable communities to provide for their economic well-being, including productive economic opportunities, in sustainably managing freshwater quantity, within limits.

Policy B1

By every regional council making or changing regional plans to the extent needed to ensure the plans establish freshwater objectives in accordance with Policies CA1-CA4 and set environmental flows and/or levels for all freshwater management units in its region (except ponds and naturally ephemeral water bodies) to give effect to the objectives in this national policy statement, having regard to at least the following:

- a) the reasonably foreseeable impacts of climate change;
- b) the connection between water bodies; and
- c) the connections between freshwater bodies and coastal water.

Policy B2

By every regional council making or changing regional plans to the extent needed to provide for the efficient allocation of fresh water to activities, within the limits set to give effect to Policy B1.

Policy B3

By every regional council making or changing regional plans to the extent needed to ensure the plans state criteria by which applications for approval of transfers of water take permits are to be decided, including to improve and maximise the efficient allocation of water.

Policy B5

By every regional council ensuring that no decision will likely result in future over-allocation – including managing fresh water so that the aggregate of all amounts of fresh water in a freshwater management unit that are authorised to be taken, used, dammed or diverted does not over-allocate the water in the freshwater management unit.

Policy B6

By every regional council setting a defined timeframe and methods in regional plans by which over-allocation must be phased out, including by reviewing water permits and consents to help ensure the total amount of water allocated in the freshwater management unit is reduced to the level set to give effect to Policy B1.

Canterbury Land and Water Regional Plan

Objective 3.2

Water management applies the ethic of ki uta ki tai – from the mountains to the sea – and land and water are managed as integrated natural resources recognising the connectivity between surface water and groundwater, and between fresh water, land and the coast.

Objective 3.7

Fresh water is managed prudently as a shared resource with many in-stream and out-of-stream values.

Objective 3.8

The quality and quantity of water in fresh water bodies and their catchments is managed to safeguard the life-supporting capacity of ecosystems and ecosystem processes, including ensuring sufficient flow and quality of water to support the habitat and feeding, breeding, migratory and other behavioural requirements of indigenous species, nesting birds and, where appropriate, trout and salmon.

Objective 3.11

Water is recognised as an enabler of the economic and social wellbeing of the region.

Objective 3.12

When setting and managing within limits, regard is had to community outcomes for water quality and quantity.

Objective 3.16

Freshwater bodies and their catchments are maintained in a healthy state, including through hydrological and geomorphic processes such as flushing and opening hāpua and river mouths, flushing algal and weed growth, and transporting sediment.

Objective 3.17

The significant indigenous biodiversity values of rivers, wetlands and hāpua are protected.

Objective 3.19

Natural character values of freshwater bodies, including braided rivers and their margins, wetlands, hāpua and coastal lagoons, are protected.

Policy 4.62

To prevent the flow falling below a minimum flow for the catchment, due to abstraction, partial restriction regimes for surface water will be implemented. Regimes will be designed to:

- (a) have a single flow monitoring point for the whole catchment that all abstractors are referenced to, with additional flow monitoring points that some or all abstractors are subject to, should the hydrology of the surface waterbody justify it;
- (b) provide for groups of water permit holders in the same sub-catchment to share water when takes are operating under partial restrictions; and
- (c) except if otherwise specified in an applicable sub-region section, implement a stepped or pro rata restriction regime that applies equally to all taking within an allocation limit and does not induce the flow to fall below the minimum flow due to abstraction.

Attachment B

Definition of AA permits

... where the consent holder ~~holds shares in~~ has an entitlement to be supplied water by Opuha Water Limited by way of shares, agreements or other entitlements

Definition of AN permits

... where the consent holder does not ~~holds shares in~~ have an entitlement to be supplied water by Opuha Water Limited by way of shares, agreements or other entitlements.

Definition of BA permits

... where the consent holder ~~holds shares in~~ has an entitlement to be supplied water by Opuha Water Limited by way of shares, agreements or other entitlements.

Definition of BN permits

... where the consent holder does not ~~holds shares in~~ have an entitlement to be supplied water by Opuha Water Limited by way of shares, agreements or other entitlements.

Definition Pro-rata partial restriction

(a) Subject to (b), in relation to Tables 14(m) to 14(s), means, with regard to abstraction restrictions, the proportional reduction of an abstraction that is required whenever the flow at the minimum flow site as estimated by the Canterbury Regional Council is less than the sum of the applicable minimum flow and the applicable allocation limit.

(b) In relation to Tables 14(m) (North Opuha), (p) (Upper Opihi) and (s) (Te Ana Wai), means, with regard to abstraction restrictions for AA and BA permits that are operated as part of a water user group, the proportional reduction of an abstraction that is required whenever the flow at the minimum flow site as estimated by the Canterbury Regional Council is less than the sum of the applicable minimum flow and the allocation limit of the applicable AA and/or BA permits.

14.4.6B

To offset any decrease in reliability of supply as a result of the implementation of the environmental flow and allocation regimes in the Opihi and Temuka Freshwater Management Units, provide for the taking of water for storage in accordance with the minimum flows and partial restrictions for AA, BA, AN, BN, ~~Kakahu KIL Permits~~, A, B and C ~~takes Permits~~.

14.5.4

The taking and use of surface water is a restricted discretionary activity, provided the following conditions are met:

1. The take, in addition to all existing consented takes, does not result in an exceedance of any:

a. minimum flow limit set in Tables 14(h) to 14(za); and

b. Lake level limit set in Table 14(y); and

2. The take:

a. will replace a lawfully established take affected by the provisions of Section 124-124C of the RMA, and the take, in addition to all existing consented takes, will not result in an exceedance of any allocation limit, or rate of take, or seasonal or annual volume limit set in Tables 14(h) to 14(za); or

b. will not replace a lawfully established take affected by the provisions of Section 124-124C of the RMA, but the take, in addition to all existing consented takes, will not result in an exceedance of any allocation limit, or rate of take, or seasonal or annual volume limit, set in Tables 14(h) to 14(za);

and

3. 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, hāpua or a high naturalness waterbody listed in Section 14.8

The exercise of discretion is restricted to the following matters:

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

~~2. The actual or potential adverse environmental effects on water quality, including whether the activity, in combination with all other activities, will alter the allocation status for water quality in the relevant catchment; and~~ The appropriateness of existing conditions, including conditions on minimum flow, seasonal or annual volume and other restrictions to mitigate effects and the need to update these to reflect the flow and allocation regime applying at the time that the application is made; and

3. 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

4. For water used for irrigation, the management of water allocation and resulting nutrient discharges on individual farms; and

5. The potential effects on groundwater recharge where the groundwater allocation zone in Table 14(zb) is fully or over-allocated; and

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

7. The effects the take has on any other authorised take or diversion; and

8. The potential to frustrate or prevent the attainment of the regional network for water harvest, storage and distribution, shown on the Regional Concept diagram in Schedule 16; and

9. The reduction in the rate of take in times of low flow and restrictions to prevent the flow from falling below the minimum flow as set out in policies to this Plan; and

10. Methods to prevent fish from entering the water intake; and

11. The provisions of any relevant Water Conservation Order; and

12. The proximity and actual or potential adverse environmental effects of water use on any significant indigenous biodiversity and adjacent dry land habitats; and

13. Where the proposed take is the replacement of a lawfully established take affected by the provisions of Section 124-124C of the RMA and is from an over-allocated surface water catchment (excluding AA, BA and Kakahu permits), the reduction in the rate of take and volume limits to enable a reduction in over-allocation; and
14. Where the water is to be used for irrigation, the preparation and implementation of a Farm Environment Plan in accordance with Schedule 7 that demonstrates that the water is being used efficiently; and
15. Any adverse effects of the use of water on Ngāi Tahu values or on sites of significance to Ngāi Tahu, including wāhi tapu and wāhi taonga

14.5.5A The taking and use of surface water that does not meet condition 1b of Rule 14.5.4 is a non-complying activity, provided the following condition is met:

1. The applicant holds shares, an agreement with or other entitlements from Opuha Water Limited for the proposed take.

14.5.6

The taking and use of surface water that does not meet one or more of conditions 1 or 2b of Rule 14.5.4, or condition 1 of Rule 14.5.5A is a prohibited activity.

Table 14(ua): Allocation Blocks in the Opihi Freshwater Management Unit

River	Allocation Block	Allocation Limit (L/s)
Opuha River and Opihi Mainstem	AA + AN	5,600
	BA + BN	10,165