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Cc: James Winchester
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Good afternoon

Please find **attached** for filing the rebuttal statement of evidence of Treena Davidson, on behalf of:

- Te Ngāi Tūāhuriri Rūnanga;
- Te Rūnanga O Arowhenua and Te Rūnanga O Ngāi Tahu; and
- Te Rūnanga O Ngāi Tahu, Te Rūnanga O Kaikōura, Te Hapū O Ngāti Wheke, Te Rūnanga O Koukourārata, Ōnuku Rūnanga, Wairewa Rūnanga, Te Taumutu Rūnanga, Te Rūnanga O Arowhenua, Te Rūnanga O Waihao and Te Rūnanga O Moeraki (collectively referred to as **Ngā Rūnanga**).

Ngā mihi
Sal

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**BEFORE THE HEARINGS PANEL
FOR THE CANTERBURY REGIONAL COUNCIL**

IN THE MATTER of the Resource
Management Act 1991

AND

IN THE MATTER of submissions by **TE
NGĀI TŪĀHURIRI
RŪNANGA and TE
RŪNANGA O
AROWHENUA AND TE
RŪNANGA O NGĀI
TAHU and TE
RŪNANGA O NGĀI
TAHU, TE RŪNANGA
O KAIKŌURA, TE
HAPŪ O NGĀTI
WHEKE, TE
RŪNANGA O
KOUKOURĀRATA,
ŌNUKU RŪNANGA,
WAIREWA RŪNANGA,
TE TAUMUTU
RŪNANGA,
TE RŪNANGA O
AROWHENUA, TE
RŪNANGA O WAIHAO
AND TE RŪNANGA O
MOERAKI (collectively
NGĀ RŪNANGA) on
**PROPOSED PLAN
CHANGE 7 ON THE
CANTERBURY LAND
AND WATER
REGIONAL PLAN****

**REBUTTAL EVIDENCE OF TREENA LEE DAVIDSON
ON BEHALF OF NGĀ RŪNANGA**

18 SEPTEMBER 2020

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INTRODUCTION

1. My name is Treena Lee Davidson. My experience and qualifications are set out in my evidence in chief dated 22 July 2020.
2. I confirm that the issues addressed in this statement of evidence are within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.
3. I note that whilst I am employed by Te Rūnanga o Ngāi Tahu I am bound by the Code of Conduct and professional ethics of NZPI and am required to be impartial and unbiased in my professional opinions expressed.

SCOPE OF REBUTTAL EVIDENCE

4. My rebuttal evidence is provided in response to the evidence in chief filed by Mr Timothy Ensor. Mr Ensor is providing expert evidence on behalf of the following clients:
 - (a) The Adaptive Management Working Group (Submitter number PC7-385) (**AMWG**);
 - (b) The Opihi Flow and Allocation Working Party (Submitter number PC7-382) (**FAWP**);
 - (c) Opuha Water Limited (Submitter number PC7-381) (**OWL**); and
 - (d) Synlait Milk Limited (Submitter number PC7-188).
5. I have read all statements filed by AMWG, FAWP and OWL. I have also read the National Policy Statement for Freshwater 2020 (**NPSFW 2020**).
6. My evidence addresses matters raised by Mr Ensor only in relation to his evidence on behalf of AMWG, FAWP and OWL.

7. Te Rūnanga o Arowhenua (**Arowhenua**) and Te Rūnanga o Ngāi Tahu (**Te Rūnanga**), in their submission on Plan Change 7 to the Canterbury Land and Water Regional Plan (**Plan Change 7**) (dated 13 September 2019), stated that:

Arowhenua therefore seek recommendations and actions that improve water quality and quantity rather than providing for, and maintaining, the status quo. For this reason, Arowhenua consider the proposed plan change provisions could go further and set a clearer direction so all freshwater bodies achieve higher quality beyond, in some instances, just achieving the national bottom lines of the National Policy Statement for Freshwater Management 2017 (NPSFW 2017).

[...]

Arowhenua oppose the environmental flow and allocation limits, and the timeframe within which reductions will take place for the Te Umu Kaha / Temuka River, Ōpūaha / Opuha River and Te Ana-a-Wai / Te Ana Wai River. The Plan change means that these water bodies of significance to Arowhenua will remain in a poor state for future generations. Arowhenua do not consider the flows proposed are sufficient to maintain natural processes; water levels; prevent nutrient enrichment at the hāpua; or protect indigenous biodiversity at key life stages e.g. the migration of large tuna (eels).

8. In its further submission (dated 6 December 2019) Arowhenua also raised concerns with the AWMG and OWL submissions and the ability of some of the changes that these groups propose to protect Te Mana o te Wai when the waterbodies are already degraded.
9. I therefore respond to Mr Ensor's planning evidence filed on behalf of AMWG, FAWP and OWL in this rebuttal statement. The focus of my rebuttal is on the statutory context Mr Ensor uses to establish his opinion to support the relief sought by AMWG, FAWP and OWL.
10. I note that section 4 of Mr Ensor's evidence in chief (entitled *Statutory Context*) is identical in each of his statements for AWMG, FAWP and OWL. I have therefore focused my rebuttal on his discussion of Te Mana o te Wai that he raises in section 5 of his evidence in chief for AMWG (entitled *Te Mana o te Wai*). He refers to this section in his statements for FAWP and OWL.

REFERENCE IN THIS REBUTTAL TO NPSFW 2020

11. The NPSFW 2020 became operative on 3 September 2020. Section 4.1 requires that:

- (1) Every local authority must give effect to this National Policy Statement as soon as reasonably practicable.

12. It is not within the scope of my expertise to advise on the extent to which Plan Change 7 must give effect to the NPSFW 2020. I have provided my evaluations of the NPSFW 2020 as well as the NPSFW 2017 in this rebuttal evidence so that if the Hearings Panel is of the mind to consider the NPSFW 2020, it is able to do so.

EVIDENCE OF MR ENSOR

Ngā Rūnanga providing context to Te Mana o te Wai

13. Mr Ensor raises (at paragraph 5.8 of his evidence in chief for AMWG) that the Section 42A Report calls upon Ngā Rūnanga to provide context to Te Mana o te Wai. While I do not contest that this is what the Section 42A Report has asked, I do query Mr Ensor's suggestion that he does not have the benefit of this information from Ngā Rūnanga in drafting his evidence.

14. Because of this asserted lack of evidence, Mr Ensor seems to be (at paragraphs 5.9 and 5.10) suggesting the Hearings Panel could not agree with the recommendations in the Section 42A Report because a evidence base to support these recommendations has not been provided.

15. I consider the submission by Arowhenua clearly expresses the desire and intent of Ngā Rūnanga for the freshwater bodies within the Opihi catchment. Discussion contained within Appendix 4 of the Section 32 Report also sets out the matters of concern for Arowhenua with regard to the catchment, as does the COMAR Report that forms a part of the Section 32 Report.

16. Ngā Rūnanga concerns related to the hauora of the water were also raised during the OTOP Zone Committee process. Mr Henry's evidence (dated 22 July 2020), at paragraphs [18]-[24], explains why he could not agree on behalf of Ngā

Rūnanga to some of the matters in the OTOP ZIPA, including the limits that were set.

17. I would suggest that Arowhenua has clearly communicated its concerns with and desired outcomes for the hauora of the Opihi catchment. While the outcomes have not necessarily been expressed using the concept of Te Mana o te Wai, the outcomes have been consistently sought.
18. I therefore do not agree with Mr Ensor who appears to suggest (at paragraph 5.9) that because Te Mana o te Wai discussions were not undertaken early in the resource management process, or driven through the ZIP process, that discussions on Te Mana o Te Wai are inappropriate now. Both the NPSFW 2017 and NPSFW 2020 make Te Mana o te Wai a central consideration and I do not consider it is appropriate to diminish its importance or relevance on the basis that Mr Ensor suggests.

Purpose of the Opuha Dam

19. Mr Ensor includes statements throughout his evidence about the Opuha Dam being developed with a focus on maintaining ecological health through augmentation. Mr Ensor [at paragraph 5.14] states:

the purpose of the dam is to firstly augment flows in the Opuha and Opihi mainstems to improve ecological and cultural health, and secondly, to provide a source of irrigation water to the shareholders of OWL.

20. I disagree with Mr Ensor's suggestion that the purpose of the Opuha Dam is firstly to provide for ecological and cultural health and secondly to provide for irrigation. I would suggest, given the amount of investment involved, that the primary purpose of the development of the Dam was to augment the flows of the river for irrigation purposes.¹

¹ The primary purpose of the Opuha dam is to capture and store water from the upstream catchments and then control the release of this water to maintain environmentally sustainable flows in the downstream rivers and enable abstraction for irrigation, and for domestic water supply. The concept of the Dam arose out of discussions between Electricity New Zealand and the Opihi Augmentation Society, but resulted in the Opuha Dam Partnership being formed in 1992 to commercialise the project. At this time, the Partnership was supported by the local lines company, Alpine Energy Ltd, Timaru District Council, Opihi River Development Company and two irrigation companies, South Canterbury Farmers Irrigation Society Ltd and Levels Plain Irrigation Company Ltd. The support of these organisations suggests to me that the interests in maintaining environmentally sustainable flows during times of drought was based on enabling extraction for irrigation. See Annette Scott "Case Study: Opuha Water - New Management Era Emerges" IrrigationNZ News (Spring 2011) at <<http://smartirrigation.co.nz/wp-content/uploads/2014/03/Smart-CaseStudy-OpuhaWater1.pdf>>

21. In my opinion, Mr Ensor's suggestion as to the relative priority between the two functions of the dam (whether accurate or not) does not mean that the Opuha Dam provides for the hauora of the water under the NPSFW 2017.

22. In terms of the NPSFW 2020, I consider that the impact of the Opuha Dam and Mr Ensor's statements are inconsistent with the hierarchy of obligations under 1.3(5) of the NPSFW 2020, which provides that:

(5) There is a hierarchy of obligations in Te Mana o te Wai that prioritises:

- (a) first, the health and well-being of water bodies and freshwater ecosystems
- (b) second, the health needs of people (such as drinking water)
- (c) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.

23. This clearly puts the health and well-being of water bodies and freshwater ecosystems first and the ability of people and communities to provide for their social, economic and cultural well-being third. Objective 2.1 of the NPSFW 2020 similarly prioritises the health and wellbeing of waterbodies and freshwater first as follows:

2.1 Objective

(1) The objective of this National Policy Statement is to ensure that natural and physical resources are managed in a way that prioritises:

- (a) first, the health and well-being of water bodies and freshwater ecosystems
- (b) second, the health needs of people (such as drinking water)
- (c) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.

- 24.** I consider that the Environment Court’s “key understandings” of Te Mana o te Wai from recent case law² that I set out in my evidence in chief (at paragraph [44]) are captured within the fundamental concept of Te Mana o te Wai in the NPSFW 2020.
- 25.** I also consider that the NPSFW 2020 strengthens and clarifies Te Mana o te Wai. Te Mana o te Wai must be given effect to, and the NSPFM 2020 provides stronger direction on how Te Mana o te Wai should be applied when managing freshwater. Te Mana o Te Wai within the NPSFM 2020 imposes a hierarchy of obligations. This hierarchy means prioritising the health and well-being of water first. The second priority is the health needs of people (such as drinking water) and the third is the ability of people and communities to provide for their social, economic and cultural well-being.
- 26.** Six principles [mana whakahaere, kaitiakitanga, manaakitanga, governance, stewardship, and care and respect] inform the implementation of Te Mana o te Wai, in addition to the hierarchy of obligations in paragraphs [22] and [35] above.
- 27.** Mr Ensor’s evidence in section 5³ also addresses the application of Te Mana o te Wai and the challenge created by the presence of the Opuha Dam. Mr Ensor considers (at paragraph 5.14) that the management of the Opihi FMU is strongly influenced by the presence of the Opuha Dam.
- 28.** While I agree with Mr Ensor (at paragraph 5.10) that the presence of the Dam should be taken into account in decision-making (because the Dam forms part of the current environment), I do not agree that 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 (at paragraph 4.6). The Opuha Dam and related irrigation exist as a matter of fact, but this does not mean their existing operating regime is a “given” in terms of the NPSFW 2017 or the NPSFW 2020. As discussed in paragraph [17] of my statement of evidence (dated 22 July 2020) Te Mana o te Wai anticipates a paradigm shift. So rather than the presence of the Opuha Dam being the “starting point” for discussion, in my opinion the starting point should be the health and wellbeing of the waterbody.

² *Aratiatia Livestock Ltd & Ors v Southland Regional Council* [2019] NZEnvC 208.

³ Mr Ensor’s Statement of Evidence for AMWG (dated 17 July 2020).

How Te Mana o te Wai has been addressed in Plan

- 29.** At paragraphs 5.12 – 5.17, Mr Ensor provides a high-level response to the matters raised in paragraph 2.14 of the Section 42A Report. I would note here that while these matters are applicable to the OTOP Zone, it is my understanding the matters raised in paragraph 2.14 were generic to the approach taken in Plan Change 7.
- 30.** In my Statement of Evidence (dated 22 July 2020), I have considered these matters and the more specific matters relating to the OTOP. I broadly support the conclusions contained in the Section 42A Report on the matters set out in paragraph 2.14 of that Report.

Treena Lee Davidson

18 September 2020