

**BEFORE**

**The Canterbury Regional  
Council (Environment  
Canterbury)**

**IN THE MATTER  
OF**

**Multiple Resource Consent  
applications**

**BY**

**Multiple applicants  
to take water from the  
Selwyn Rakaia Ground  
Water Zone**

**Minute of Commissioners Milne, Ryder and Russell  
Independent Commissioners for Environment Canterbury**

1. Last week Dr Jenkins the CEO of ECan issued a media statement expressing *disappointment* with the interim decision we have made on behalf of ECan as its independent commissioners. He also indicated that “ECan” (we assume he meant ECan management) did not agree with many of our conclusions. He then went on to detail specific areas where he suggests we are wrong.
2. The statement reflects Dr Jenkin’s earlier comments made before the hearing commenced, where he suggested that ECan (which, for the present purposes is us) would be declining all of these applications. Notwithstanding those comments, we have maintained our independence and as required, have objectively considered the very complex, lengthy and strongly contested evidence before us. (We have heard voluminous evidence from experts for ECan and for the applicants over the course of 3 weeks and have re-read much of that. (Evidence which has not been **heard** by ECan management).
3. We are not surprised by Dr Jenkins disappointment, or that he differs with our conclusions. However, It should go without saying, that it is inappropriate for the Council to publicly criticise or debate specific aspects of the decision we have made on its behalf, let alone before we have completed the hearing and issued a final decision. That final decision will include our detailed reasoning for not accepting aspects of the ECan officers’ evidence. If the applicants or submitters disagree with the decision they can appeal to the Environment Court. Until that process is complete the Council and its management should not be debating the issues in the media.
4. Whilst we presume that this was not the intention, the statement may be interpreted as an attempt by management to try and influence the outcome of either this and/or future processes. It also puts us in an invidious position, when in essence, our judgement and competence is being questioned by the organisation who we are acting for. Such comments bring the independent hearing process into disrepute. We have considered whether, given the Council’s apparent lack of confidence in us, we should step down. However, that would be grossly unfair to the applicants since they would have the costs, delays and stress associated with the process starting again.

5. It would be inappropriate for us to enter into a debate with Dr Jenkins. We will respond to his specific points in our final decision. We do however think that it is important to respond to certain aspects of his statement lest the parties and existing users are given an incorrect impression of our views and our intent. Firstly, we refer to his statement that:

*The cumulative long-term effects of further groundwater abstraction will be a lowering of groundwater levels and pressure, **leading to low stream flows occurring more frequently and for longer periods together with a decreased reliability of supply for existing irrigators.***

6. The somewhat alarmist assertion we have emphasised, goes to the heart of the issues before us. It is not worded as being a personal view, but is presented as if it were an established truth. We wish to again emphasise that, on our view of the evidence which we have heard and considered in detail, the latter part of that proposition has not been established in relation to takes from the deeper aquifers.

7. The panel (which includes a very experienced hydro geologist) have unanimously concluded that such effects, if they occur, will be minor. We are satisfied that effects on the spring fed streams can be addressed. We have said that we will do this, firstly, by not granting further consents to take from the already over-allocated shallow aquifer which partially feeds these streams. Secondly, we intend to impose adaptive management conditions which restrict takes from the deeper aquifers, **to the extent that they are shown (by monitoring or testing) to affect shallow groundwater levels to a more than minor additional extent.** In our view, the evidence suggests that such influence is unlikely to be significant. Nevertheless there will be safeguards in place and the consents will be for a relatively short term.

*“This ignores the situation that existing cumulative effects are unacceptable, so any increase in abstraction cannot be sustainable,”*

8. We have certainly not *ignored* that situation. Rather, we have rejected as unproven, the assertion that it necessarily follows that **any increase in abstraction cannot be sustainable** (i.e. that adverse effects will be made substantially worse than present). We will explain our reasoning more thoroughly in our final decision. Suffice to say, for the present purposes, that the statement is based upon the propositions that additional takes from the deeper aquifers will **necessarily** have a significant effect on levels in the shallow aquifer and that the additional take from the deeper aquifers will not, on average, be replenished by subsequent rainfall. In our view, the ECan evidence has not established either point.

9. Only time and the ongoing monitoring we propose, will prove whether we or Dr Jenkins are correct. One of the few clear points arising out of this hearing, is that ECan does not yet have a sufficient monitoring basis for a clear understanding of the inter relationships between the deeper Aquifers and the spring fed streams.

*An adaptive management regime, described by the commissioners as a ‘suck it and see’ approach is likely to mean that these consents can only be exercised infrequently, if at all.*

10. This comment does not reflect our decision, our conclusions or our intent. We want to make it very clear, that in our opinion, few, if any, consent holders will be in the position of being only able to exercise their consent *infrequently, if at all*. We expect that the vast majority of the consents will be able to be exercised for most of the time, albeit in **some** years not up to their maximum allowable volumes. Whilst we can see no difficulty with these permits having lower reliability than existing consents, (as is the case with many surface water resources in Canterbury) it is certainly not our intention to grant consents that are useless.
11. We have responded to this latter point now, because we are deeply concerned by the incorrect and alarming impression that the ECan statement has left. We are also concerned that officers who are drafting proposed adaptive management conditions for our consideration, may feel encouraged by their CEO's statement, to draft the conditions with that outcome in mind. We want to make it very clear, that the conditions should be drafted with the objective of dealing with **likely** potential effects on shallow aquifer levels at times of low flow. They should not be drafted on the basis that at times when the shallow aquifer is at low levels (because of low rainfall and over allocation of this aquifer by ECan), the deeper takes should be restricted. Such restrictions should only apply where those deeper takes are **shown** (by monitoring) to be having a more than minor impact on levels in the shallow aquifer.
12. Finally, we wish to reassure the parties, that notwithstanding the ECan statement, we will continue to act independently and will proceed upon the assumption that the ECan officers who we will be hearing from, will express their own professional opinions based on research, rather than be influenced by any pressure from management or Council. We again note that we have to reach our decision based upon what we read and hear and based upon our own professional judgement. That is what we have done and will continue to do.

**Dated 19 March 2007**

Philip Milne  
Wayne Russell  
Dr Greg Ryder