

IN THE MATTER

of the Resource Management Act 1991 (“the Act”)

AND

IN THE MATTER

of applications by the Central Plains Water Trust (CPWT), Central Plains Water Ltd (CPWL) and the Ashburton Community Water Trust (ACWT)

Statement of Evidence of John Hugh Thwaites

Landowner

Waianiwaniwa Valley

Introduction

1. My name is John Hugh Thwaites. I speak on behalf of myself, my wife Andrea and my children Bridgette, Julia, Anna, Catherine, Rebecca, William and Gabrielle Thwaites. We are all either 5th or 6th generation New Zealanders (Canterbury). We are members of the Malvern Hills Protection Society.
2. We live in Christchurch due to the nature of my work commitments however I have had a long association with the Malvern district having worked on my relative’s farms throughout my school and post school years in the Hororata and Coalgate area. My father Keith grew up on the original Thwaites family

farm in Hororata which had been farmed by the Thwaites family since the 1850s. As soon I could afford the deposit I purchased my small farm Kinvara in the neighbouring Waianiwaniwa Valley in 1991 and although not living on site have farmed it throughout the ensuing years.

3. Our statement of evidence is intended to firstly provide an overview of how the CPWL irrigation scheme has affected us over the past six years, how it will affect us in the future, our concerns with its impact from a social perspective and on the environment and also comment on CPWL's requiring authority status and the subsequent notice of requirement.

Description of Farm

4. Kinvara is a 50 acre sheep and cropping unit with a small amount of forestry and a comfortable four bedroom home. It is nestled in the heart of a beautiful and unique valley system where it is very sheltered and peaceful. A large double garage, 5 bay implement sheds, yards, fencing, fruit trees and shelter belts have all been added since purchasing Kinvara. The soils are fertile and do not require irrigation. In fact every 2-3 feet of the whole farm has been carefully mole ploughed with heavy machinery to ensure adequate drainage. (The irony of this should not be lost on even CPWL). As well as a farm, this is our family retreat, lifestyle and holiday home and a wonderful outdoor education centre for our children. A place where the four seasons are well demarcated and provide a wonderful backdrop to the rich tapestry of rural life experienced by our family.
5. We have enjoyed a wonderful sense of community in the Malvern district over the years, sharing many experiences with neighbours, friends, relatives and parishioners with events such as the big snow of 1992, harvesting our crops, the grieving for the passing of loved ones and local social events forging very strong bonds within the community.

Background

6. We first learned that the Waianiwaniwa Valley was a possible site for a dam and reservoir in 2002 from a neighbour and I subsequently attended 2 public meetings which were advertised locally. Unfortunately these were unhelpful as the then facilitator was unable to answer any questions on behalf of CPWL but we were assured that full and frank discussion would be forthcoming for landowners in the Waianiwaniwa valley. Unfortunately this never eventuated. We must have been left off the invitation list.
7. Unfortunately, being forthcoming with information has not been one of the applicant's greatest strengths as evidenced at this hearing where, almost 8 years after the project's inception, further information is still being requested from the applicant to clarify critical aspects of the proposal. Probably the most reliable form of information over the ensuing years for us has been the local newspapers with the occasional impersonal flier from CPWL.
8. However, from what we understand, if the scheme was to proceed, then every aspect of our small farm as outlined above would go under 100 or more feet of water.
9. Of course we certainly appreciated the very glossy brochure inviting us to purchase shares in CPWL – however we soon realized that our drainage system of mole holes would be overwhelmed in endeavouring to drain the reservoir sufficiently for our farm to benefit from irrigation, and so we declined.

Personal Effects

10. The scheme has had an adverse effect on our family. It has resulted in considerable anxiety due to the uncertainty with respect to long term planning and capital development with all its attendant financial implications. It has also taken up considerable time and energy which would have been far more profitably spent on our family.

Our children have been very upset with the proposal and have asked many questions including -

How it is that if we own freehold land that others can come and take it off us for their benefit?

How is it that even if CPWL were to have a legal right to start an irrigation scheme why should their rights be allowed to overrule those who do not want it?

Why can't we just keep the farm??

I have assured them that despite the lack of answers from CPWL, that the commissioners here today would hopefully be able to answer such straight forward questions from a natural justice perspective.

The environment

11. We the people of Canterbury are but the custodians of the land for future generations - the Rakaia and Waimakariri rivers, the Waianiwaniwa valley, the villages of Coalgate and Glentunnel, the Canterbury Foothills and Plains must be protected.

12. However, before even the first acre of this scheme could be irrigated, the flooding of thousands of acres of sheltered, fertile, drought-resistant land in the Waianiwaniwa valley and associated areas is proposed. Hardly the most environmentally friendly act from any perspective.
13. Furthermore no debate or hearing on the irrigation of the central plains should have reached this late stage without the development of a detailed long term regional plan for the sustainable utilisation of the central plains with or without irrigation.
14. Many of the possible adverse effects on the environment have been identified and extensively addressed by earlier submitters and I draw the commissioner's attention to the submissions from the Malvern Hills Protection Society, Rosalie Snoyink, The Royal Forest and Bird Society, Department of Conservation, and Fish and Game which we have read and endorse.
15. Potential effects on water quality, purity and integrity of the aquifer systems and drinking supplies, the effects of raising the groundwater table and contamination of increased nitrates, the ensuing effects of the scheme with respect to the use of fertilisers, pesticides and antibiotics and the implications for Christchurch City aquifers have been addressed in the comprehensive Health Impact Assessment report by Community and Public Health, Canterbury District Health Board (Dr Alastair Humphrey et al.) to which we also draw the commissioners attention and endorse.
16. Water quality in rivers and lakes has declined in regions dominated by pastoral farming locally and nationally, where high nutrient inputs and microbiological contamination destabilize natural ecosystems and pose risks to human health according to an OECD report in 2007. In lowland areas, surface waters regularly exceed national water quality guidelines, and consequent damage to aquatic ecosystems is widespread, mainly due to run-off and leaching from pastoral farming and rural septic tanks.

17. The OECD report also highlights the fact that central government has provided little guidance in the form of national standards and policy statements to local authorities regarding implementation of the Resource Management Act and monitoring of environmental conditions. The apparent considerable variation in technical knowledge, skills and expertise among and between local authorities exacerbates the problems of monitoring any effects on the environment particularly in such a scheme as this where there are so many unknown variables.
18. Furthermore the applicant's "adaptive strategy" to the many questions put to them highlights the deficiencies in their research and planning of the project undertaken to date. The time for identifying all adverse effects or plans to mitigate such outcomes should have been undertaken in the extensive lead in time the applicant has had prior to the hearing.

Requiring authority status and subsequent notice of requirement

19. The granting of requiring authority status to CPWL by the then Honourable Minister for the Environment in 2005 was an extraordinary decision. When we wrote to the minister expressing our concerns with this we received a letter whereby the minister outlined that the matters he could consider when assessing an application for requiring authority status were limited and are set out in section 167(4) of the Resource Management Act. One such matter refers to:
- a. the applicant is likely to satisfactorily carry out all the responsibilities (including financial responsibilities) of a requiring authority under this Act and will give proper regard to the interests of those affected and to the interests of the environment."
20. In his letter the minister considered that CPWL had demonstrated that they are 'likely' to have regard to the interests of those affected.

21. Unfortunately, we do not share that former minister's faith in the beneficence of the applicant and its regard for both those affected and the effects on the environment.
22. While recognising that this hearing has no authority over that decision and that there was no statutory obligation by CPWL to consult prior to lodging an application for requiring authority status, for the record we do not believe that proper regard for the interests of the landowners including ourselves and all others affected by the scheme has been shown by the applicant to date.
23. If the applicant had truly shown regard for the affected parties, why was their first choice to apply for requiring authority status, the granting of which, gives CPWL the right to apply to the Minister of Land Information to use the compulsory acquisition powers in the Public Works Act 1981, rather than at least endeavouring to meet and negotiate with those most affected.
24. Furthermore the Selwyn District Council (SDC)'s communication to us with respect to the Notice of Requirement has been just as disappointing and unsatisfactory, particularly given the fact that not only do we stand to lose our farm but the same aforementioned council used rates (our rates included) to promote the initial scheme and provide a considerable loan to CPWL. We were unable to determine from the limited correspondence from SDC what the full implications of a Notice of Requirement for designation meant for us although we had some understanding from correspondence with the previous Honourable Minister for the Environment. Furthermore the provision of web site links for further information by the SDC is unsatisfactory for those who are not computer literate or who do not have internet access. Surely hard copy information would not have been too much to ask in this situation.
25. This lack of detailed information necessitated us to further research the legal implications and seek legal advice to allow us to fully comprehend the full implications of the notice of requirement as it applies to our situation. This has proved a costly and very time consuming exercise for us.

Social effects and accountability to the community.

26. If this was truly a community scheme then the community would be here supporting it in large numbers rather than the strident opposition heard from the people of Canterbury over the last several months.
27. Unfortunately CPWL is not a community scheme. It is a small company with responsibilities to its select shareholders. In fact the directors of CPWL (as with any company) will almost certainly be charged with the responsibility to protect the interests of their shareholders (not the community).
28. One must remember that of the 376,002 shares owned by shareholders, the Selwyn District Council (SDC) has only one share. (SDC communication 2006) We understand the Christchurch City Council also has only one share. Hardly a controlling interest by the respective councils.
29. Should those 2 shares be sold as could be possible then there would be no representation from those respective councils in CPWL at all.
30. We understand that the CPWL board itself will have no direct representation from either the Selwyn District or Christchurch City Councils or CPWT (the Trust).
31. Furthermore we are told by the Selwyn District Council in their correspondence of May 2006, that following the appointment of trustees to the Trust by the two councils, the trustees will act independently of the two councils and run the affairs of the Trust according to its deed.
32. We were then told by Dr Ed Wylie for CPWL in his opening statement that the Trust would be the guardian and promoter of the community's interests and that considerable comfort could be taken from that fact.

33. However it appears enforcement will not be so easy when primarily left to the Trust as it may not have the legal authority to ensure that CPWL always acts in the community's best interests. In his comments on the Memorandum of Agreement between CPWL and CPWT 2004, Mr Michael Parker (on behalf of the Malvern Hills Protection Society) in his submission, notes that there is nothing that requires CPWL to act at all times or even part of the time in accordance with the objectives of the Trust and under company law may in fact be precluded from doing so in deference to the interests of its shareholders. The Memorandum of Agreement also refers to the role of the trust whose obligations among other things shall not be detrimental to the commercial viability of CPWL operation.
34. We further would like to highlight concerns raised by Mr Parker at the terms upon which the Trust makes the resource consents available to CPWL;
- a. in consideration of the exclusive right to the use of the resource consents and compliance therewith, CPWL will: ... accommodate and/or facilitate any recreational, social, cultural or environmental benefits which can be added to the scheme that either it or the water trust identifies and requires provided that the provision of such benefit does not adversely affect the financial viability of CPWL's operations.
35. Therefore from our very limited understanding of the above, there appears to be no real governance or oversight of CPWL from the Selwyn District and Christchurch City Councils and their communities with little indication of it being able to be controlled by the consenting authorities to ensure it acts in the best interests of the community.
36. Therefore, if such a scheme was to succeed in its current format this company would:

Firstly be compulsorily acquiring land from private individuals.

Secondly be essentially privatising the water of the central plains for which they would pay nothing. However any subsequent direct financial or capital gain would belong solely to its shareholders.

Thirdly have little if any true governance by or accountability to those (our) communities through which the scheme would operate.

37. Therefore is it any wonder at all, that there has been so much opposition to this proposal. It is a divisive project not only with regard to the physical aspects of the reservoir and canals with numerous people including ourselves being uprooted from homes and farms, but has resulted in a community deeply upset due to the very strong sense of injustice, the inequity of the scheme, the concerns of the environment and the applicant's very apparent lack of representation of and accountability to the broader community.

38. This lack of accountability by the applicant to the communities in which it would operate if successful in no way inspires any confidence that the applicant will have proper regard to the possible long term detrimental effects of such a scheme.

39. In conclusion due to the very real concerns we have identified as outlined above, we ask that the notice of requirement be withdrawn and all associated resource consent applications be declined.

John Thwaites August 2008

References:

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