

IN THE MATTER OF the Resource Management Act 1991

AND

IN THE MATTER OF a joint application by Central Plains Water Trust and Ashburton Community Water Trust to:

Canterbury Regional Council for resource consents to take water from the Rakaia River for use by the Central Plains Water Enhancement Scheme and the Rakaia Terrace Hydro Scheme

IN THE MATTER OF applications by Central Plains Water Trust to:

Canterbury Regional Council for resource consents to take and use water from the Waimakariri River and to use water from the Rakaia River for the Central Plains Water Enhancement Scheme and for associated consents required for the construction and operation of the Central Plains Water Enhancement Scheme; and to

Selwyn District Council for resource consents to construct and operate the Central Plains Water Enhancement Scheme

AND

IN THE MATTER OF a notice of requirement by Central Plains Water Limited to:

Selwyn District Council for the designation of land for works associated with the construction and operation of the Central Plains Water Enhancement Scheme

IN THE MATTER OF applications by Ashburton Community Water Trust to:

Canterbury Regional Council for resource consents to use and divert water from the Rakaia River for the purposes of hydro electricity generation and associated consents required for the construction and operation of the Rakaia Terrace Hydro Scheme.

SUBMISSIONS BY APPLICANT IN REPLY (RECONVENED HEARING)

Dated 15 October 2009

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Introduction

1. I propose to address the following issues raised in the reconvened hearing. Other issues have been addressed in the evidence of CPW and others, and the Commissioners probably do not require further assistance in reply submissions.
 - (a) Gravel extractors
 - (b) Plan Change 1
 - (c) Economics (& others) – opportunity cost of water
 - (d) “Available” vs “predicted” – also maximum take limit
 - (e) Piping of distribution network
 - (f) Public health
 - (g) Te Waihora and its tributaries
 - (h) Consideration of alternatives

Gravel extractors

2. The presentation from this group added to the confusion of their original presentation. The issue of relevance to the application is the effects on the environment of the (reduced) CPW scheme. The gravel extractors still address this in terms of economic loss to them personally.
3. The result of the approach they have adopted is that you are given only selective information.
4. The test of “maximum recorded groundwater level” – MRGL – is in the Christchurch District Plan but not in the Regional Plan. It has a policy to require an adequate buffer.
5. In the CCC evidence at the main hearing (and adopted by the gravel extractors) Keri Davis-Miller accepted that the risk of reduction of the “already limited supply” as the result of any groundwater level rise might not occur within the expected operational life of the quarries (see para 16 & fn 2).
6. There is now some additional confusion about the measurement of the MRGL. I referred in closing submissions to the consent produced by the gravel extractors in support of the claims made. I have since located the Plan referred to in the consent (but not provided). It shows a MRGL consistent with the 1970s levels (compare Table from Burrell / Callander re M35/1080) – and the consent (granted in 2007) says “For the purpose of this consent

the [MRGLs] are shown on Plan CRC072440B attached to this consent” – see Seaton Appendix A, Consent CRC072440, condition 2.

7. This is inconsistent with evidence that the MRGLs in recent consents are of only recently recorded levels. It also indicates that the consents do confer some operational certainty as to the level that applies throughout the consent. But even if that is so, the real risk to the gravel extractors is that there will be a return to the 1970s levels (or higher) for reasons completely unrelated to CPW.
8. The gravel extractors seem to believe that they and their resource somehow have a priority above the interests of others and the use of other resources. That is not the case, either in fact or under the RMA. Their resource and its availability is important – but so are the resources represented by the water in the Waimakariri and the soils of the central plains.
9. If consent to CPW is declined or the scheme doesn't proceed, there will still be demands to irrigate the plains (from surface water) and similar consequences to the gravel resource, to a greater or lesser degree. This highlights the real difficulty in attempting to make sense of the “compensation” model advanced by the gravel extractors.
10. There is also the complex interrelationship of groundwater with the effects of ongoing groundwater extraction and reduction in river flows. While counsel for the gravel extractors stated that there is no dispute with the predictions from the modelling, he did not explicitly indicate acceptance of the uncertainties surrounding it.
11. CPW's preferred position is that effects on the gravel resource are appropriate to take into account if and when they become manifest. An expert panel (constituted for other concerns) can be tasked with assessing an increase in MRGL if and when it occurs, and attributing responsibility. This can then trigger a s 127 review of conditions. The actual effects will be then ascertainable (and quantifiable), and the range of solutions also more identifiable.
12. The effects, even once an increase in MRGL is identified, will not be immediate and the response need not be instantaneous. Both the gravel extractors and CPW can (and have the incentive to) co-operate in resolving with Ecan and CCC the problems of access to the gravel resource, which as already been identified (in the *Road Metals* case) as a priority.

Plan Change 1

13. It is most unsatisfactory for ECan to have “reported” as its final advice that you should simply (and in blind faith) implement the flow regime proposed in its Plan Change 1. Mr Feitje (and then only in his verbal presentation) provided the real reasons why PC 1 was

introduced, but did not answer your question as to how these translate to a reason for you to disregard months of evidence in favour of someone's hastily prepared "good idea".

14. What is particularly disappointing is that whoever put up the Plan Change was not involved in this hearing and apparently did not bother to inquire about what those who have been involved had to say – on all sides.
15. Mr Feitje advanced four good and practical reasons why Ecan considered it appropriate to introduce the Plan Change in advance of the conclusion of this hearing. That does not explain, and falls far short of any justification for, advancing it as the recommended outcome.
16. The legal position is that the weight to be given is on a case-by-case basis. Given what Mr Feitje said about the reasons for the Plan Change, it had no place whatever in this hearing.
17. Although the proposal for PC 1 is that the flow measurement point will shift to Otarama, there are concerns about how it deals with the relationship with the current measurement regime at the Old Highway Bridge. CPW supports the change (in principle) but the conditions of this consent need to be consistent with the present WRRP so need to refer to the OHB.

Economists (Butcher) and others – (opportunity) cost of the water / efficiency

18. The system of resource allocation in NZ does not involve the attribution of an opportunity cost in economic (or financial) terms. The question of efficiency is not expressed in terms of economic efficiency, albeit that this may be a measure.
19. The concept of comparative efficiency (economic or otherwise) vis-à-vis other prospective competing uses is not a factor in resource consent applications – *Fleetwing; Ngai Tahu*.
20. The "opportunity cost" has been assessed, although more as an opportunity value. Water that would otherwise have no economic value will be harvested and used to create value.
21. The only "lost" opportunity of relevance is the loss of the benefits which arise from leaving the water un-harvested. No claim has been advanced that these have an economic value. The purpose of the consent process (and this hearing) is to balance competing values, but not any prospective competing "economic" or "economically efficient" use of the water.

Available vs predicted – maximum take?

22. Given the basis on which CPW is to be held to a take regime designed to maximise the protection of in-stream values, and the constraints imposed by the refusal of the dam and

reservoir consents, it is unnecessary and potentially unfair to restrict the consent any further by imposing a maximum volumetric limit.

23. There will be significant seasonal fluctuations and the need for flexibility in the way the water is used to best effect. The effects on the river are most pronounced at the times when run-of-river irrigation is most likely to be in highest demand. At other times the effects are likely to be much reduced, so the imposition of an annual limit is of no added benefit there.
24. The effects of the use of the water have been assessed "conservatively", based mainly on "available" water rather than predicted. Other significant "uses" by CPW (eg storage, groundwater recharge) will need additional consents, but should not require a relitigation of the take regime.
25. Finally, my understanding is that PC1 does not propose a volumetric limitation on the takes of water from the Waimakariri River.

Piping of distribution network

26. The costs associated with piping the network are unlikely to see this happen, especially in the "reduced" scheme. CPW still intends to pipe where necessary (eg because of land-owner concerns) but that will be minor.
27. A review clause can deal with the desirability of clean-water recharge to off-set any reduction in anticipated losses as the result of piping the network, if that occurs.

Public health

28. The abject inability of Dr Humphreys to answer your reasonably straight-forward questions only compounded the questionable nature of evidence he sought to advance both at this hearing and the earlier one.
29. While there may be research somewhere to support his assertion that social inequity as he describes (and which he accuses CPW of generating) will cause health problems among those who do not obtain a direct benefit, it seems exceedingly vague and inaccessible. There is no attempt to measure or quantify it.
30. Perhaps of more concern to our public health watchdogs should be today's news that the current economic situation in New Zealand means that the Government has to borrow, each week, an amount equal to the cost of establishing a small hospital.
31. Some people are prepared to risk their money to help lift (or at least maintain) the standard of living that we either enjoy or aspire to as New Zealanders. The alternative scenario which Dr Humphries idealises is that we should all share the economic

(mis)fortunes of the least well-off in our communities. While the capitalist model has its failings, so does the socialist model advocated by Dr Humphries. Fortunately s 5 RMA does not support Dr Humphries' approach.

32. It is unfortunate that if Dr Humphries did in fact read the CWMS and the Bidwell / Norton Report, he either did not understand them or has chosen to misrepresent their content. There is already nitrogen in measurable concentrations throughout the water of the region, and it is in the air we breathe. It is not *per se* harmful, but like anything it can become so in excess. The evidence you have is that CPW gets nowhere near this.

Te Waihora and tributaries

33. The Bidwell / Norton report and CWMS indicate that intensification of agriculture anywhere in the region will pose a risk of increased incidence of nitrogen / nitrate contamination, particularly of surface water and ultimately in Te Waihora.
34. As to Te Waihora, the CPW scheme will make no appreciable difference, so its effect on that environment will be minor at most. As TRoNT acknowledged, it is a question of judgement as to whether the increase in nitrate loading of Te Waihora is off-set by the benefits, including to the tributaries.

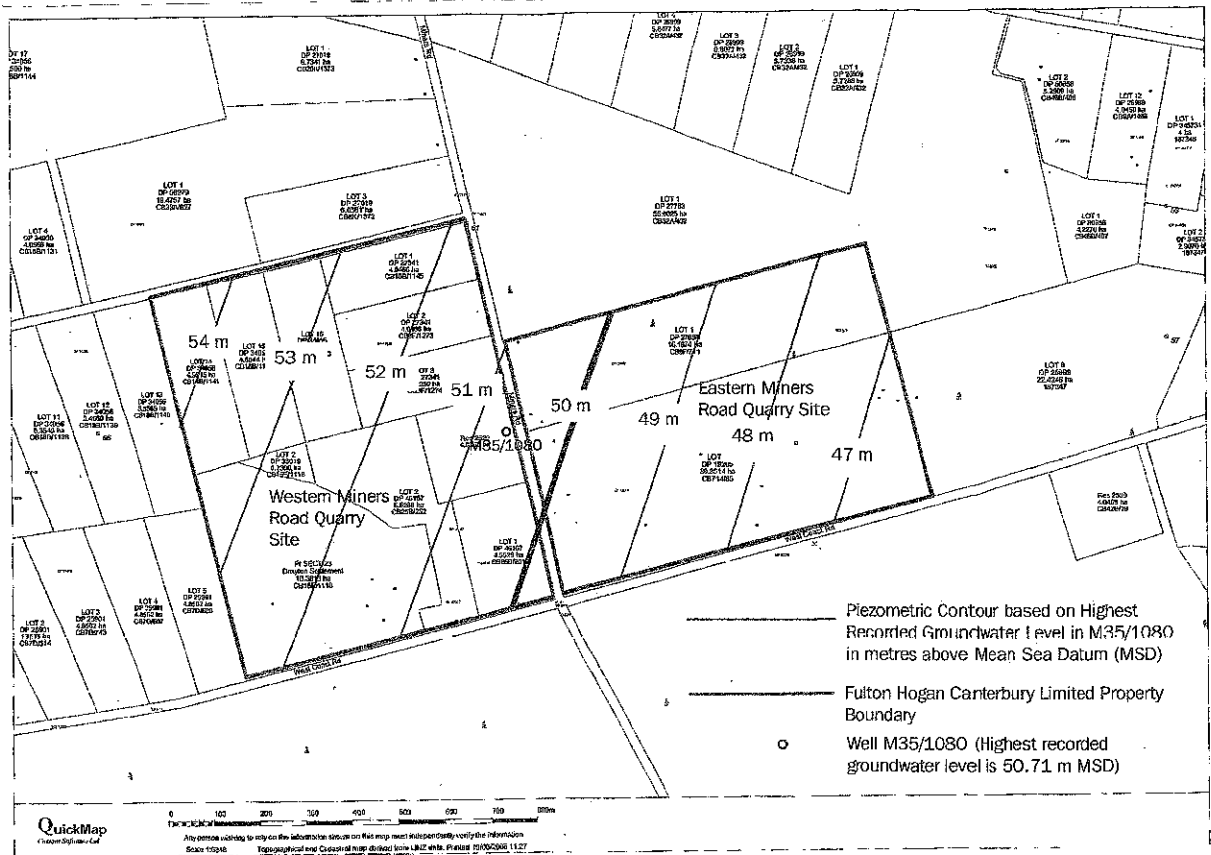
Consideration of alternatives

35. Contrary to the "emphasis" placed by counsel for the Malvern Hills Society, the statement of purpose in the NOR contained more than one sentence, and even that was qualified. You have a lot more evidence on the question of alternatives, than the single paragraph. The selection of the headrace location was independent of the dam and reservoir. There is no change to the primary purposes of the headrace and of its location.
36. The demand for a further (or fresh) consideration of alternatives is a going back to the submission made (and rejected) in May 2009 that this is a whole new scheme. If Malvern Hills Society believed that your directions as to the issues you wished to be addressed at this hearing were deficient, then that should have been stated before the last day of the hearing.

DATED 15th October 2009.


Matthew Casey QC / Rachel Dunningham
Counsel for Central Plains Water

Proposed Miners Road Quarry Sites



CRC072440B: Project Site with the Estimated Contours of Maximum Water Table Elevation