

BEFORE INDEPENDENT COMMISSIONERS

UNDER the Resource Management Act
1991

IN THE MATTER of Plan Change 3 to the Waitaki
Catchment Water Allocation
Regional Plan

JOINT MEMORANDUM OF COUNSEL IN RESPONSE TO MINUTE 10
12 November 2015

WYNN WILLIAMS
LAWYERS
CHRISTCHURCH

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MAY IT PLEASE THE PANEL

1. By Minute 10 the Hearing Commissioners directed Meridian Energy Limited ("Meridian"), Genesis Energy Limited ("Genesis"), Waitaki Irrigators Collective Limited, and the Canterbury Regional Council to discuss appropriate wording for the proposed controlled activity rule for the replacement of existing consents for hydroelectricity generation, including a section 32AA analysis.
2. In particular the Panel drew the parties' attention to the following matters:
 - (a) The scope of the activities which a controlled activity status would apply to;
 - (b) Wording that reflected the Resource Management Act 1991;
 - (c) Greater specificity in the matters of control (including reference to "*any mitigation measures to address adverse effects*" and "*Ngāi Tahu cultural values*");
 - (d) How efficiency gains in the use of water are to be evaluated; and
 - (e) How localised flow management effects are to be evaluated if the rule excludes the flows and levels regime.
3. The parties met on Friday, 30 October 2015, to discuss the drafting of Rule 15A. As the parties explored the drafting issues that the Panel had raised, the Council Officers became more comfortable with a single, controlled activity rule, for specified activities associated with the Waitaki Power Scheme.
4. One of the key reasons for the Council Officers becoming more comfortable with a single, controlled activity rule, was the provision of further information from Meridian Energy Limited regarding the quantum of natural outflows from Lakes Pukaki and Tekapo. The further information provided included Meridian's estimates of Mean Annual 7-day low flow, 5-year 7-day low flow, Mean Flow, and Mean Annual Flow for those two lakes. This was calculated by Meridian's hydrologist Mr Eddie Stead, who advised that he used a recognised analytical method (EV1) and cross checked the Lake Pukaki 5-year 7-day low flow results against earlier work undertaken by Horace

Freestone (2005) using an alternate analytical method (PE3). A copy of the information provided by Meridian is attached and marked "A".

5. In relation to these flows, the parties note that in the Waitaki Catchment Water Allocation Regional Plan:
 - (a) Rule 2, Table 3 provides Environmental flow and level regimes for water bodies in the Waitaki catchment. Where Table 3 does not specify a particular environmental flow regime, line xxii sets out the basis for calculating that flow for all other rivers, with the exception of the three named rivers. Line xxii provides for a minimum flow of the 5-year 7-day low flow, with a flow sharing threshold at the mean flow (Rule 2, Table 3, line xxii). The three named rivers are not covered by Table 3.
 - (b) Tekapo, Pukaki and Lower Ohau Rivers are not recognised as having "*high natural character worthy of a high level of protection*" in Policy 2 (see Policy 2 and contrast Policies 38 and 39 with Policies 29 to 34).
6. Based on those estimates, Meridian and Genesis indicated that a condition of consent requiring flows to be passed through the dams using numbers of the magnitude shown in those data in the order of the 5-year 7-day low flow would not be considered to frustrate the grant of consent in the future.
7. It is considered that proposed matter of control (a) provides for a consent authority to consider imposing a condition of consent relating to flow requirements for these three named rivers, until this matter is considered as part of a planning process. Once an environmental flow and level regime for the three named rivers has become operative in accordance with clause 20 of Schedule 1 of the Resource Management Act, the rule provides that to be a controlled activity, any resource consent application for the Waitaki Power Scheme would need to 'fall-into-line' with the operative plan by complying with Rule 2, as required for all other environmental flows.
8. Further reasons why the Council Officers are now able to support a single controlled activity rule, rather than the previous split rule 15A and 15B, are set out in the memorandum of Mr Regnault, dated 12 November 2015.

9. The parties who participated in the discussion regarding Rule 15A have reached agreement as to the wording of the draft rule. A copy of that wording is attached and marked "**B**".
10. A narrative response to the issues raised by the Hearing Panel in relation to the issues set out in paragraph 2 above, follows:

The scope of the activities

11. The parties consider that the redrafted rule 15A appropriately describes the activities which the draft rule applies to. It does so without referring to a list of applicable resource consents.

Wording that reflects the Resource Management Act 1991

12. The parties proposed wording of draft rule 15A now reflects the wording in section 124 of the Act, being "*any activity for which a consent is held and which is the subject of an application for a new consent for the same activity*".

Greater specificity in the matters of control

13. The parties carefully considered whether the matters of control could be articulated in a way which provides greater specificity. The parties explored the possibility of listing all of those matters over which control might be reserved. However, it became apparent to the parties that listing all of the matters over which control would be reserved may have the unintended consequence of inadvertently excluding a matter over which control should be reserved. In those circumstances, the parties agreed that the matters over which control is to be reserved should remain broadly drafted so as to enable any adverse effects to be addressed.

How efficiency gains in the use of water are to be evaluated

14. The Waitaki Catchment Water Allocation Regional Plan includes objectives and policies that relate to efficiency.

15. Meridian and Genesis emphasised during discussions that there were commercial incentives to ensure that the Waitaki Power Scheme was operated as efficiently as possible. No further matters of control were considered necessary to address efficiency issues associated with the non-consumptive use of water for the Waitaki Power Scheme.

How localised flow management effects are to be evaluated

16. It is submitted that localised flow management effects (e.g. ramping rates including effects on public safety and erosion) can be considered and addressed by way of conditions under the proposed matters of control. As discussed above, the matters of control are broadly worded and enable consideration of the measures necessary to address all adverse effects.

Section 32AA evaluation

17. Mr Regnault has also completed a section 32AA evaluation of the proposed redrafted rule 15A. A copy of that evaluation contained within Mr Regnault's memorandum dated 12 November 2015.

DATED this 12th day of November 2015



P A C Maw

Counsel for the Canterbury Regional Council

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S W Christensen

Counsel for Meridian Energy Limited

15. Meridian and Genesis emphasised during discussions that there were commercial incentives to ensure that the Waitaki Power Scheme was operated as efficiently as possible. No further matters of control were considered necessary to address efficiency issues associated with the non-consumptive use of water for the Waitaki Power Scheme.

How localised flow management effects are to be evaluated

16. It is submitted that localised flow management effects (e.g. ramping rates including effects on public safety and erosion) can be considered and addressed by way of conditions under the proposed matters of control. As discussed above, the matters of control are broadly worded and enable consideration of the measures necessary to address all adverse effects.

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DATED this 12th day of November 2015

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P A C Maw

Counsel for the Canterbury Regional Council


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S W Christensen

Counsel for Meridian Energy Limited

A handwritten signature in blue ink, appearing to read 'T L Hovell', positioned above a horizontal dotted line.

T L Hovell

Counsel for Genesis Energy Limited

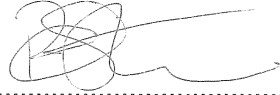
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P A Steven QC

Counsel for Waitaki Irrigators Collective Limited

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T L Hovell

Counsel for Genesis Energy Limited



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P A Steven QC

Counsel for Waitaki Irrigators Collective Limited

"A"

From: [Eddie Stead](#)
To: [Jeff Page](#)
Subject: Tekapo and Pukaki Natural Outflow
Date: Friday, 30 October 2015 11:27:22 AM

Hi Jeff

Stats for Lake Pukaki and Lake Tekapo Natural Outflow as requested.

Data used is from 1-Jan-1926 to 31-Dec-2014

Regards

Ed

	Lake Pukaki Natural Outflow (68775)	Lake Tekapo Natural Outflow (68795)
Mean Annual 7-day low flow	37	32
5-year 7-day low flow	28	26
Mean Flow	128.91	81.68
Mean Annual Flow	523.584	238.15

"B"

Changes from Rule 15A as notified are shown marked up (additions underlined and deletions in ~~strikethrough~~)

Rule 15A

Any activity that ~~complies with Rules 2, 3, 6 and 7 and is the subject of an existing consent to take, dam, divert or use water for hydro-electricity generation~~ is part of the Waitaki Power Scheme, for which a consent is held and is the subject of an application for a new consent for the same activity and is:

- the use of water for the generation of electricity; or
- the taking, damming or diverting of water for storage; or
- the taking or diverting of water into canals; or
- the taking, damming, or diverting of water to protect the structural integrity of dams, power houses, canals and appurtenant structures;

is a controlled ~~restricted-discretionary~~ activity provided the activity complies with Rules 2, 3, 6 and 7.

The matters of control ~~exercise of discretion~~ is restricted to the following matters:

- a. In respect of flows into the Pūkaki River, the Lower Ōhau River or the Tekapo River (above the confluence with the Forks Stream), adverse effects, including effects on Ngāi Tahu culture, traditions, customary uses and relationships with land and water, unless the environmental flow and level regimes for these rivers have been reviewed after the public notification date of this rule and the outcome of the review has ~~been made~~ become operative in accordance with clause 20 of Schedule 1 to the relevant provisions of the Resource Management Act 1991;
- b. Any mitigation measures to address adverse effects (including effects on Ngāi Tahu culture, traditions, customary uses and relationships with land and water), except for changes or alterations to environmental flow and level regimes, minimum lake levels, annual allocation to activities, or the provisions of flows into the Lower Waitaki River, set by this Plan;
- c. Collection, recording, monitoring and provision of information concerning the exercise of consent; and,
- d. Lapse period, duration of consent and review requirements.

Any application made under Rule 15A will be publicly notified.