

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTERS of an application pursuant to Section 201 for
a Water Conservation Order on the Hurunui
River

**STATEMENT OF EVIDENCE OF ANNA CAMERON ON BEHALF OF THE ROYAL
FOREST AND BIRD PROTECTION SOCIETY OF NEW ZEALAND INCORPORATED**

Dated: 13 March 2009

Royal Forest and Bird Protection Society

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1. INTRODUCTION

1.1 My name is Anna Mary Cameron. I hold a Masters degree in Regional Resource Planning and I have three years experience in planning and resource management. I am a graduate member of the New Zealand Planning Institute. I am the Resource Management Planner for the Royal Forest and Bird Protection Society of New Zealand Incorporated (Forest and Bird) and have the responsibility to provide input into Resource Management Act (RMA) and Conservation Act processes and resource management issues. I have experience in resource management, including resource consents, project management, provisions assessments and consultation processes.

1.2 This evidence relates to the application by the New Zealand Fish and Game Council, North Canterbury Fish and Game Council, and the New Zealand Recreational Canoeing Association under the RMA for a Water Conservation Order on the Hurunui River. I am appearing on behalf of Forest & Bird.

1.3 Forest and Bird has over 48 000 members and supporters, and 50 branches nation-wide. We are New Zealand's oldest conservation organisation and members of Forest and Bird have actively campaigned for the protection of New Zealand's indigenous flora and fauna for the last 86 years. The constitutional purpose of Forest and Bird is:

To take all reasonable steps within the power of the society for the preservation and protection of the indigenous flora and fauna and natural features of New Zealand, for the benefit of the public including future generations.

1.4 I confirm that I have read and agree to comply with the Code of Conduct for Expert Witnesses. This evidence is within my area of expertise, except where I state that I am relying on facts or information provided by another person. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

2. STRUCTURE AND SCOPE OF EVIDENCE

2.1 My evidence will discuss the following:

- The water conservation order application and the preferences sought by Forest and Bird;
- The relevant resource management issues associated with the Hurunui Waters;
- The provisions for water conservation order's which apply under the RMA, and their application to the Hurunui Waters; and
- The matters to be considered under s.207 and in particular the relevant planning documents.

3. WATER CONSERVATION ORDER APPLICATION

3.1 The New Zealand Fish and Game Council, North Canterbury Fish and Game Council (Fish & Game) and the New Zealand Recreational Canoeing Association (NZRCA) (the Applicants) applied to the Minister for the Environment in August 2007 for a water conservation order that would apply to the Hurunui Waters.

3.2 In summary the water conservation order application sought the following:

- (a) The Upper Hurunui Waters to be preserved in their natural state. Therefore no water takes (of ground or surface water) would be permitted, other than reasonable takes for domestic needs, stockwater and fire fighting purposes.

The Upper Hurunui Waters are defined as (para.2 Appendix A – Application):

The mainstream of the Upper Hurunui River and all of its lakes, tributaries and contributing waters (including groundwater) from its source in the main divide of the Southern Alps down to immediately above its confluence with the Mandamus River.

- (b) With respect to the Lower Hurunui, the application seeks a prohibition on damming, and minimum standards for fish screens in respect of all takes and diversions.

The Lower Hurunui is defined as (para.2 Appendix A – Application):

The mainstem of the Lower Hurunui River from immediately above its confluence with the Mandamus River down to the sea.

3.3 The application was supplemented by further information provided to the Minister in March 2008. The Special Tribunal publicly notified the application in November 2008. A number of submitters sought preferences to the proposed water conservation order. These preferences were notified to allow submitters to comment and included the following:

- Water quality standards;
- Level and rate of flow;
- Inclusion of the Mandamus River and other tributaries;
- Recognition of further outstanding cultural and spiritual values; and
- Integration with the regional plan.

3.4 Forest and Bird considers that the amenity and intrinsic values of the mainstem of the Upper Hurunui River and all of its lakes, tributaries and contributing waters (including the hydraulically connected groundwaters) from its source in the Main Divide of the Southern Alps down to immediately below its confluence with the Mandamus River (Upper Hurunui River) are nationally outstanding and should be recognised and sustained in their natural state by a water conservation order.

3.5 Forest and Bird considers that both the Upper Hurunui River (including the Mandamus) and the mainstem of the Lower Hurunui River, from immediately below its confluence with the Mandamus River down to the sea and including the lagoon (Lower Hurunui River) have outstanding characteristics as habitat for terrestrial and aquatic organisms and for scientific and ecological values, and these should be recognised and sustained by the a water conservation order.

3.6 Forest & Bird lodged a submission in support of the application for a water conservation order on the Hurunui River, and also sought the following preferences:

- That the Mandamus River be included and be retained as far as possible in its natural state – including and not limited to water quality, quantity, level and rate of flow;
- A minimum flow rate of 40 000 l/s as measured at the State Highway 1 recorded from September to December inclusive;
- A minimum flow rate of 20 000 l/s August, January and February inclusive measured at State Highway 1; and

- A gap between 'A' and 'B' water allocation for the Lower Hurunui so that the river would not be unduly held down to the minimum flows.

4. NATURAL VALUES

- 4.1 On the basis of the evidence presented by Dr. Hughey, Dr. Jellyman, Ms Lucas, and my own knowledge of the river, I consider that the following is a summary of the key natural values relevant to the proposed water conservation order.
- 4.2 The Hurunui Waters are an outstanding example of a largely unmodified complex of rivers, lakes and wetlands. The Hurunui begins at the Main Divide and flows impeded to the Pacific Ocean. The North Branch begins at Harpers Pass and flows into Lake Sumner, which also has several minor tributaries. The valley sides of the North Branch are covered in beech forest, moving into shrubland and alpine tussock. The valley floor is predominantly grassland and matagouri shrubland.
- 4.3 The North Branch flows into Lake Sumner. Lake Sumner was reported by the Ministry for Environment (2006) as having pristine water quality. In addition to Lake Sumner, Loch Katrine, Lake Marion, Lake Taylor, Lake Sheppard, Lake Mason, Lake Mary and Raupo Pond are located in the Upper Hurunui.
- 4.4 The moderating influence of Lake Sumner stabilises river flows, reducing the extent and duration of low flow periods and smoothing flood peaks between the lake and the South Branch confluence. Between Lake Sumner and the Mandamus confluence the river is fast flowing and is generally confined by steep topography. Beech and kanuka shrubland cover the valley sides.
- 4.5 As stated by Ms Lucas, from their sources the Upper Hurunui and South Branches together demonstrate outstanding wild and scenic, and natural characteristics. The lakes and tributaries are in a highly natural state.
- 4.6 Below the Mandamus (Lower Hurunui) the Hurunui River becomes a braided system flowing over the Amuri Plains. The river is confined by a gorge through the Lowry Peaks Range, after which becomes braided once more. The mouth of the river is located south of Gore Bay and is characterised by sandstone cliffs, an extensive lagoon and a coastal broadleaf forest.

- 4.7 The Lower Hurunui has been modified by water abstractions, dairy farm run-off and flood protection works. As stated by Dr Jellyman the Lower Hurunui plays a vital role in ensuring the outstanding state of the Upper Hurunui. The Lower Hurunui has outstanding characteristics as habitat for terrestrial and aquatic organisms and for scientific and ecological values.

5. ABSTRACTIONS AND DEVELOPMENT PROPOSALS

- 5.1 There are existing water abstraction and diversion consents for the Lower Hurunui. Other consents have been issued, including vegetation clearance, gravel removal, discharge, effluent disposal and activities such as construction and removal of structures, plant introduction, stopbank removal or addition (Armstrong, 2006).

- 5.2 In recent years the Hurunui Waters have been surveyed and assessed for water abstraction and the building of dams (Armstrong, 2006). An example of this research is the Hurunui Water Project. The Hurunui Water Project is currently undertaking consultation with groups to canvas varying proposals to construct a weir at the Lake Sumner outlet and/or construct a dam on the South Branch.

- 5.3 Water abstraction consents, changing land use patterns and research into the development of hydro-electric and water storage are increasing the demand to develop the water resources of the Hurunui Waters.

- 5.4 Abstraction and alteration to the water flow can result in problems with upstream passage for fish species, closure of the river mouth, changes in river temperatures, loss of littoral habitat and a reduction in the quality of habitat for terrestrial and aquatic species (Armstrong, 2006). Flooding due to dams could result in a loss of bird, plant and invertebrate habitat. Increases in the volume of water abstracted will lead to longer periods of time when that flow is depressed below the natural variation.

6. POLICY FRAMEWORK FOR WATER CONSERVATION ORDERS

Resource Management Act 1991

- 6.1 Water conservation orders are provided for in Part IX of the RMA.

Section 199 – Purpose of water conservation orders

6.2 Section 199(1) sets out the purpose of water conservation orders and states the following:

Notwithstanding anything to the contrary in Part II, the purpose of a water conservation order is to recognise and sustain –

- (a) Outstanding amenity or intrinsic values which are afforded by waters in their natural state:*
- (b) Where waters are no longer in their natural state, the amenity or intrinsic values of those waters which in themselves warrant protection because they are considered outstanding.*

6.3 The matters that a water conservation order may provide for are as follows:

- Preservation of water bodies in their natural state that are considered to be outstanding;
- Protection of outstanding habitat for terrestrial or aquatic organisms, fishery, wild or scenic, scientific and ecological values; or recreational, historic, spiritual or cultural purposes; and
- Protection of characteristics considered to be of outstanding significance in accordance with tikanga Maori.

6.4 Section 199 of the RMA is essential to understanding the nature and purpose of a water conservation order. Subsection 1 provides the reasons for the order and subsection 2 provides the matters that justify the order. As stated above the purpose of an order is to recognise and sustain the outstanding and intrinsic values of the waters in their natural state or, when waters are no longer in their natural state, to recognise and sustain the amenity or intrinsic values of those waters that warrant protection because they are considered outstanding.

6.5 Section 2 of the RMA defines amenity values as being *“those natural physical qualities and characteristics of an area that contribute to a person’s appreciation of this pleasantness, aesthetic coherence, and cultural and recreational attributes”*.

6.6 Section 2 goes onto define intrinsic values as, *“in relation to ecosystems, means those aspects of ecosystems and their constituent parts which have values in their own right, including –*

- (a) Their biological and genetic diversity; and*
- (b) The essential characteristics that determine an ecosystem’s integrity, form, functioning and resilience;”*

- 6.7 What is clear from the definitions of amenity and intrinsic values is that water conservation orders place a premium on the non-monetary components of the values described. Such values are clearly considered to be outstanding when found in their natural state. Where by contrast, they are no longer in their natural state they can be considered to warrant protection where certain characteristics are considered to be outstanding.
- 6.8 While Part II of the RMA is concerned with sustainable management of all natural and physical resources, the specific purpose of a water conservation order is wholly concerned with recognising and sustaining the outstanding amenity and intrinsic values of a water body. A water conservation order may provide for any of the characteristics or elements as set out in s.199(2) RMA.
- s.199(2)(a)** provides for *‘the preservation as far as possible in its natural state of any water body that is considered to be outstanding’*.
- 6.9 As stated in the application the Upper Hurunui Waters remain largely in their natural state and have a number of nationally significant values.
- 6.10 Dr. Jellyman has stated that within the Hurunui Waters there are approximately 12 species of native fish, including three species that are listed in the Department of Conservation’s threatened species classification.
- 6.11 With regard to aquatic birds, it is stated by Dr Hughey states the Hurunui Waters are extensive and diverse enough to support viable populations of almost all guilds of fresh water New Zealand bird species. The birdlife of the Hurunui, when evaluated on a number of scales, ranks very highly. Its combination of high species diversity, presence of significant numbers of important threatened or at risk species, and its relatively good habitat, mean it is of national importance for wildlife importance (Hughey, para. 14.2). The surveys show that the majority of the birds were recorded on the Lower Hurunui, however on Upper Hurunui there were significant numbers of banded dotterel (gradual decline) and black fronted tern (nationally endangered) (Hughey, para. 4.12).
- 6.12 The Upper Hurunui waterways are characterised by predominantly native aquatic vegetation. Lake Marion has only native vegetation and native fish and has not been affected by any invasive exotic species. The headwater

lakes have unimpeded access for migratory species, something unusual for South Island east coast lakes (Jellyman, para. 9.2)

s. 199(2) (b) provides for *“the protection of characteristics which any water body has or contributes to, and which are considered to be outstanding, -*

(i) As a habitat for terrestrial or aquatic organisms

(ii) As a fishery

(iii) For its wild, scenic, or other natural characteristics

(iv) For scientific and ecological values

(v) For recreational, historical, spiritual, or cultural purposes

6.13 In contrast to the Upper Hurunui, the Lower Hurunui is a more modified system due to the volume of water abstraction, and the development both within the riverbed and along the fringes. Due to these modifications the Lower Hurunui is not considered to be in its natural state. However, the braided nature of the river and overall characteristics of the river are still relatively intact. Outstanding values of the Lower Hurunui, in particular its value as a habitat for braided river birds and native fish are worthy of protection in accordance with s199(2)(b).

6.14 With regard to Lower Hurunui, the following characteristics of this section of the system are considered to be outstanding and will be discussed in the following section:

(i) As a habitat for terrestrial or aquatic organisms

and

(iv) For scientific and ecological values

6.15 The Lower Hurunui contains a variety of braided river, lagoon and lake environments that individually and collectively provide outstanding habitat for aquatic and braided river birds and native fish.

6.16 As stated in Dr. Hughey’s evidence the Lower Hurunui supports a number of nationally important river-dependent bird species. These bird species include the black-fronted tern (nationally endangered), black-billed gull (serious decline) and banded dotterel (gradual decline). The Lower Hurunui from just below the Mandamus confluence down to and including the lagoon is the habitat on the Hurunui Waters that supports these bird species.

- 6.17 Dr. Hughey states that the bird numbers and distribution vary greatly along the river. However the highest bird numbers were recorded on:
- Most of the braided sections;
 - Downstream of Mandamus; and
 - The lagoon.

6.18 The Hurunui River is of national and international significance in terms of habitat for threatened bird species (Hughey, para. 6.16).

6.19 Eight of the 12 species recorded by Dr. Jellyman are dependent on the Lower Hurunui to provide passage to the sea to complete their life cycles (diadromous). These species include the migratory galaxiid species, the common bully and both species of eel (for a complete list refer to table 3 of Dr. Jellyman's evidence). For each of these diadromous species access to the sea is important, but for eels it is essential. Whitebaiting is a popular activity at the river mouth.

6.20 The Lower Hurunui is utilised by juvenile eels for early growth before they move upstream and into the deeper pools as they grow larger (Mosley, 2002).

(v) For recreational, historical, spiritual, or cultural purposes

6.21 It is considered that the entire length of the Hurunui Waters is an outstanding recreation area. It is noted that it is within the Upper Hurunui the waters are generally linked with white water rafting and kayaking. The Lower reaches of the river are also important in terms of recreation, including but not limited to bird watching, swimming, boating and fishing.

6.22 Other parties will present evidence on the recreational opportunities of the Hurunui Waters and the importance of the river for providing these opportunities.

7. SECTION 207 – MATTERS TO BE CONSIDERED

7.1 Section 207 identifies the matters that the Tribunal must have regard to when considering the water conservation order application. Particular regard must be given to the purpose of a water conservation order and the other matters listed under s. 199. Section 207 specifically states the following as matters that the special tribunal shall have regard to:

- The application and all submissions;
- The needs of primary and secondary industry, and of the community; and
- The relevant provisions of every national policy statement, New Zealand coastal policy statement, regional policy statement, regional plan, district plan, and any proposed plan.

7.2 The relevant documents to be considered under s.207(c) are therefore:

- National Policy Statement for Freshwater (draft)
- New Zealand Coastal Policy Statement
- The Canterbury Regional Policy Statement
- The Canterbury Regional Coastal Plan
- Proposed Natural Resources Regional Plan
- Hurunui District Plan

8. NATIONAL POLICY STATEMENT FOR FRESHWATER

8.1 The proposed National Policy Statement for Freshwater was publicly notified and submissions called for in September 2008. A hearing for the proposed National Policy Statement has not yet been held. In my opinion, because the National Policy Statement has not been approved by the Minister, then it should not be afforded any weight in the assessment in accordance with s. 207(c).

9. THE NEW ZEALAND COASTAL POLICY STATEMENT

9.1 The purpose of the New Zealand Coastal Policy Statement (NZCPS) is to achieve sustainable management of natural and physical resources in relation to the coastal environment.

9.2 The 'coastal environment' is not defined in the NZCPS, the term has generally been interpreted as the environment in which the coast is a significant element or part – including the coastal marine area (CMA), the active coastal zone and the land backdrop. The land backdrop including, estuaries and where there is a coastal influence on the flora, fauna, habitats and processes.

9.3 A water conservation order cannot directly control the activities within the CMA, as the CMA is excluded from the definition of a 'water body'. Section 2 of the RMA defines a water body as being *'fresh water or geothermal water in*

a river, lake, stream, pond, wetland, or aquifer, or any part thereof, that is not located within the coastal marine area. This exclusion does not limit the water conservation order managing or protecting processes occurring outside of the water body but that are completely reliant on the water body to function – for example effects on the mouth of the river.

9.4 The following policies of the NZCPS are relevant to the proposed water conservation order of the Hurunui Waters:

Policy 1.1.2

It is a national priority to preserve and protect the coastal environment, significant indigenous vegetation and significant habitats by avoiding any potential adverse effects of activities.

Policy 1.1.3

It is a national priority to protect the natural character of the coastal environment, including special spiritual, historical and cultural characteristics.

Policy 1.1.4

It is a national priority to preserve the natural processes of the coastal environment.

Policy 1.1.5

It is a national priority to restore and rehabilitate the natural character of the coastal environment where appropriate.

Policy 3.3.1

A precautionary approach should be adopted where the effects are unknown or little is understood

9.5 The Hurunui Waters supply sediment to the coast. Major developments, including dams or other major structures, and diversions would reduce the amount of sediment reaching the coast (Armstrong, 2006), and therefore potentially leading to coastal erosion.

9.6 The river mouth processes and the preservation of the habitat located at the mouth are important considerations and are reliant on the system above this point. The link between mouth and the river provides for migration of native

fish species. Furthermore this link contributes to the integrity, functioning and resilience of the coastal environment.

9.7 In my opinion the making of a water conservation order prohibiting the damming of the river and providing for minimum monthly flows for both the Upper and Lower Hurunui would assist in achieving the policies of the NZCPS. A water conservation order would maintain the integrity, functioning, and resilience of the coastal environment surrounding the mouth of the Hurunui River and would help to safeguard the survival of species that rely on both the coastal and braided riverbed environments. This is in accordance with the policies listed above.

9.8 The water conservation order cannot directly control activities within the CMA. However the water conservation order is able to impose restrictions or prohibitions within the Hurunui Waters that provide positive benefits for the CMA.

10. THE CANTERBURY REGIONAL POLICY STATEMENT

10.1 The Canterbury Regional Policy Statement (RPS) became operative in June 1998. The RPS provides a broad overview of issues within the Canterbury region. It is important to note that it is the implementation of the regional and territorial plans that addresses these issues on the ground.

10.2 The RPS contains provisions that are relevant to the water conservation order application. In my opinion the water conservation order is consistent with the objectives of the RPS and would aid in the implementation of this Statement.

10.3 Chapter 8 is entitled 'Landscape, Ecology and Heritage'. The water conservation order would directly assist in the implementation of the objectives and policies of Chapter 8. Objectives 2 and 3 are of most relevance to the proposed water conservation order for the Hurunui Waters. They are as follows:

- Objective 2
Protection or enhancement of the natural features and landscape that contribute to Canterbury's distinctive character and sense of identity, including their associated ecological, cultural, recreational and amenity values.

- Objective 3
Protection or enhancement of:
 - (i) Indigenous biodiversity, (including the survival of threatened species, communities and habitats, and species, biological communities and habitats unusual in, or characteristics of Canterbury);
 - (ii) Indigenous ecosystems functioning; and
 - (iii) Indigenous vegetation and habitats which contribute to the region's natural character.

10.4 Policies 3 and 4 support Objectives 2 and 3 respectively. Policy 3 provides for the protection of natural features and landscapes from adverse effects of development and use. Policy 4 states that indigenous species, communities and habitats that are threatened, unusual in, or characteristic of Canterbury should be safeguarded as far as practicable.

10.5 The proposed water conservation order, if approved, would meet both of these Objectives and aid Environment Canterbury in the implementation of Policies 3 and 4.

10.6 Chapter 9 – 'Water' addresses water resources in the Canterbury region. It is stated in the introduction to this Chapter, subject to investigations, that it '*may be desirable to sustain the natural characteristics*' of the Hurunui River above the Mandamus. This Chapter identifies a number of objectives and policies that have been included in the RPS to safeguard and protect the water resource and associated environs whilst managing competing demands.

10.7 Objective 1 seeks to provide sufficient water to meet those competing demands while safeguarding sources of drinking water, the life supporting capacity of water, protecting wahi tapu, preserving the natural character of lakes and rivers, protecting the habitat of salmon and trout, and maintaining and enhancing amenity values.

10.8 Policy 1 sets out the matters to which particular regard should be had in setting water flow allocation for rivers. These include:

- natural patterns of flow or water level change;
- river or lake bed morphology and substrate material;
- bed gradient;
- water quality;
- habitat requirements; and

- appropriate alternative minimum flow regimes including mean annual low flow.
- 10.9 Policy 4 of Chapter 9 promotes the investigation of seven water bodies that should be sustained as far as possible in their natural state. This policy also provides for water flow, level or allocation schemes. The Hurunui catchment is not listed. The commissioning of an investigation into a suitable flow, level or allocation scheme has not been initiated and therefore the subject water conservation order would aid in providing a management mechanism for this 'regionally significant' catchment.
- 10.10 The proposed water conservation order for the Hurunui Waters would be consistent with the objectives and policies of Chapter 9.
- 10.11 Chapter 20.4 – 'Regional Significance' contains a number of landscape and ecological criteria for identifying matters and effects of regional significance. These matters include:
- Species, communities and habitats that are predominantly endemic to Canterbury, or are threatened within the region, or any other indigenous species, communities or habitats which, in the manner of their occurrence are or were recognisable as being unique to or characteristic of the Canterbury region;
 - Existing indigenous ecosystems and associated ecological processes that are or were unique to, characteristic of the Canterbury region;
 - Threatened species and communities of indigenous flora or fauna;
 - Landscapes and natural features that are distinctive, unique to, characteristic of, or outstanding within the Canterbury region; and
 - Sites or places that have important recreational or other amenity value to the Canterbury region.
 -
- 10.12 These matters link back to Objectives 2 and 3 in Chapter 8. These criteria are applicable to the Upper and Lower Hurunui River and therefore I consider, with reference to this criteria that both the Upper and Lower Hurunui and the catchment are of regional significance.
- 10.13 In my opinion, the proposed water conservation order is consistent with the RPS and will aid in its implementation.

11. THE CANTERBURY REGIONAL COASTAL PLAN

11.1 The Regional Coastal Plan for the Canterbury Region is a relevant document under s.207. The Plan relates to the coastal environment and the rules only apply within the CMA. For the purposes of the Hurunui River, the CMA extends approximately 300m inland from the seaward side of the lagoon arm.

11.2 Schedule 2 of the Coastal Plan identifies the Hurunui River mouth as an 'Identified Area of High Natural, Physical, Heritage or Cultural value'. The following values are identified:

- Marine mammals and birds;
- Ecosystems flora and fauna habitats; and
- Coastal landforms and associated processes.

11.3 I consider that a water conservation order would be consistent with the Canterbury Regional Coastal Plan. While the water contained within CMA is excluded from the proposed water conservation orders and the preferences sought by Forest and Bird will aid in the maintenance of the river mouth to ensure the passage for migratory native and introduced fish.

14. TRANSITIONAL DISTRICT PLAN

14.1 The Transitional District Plan is operative and contains bylaws and ordinances which preceded the RMA. The Transition Plan contains no objectives or policies that are relevant to the proposed water conservation order.

14.2 The intent of the Transitional District Plan is the management of natural and physical resources within the Canterbury Region. It is my opinion that the proposed water conservation order is consistent with this intent.

15. PROPOSED NATURAL RESOURCES REGIONAL PLAN

15.1 The Proposed Natural Resources Regional Plan (NRRP) addresses the sustainable management of natural resources in the Canterbury region. In 2004 Chapters 4-8 were notified. These Chapters address water quality, water quantity, beds of lakes and rivers, wetlands and soil conservation. There are some similarities between the intent of NRRP and the proposed water conservation order, including the preferences sought by Forest and Bird.

Variation 8 addresses Chapter 5 – ‘Water Quantity’. Chapter 5 is of most relevance to the proposed water conservation order for the Hurunui Waters. Variation 8 to Chapter 5 introduces a flow and allocation regime for the Hurunui River. No Officer’s Report has not yet been released nor hearings commenced for Variation 8.

15.2 The assessment of Chapter 5 and Variation 8 has been completed with reference to the notified documents. Limited weight only can be placed on Chapter 5 and Variation 8 due to the stage of the planning process that both of these documents are at.

15.3 The following discussion will review the relevant sections of Variation 8 of the NRRP and compare these to the proposed water conservation order, the preferences sought for the Hurunui Waters and the submission made by Forest and Bird.

Chapter 5 – Water Quantity

15.4 Variation 8 is intended to give effect to Policy WQN5 of the NRRP. Policy WQN5 reads as follows:

Within five years of this plan becoming operative, Environment Canterbury will have completed a review, in priority order, of all of the minimum flows set out in Appendix WQN2.

15.5 Policy WQN1 and WQN2 and Schedule WQN5 of Chapter 5 are of particular relevance to the proposed water conservation order. The following paragraphs will address these components of Chapter 5.

15.6 Policy WQN1 is entitled ‘Natural state water bodies’ and these water bodies are identified in Schedule WQN5. With regard to the Hurunui Waters the following components have been identified within this Schedule:

- North Hurunui River (mainstem) and tributaries upstream of Lake Sumner
- Upper Reaches of South Hurunui River and tributaries
- Upper reaches of North Esk River and tributaries

15.7 Policy WQN1 consists of three clauses:

- (1) To retain river flows or lake levels in the stated water bodies in their natural state;
- (2) Any taking, using, damming, and diverting of water or discharge of water into water within these natural state water bodies must not have more than a minor adverse effect on the natural flow, indigenous vegetation, natural character and landscape values, wahi tapu, indigenous birds or fish, passage of fish or wild and scenic values; and
- (3) Takes or diversions from waterbodies must be within the allocation limits that apply to that catchment.

15.8 Within clause (1) there are two groups of water bodies located within the Hurunui Waters that are relevant:

- 1(a) water bodies within and adjacent to the Southern Alps areas of the Crown reserve administered by the Department of Conservation.

It is assumed that these water bodies refer to the components of the system that are listed at paragraph 15.6 above (Schedule WQN5).

- 1(d) Lake Sumner, Lake Taylor, Lake Sheppard, and Loch Katrine.

15.9 The explanation for this Policy states that the identified water bodies that have high natural values should be sustained in their natural state. These water bodies have been selected as deserving protection when tested against the following criteria:

- Natural character;
- Outstanding or significant natural features and landscape;
- Areas of significant indigenous vegetation and significant habitats of indigenous fauna;
- Relationship of Ngai Tahu with their ancestral lands;
- Habitat for trout and salmon;
- Amenity; and
- Whether they are within the Southern Alps area of the Crown Reserve administered by the Department of Conservation.

15.10 It is my opinion that the proposed water conservation order is consistent with the intent of Policy WQN1. However, the proposed water conservation order is more comprehensive and robust than Policy WQN1.

15.11 Policy WQN2 is titled 'High naturalness water bodies' and applies to water bodies that are located outside of 'natural state water bodies'. This policy identifies several locations within the Hurunui Waters, including:

- The mainstem of the Hurunui to Lake Sumner; and
- Tributaries of the Hurunui upstream of the Mandamus.

- 15.12 Clause 2 of Policy WQN2 is somewhat ambiguous, but appears to prevent the damming of the mainstem of the Hurunui. It also applies to dams outside of the mainstem that would have an 'significant impact'.
- 15.13 In my opinion the proposed water conservation order is consistent with Policy WQN2 with regard to restricting dams on the mainstem of the Hurunui. However the proposed water conservation order together with the preferences sought by Forest and Bird would provide more robust and comprehensive protection to the Hurunui Waters than Policy WQN2.
- 15.14 As a stand alone policy, Policy WQN1 Clause 1 gives appropriate recognition and provides satisfactory protection to those waterbodies that are considered to be in their natural state. However, when Clause 1 is read with Clause 2, the intent of Clause 1 is called into question. This is confirmed in the explanation where it is stipulated that consents to take, dam, divert or discharge water may not create a more than minor effect.
- 15.15 This explanation allows the natural state of a water body to be diminished by a minor effect. There seems to be no reason to identify these natural state water bodies if they are allowed to be diminished by minor effects, or a series of incremental 'minor effects'. Furthermore by allowing minor effects on these water bodies there is scope for interpretation of what constitutes a 'minor effect' and therefore there is no certainty for the protection of these water bodies in their natural state.
- 15.16 Policy WQN2 provides a clear indication that there is an intention that the high naturalness waters will be used modified. Clause 2(d) stipulates that any damming, using, taking or diverting of water from the water bodies identified may not adversely affect the reliability for supply of downstream users. There is no certainty of the level of use and there is no recognition of the potential environmental or intrinsic effects downstream of the activity. The only test is the reliability of the supply.
- 15.17 The following paragraphs will discuss Forest and Bird's submission on Variation 8 and the exclusion of the Mandamus from the protection measures of Variation 8.

15.18 Forest and Bird stated in their submission on Variation 8 that the minimum flows had been set too low to maintain either the life supporting capacity of the Hurunui River's indigenous species; or the natural character and amenity of the Hurunui River between the Mandamus and the sea. Specifically Forest and Bird stated the following:

- The minimum flows have been set below the best available estimates and would not provide for an adequate 'moat effect' for the nationally endangered black-fronted tern and black-billed gulls;
- The minimum flows of 15 cumecs or less are at the extreme lower end of the feeding preference curves for black fronted tern;
- Minimum flows are insufficient for optimising diatom production over undesirable long filamentous algae; and
- Insufficient attention has been paid to natural character.

15.19 Through the variation process Forest & Bird sought the following decision from the Regional Council:

- To adopt a prohibited activity status for dams, weirs and diversions in, on, or over the bed of the entire Upper catchment from the Mandamus confluence and upwards and including all the lakes; and a prohibited activity status for dams and weirs in, on, or over the bed of the mainstem of the Hurunui from the Mandamus down to the coastal marine area
- To maintain a minimum flow of 20 cumecs on the Hurunui main stem from the Mandamus to the sea throughout the year to protect instream values. (Since this submission was made new scientific evidence indicates that a minimum flow rate of 40 000 l/s September to December (inclusive) is required to ensure that nesting birds are protected (Duncan et al, 2008)).
- To cap the total water allocation at the sum of the "A" and "B" Blocks, with further takes being a prohibited activity.
- To provide a greater gap between the "A" and "B" block abstraction.

15.20 Policy WQN2 provides for high naturalness water bodies outside of the areas covered by Policy WQN1. However, clause (1)(d) clearly excludes the Mandamus River from any protection afforded by this policy. This policy states:

Outside the areas covered by Policy WQN1, the following water bodies are classified as high naturalness water bodies:

(d) tributaries of the Hurunui River upstream of the Confluence with, but not including, the Mandamus River.

15.21 The Mandamus is not included in Schedule WQN5 and therefore is not classified as either a water body to be retained in its Natural State or a High Naturalness water body. In accordance with the NRRP water takes from the Mandamus and downstream is a controlled or restricted discretionary activity and damming is a restricted activity. Forest and Bird through the water conservation order is seeking to protect the values of the Mandamus. Forest and Bird is seeking no damming or takes (beyond reasonable domestic, stock watering or fire-fighting needs) from the Mandamus and no damming of the Lower Hurunui River.

15.22 The NRRP provides very little protection for the Mandamus in comparison to what is being sought by Forest and Bird through the proposed water conservation order.

15.23 Variation 8 does not provide sufficient protection of the Hurunui Waters except for the North Branch above Lake Sumner. It is ambiguous about dams and abstraction and provides no protection for the Mandamus. The water conservation order together with the preferences proposed by Forest and Bird would better protect the Hurunui Waters, including of the Mandamus.

16. HURUNUI DISTRICT PLAN

16.1 The Hurunui District Plan became operative in August 2003 and was last amended in March 2008. Currently there are a number of plan changes that have been publicly notified. None of these plan changes should have any effect on the Hurunui Waters and the proposed water conservation order.

16.2 On page 25 (Issue 18 – Hurunui Lakes area) the District Plan identifies the Hurunui Lakes area as one of the District's significant natural assets. The Plan goes on to state that this area is of high natural and recreational value, not only to the District, but regionally and nationally. The Hurunui River Mouth, Hurunui Lakes and the Hurunui River have all been identified within the plan as being significant natural areas (Appendix A7.1). The Council states that achieving sustainable management within this environment is difficult due to the complexity of the issues and special characteristics of this area.

16.3 In 1994 the management issues specific to the Hurunui Lakes area were considered by a working group. This group represented views of central, regional, and local government, bach users, run holders, tangata whenua, and conservation and recreation interests. The identification of issues and development of policies and methods in the District Plan are largely based on the recommendations contained within the working party report.

16.4 The relevant Issues, Objective and Policy are as follows:

Issues:

Protection of the significant conservation values of the Hurunui lakes area.

It is stated that the landscapes of the Hurunui Lakes area are of regional significance. The recreational values in terms of fishery and opportunity for recreational activities are of national and regional importance.

The lack of an integrated management framework.

There are a variety of stakeholders interested in the management of the Hurunui Waters. As stated in the plan 'the diversity of land management and user interests is compounded by often divergent views on the current use and future management of the lakes area'.

Objective 18

The maintenance and enhancement of the natural values of the Hurunui Lakes area while providing for compatible activities.

Policy 18.4

To protect the special features of the Hurunui Lakes area, including its natural landscape, ecological and habitat values and recreational amenity values from adverse effects.

One of the methods to implement this policy is to work in conjunction with other management agencies to investigate methods to provide long term protection for the Hurunui River (including its lakes and tributaries) above its confluence with the Mandamus. The water conservation order will achieve this policy by ensuring the long term protection of the Hurunui Waters.

16.5 The Council goes on to state that it supports the concept of providing long term protection of the Hurunui River, and its lakes and tributaries. A water conservation order is consistent with the Council's objective to providing long term protection to the Hurunui Waters.

- 16.6 The Hurunui District Plan clearly recognises the importance of the Hurunui Waters for nature conservation, landscape and recreational values, as well as the value of the river as a water source for farming.
- 16.7 Part I of the District Plan contains a chapter addressing water as a renewable resource. The introduction to this chapter states that renewable resources can be used in a way that threatens their long-term sustainability. The Plan notes that due to the complex relationships between different systems it is often challenging to sustainably manage these resources and this is further complicated by a lack of knowledge in determining the resilience of these resources. However it is important to protect the District's renewable resources.
- 16.8 Objective 4 of Issue 4 states:
The protection and enhancement of the quality and quantity of the District's geothermal and freshwater resources, and the recognition of their value to the community.
- 16.9 This objective is supported by the following policies:
- Policy 4.1: to avoid, remedy or mitigate the adverse effects of land use activities on the quality and quantity of water resources.
 - Policy 4.2: to recognise and provide for the cultural relationship of tangata whenua with the District's water resources in the management of those resources.
 - Policy 4.3: To avoid, remedy or mitigate the adverse effects of land use activities, public access and utilisation of water resources on the cultural integrity and the natural and physical characteristics of the margins of water bodies.
 - Policy 4.4: To provide for the use of the surface of water bodies in a way that protects water quality and quantity and reflects conservation, ecological, aesthetic, cultural and recreational values of such water bodies.
- 16.10 The water conservation order would be consistent with the policies and objectives of the Hurunui District Plan. A water conservation order would assist in giving effect to the Plan by providing for a greater level of protection of ecological, amenity and recreational values, whilst providing certainty for abstractive uses. However I note that the Hurunui District Council's jurisdiction is restricted to land use activities and to activities on the surface of

waterbodies. Furthermore Objective 18 addresses the Lakes area and does not apply over the entire Hurunui Waters.

17. SUMMARY OF PLANNING INSTRUMENTS

17.1 An analysis of the relevant planning documents reveals that there are no conflicts between these policy statements and plans and the proposed water conservation order for the Upper Hurunui Waters. Given the procedural stage of Variation 8 and the uncertainties around this variation, the water conservation order strengthens the ability of Environment Canterbury to implement and give effect to the policies and objectives of the Regional Policy Statement.

18. CONCLUSIONS

18.1 A water conservation order is a tool provided by the RMA to protect outstanding amenity and intrinsic values of water bodies. Accordingly, the proposed water conservation order and the preferences sought by Forest and Bird for the Hurunui Waters seek to protect such values of the Hurunui Waters.

18.2 A water conservation order is a mechanism that provides permanent and robust protection. If the Hurunui Waters are considered by the Special Tribunal to contain outstanding amenity or intrinsic values, the proposed water conservation order would provide a level of protection that is both appropriate and necessary.

18.4 The NRRP is the most directly relevant planning document with regard to the proposed water conservation order. The NRRP recognises that some components of the Hurunui Waters exhibit high degrees of naturalness that deserve protection. However there is little protection proposed for most parts of the Hurunui Waters beyond discretionary activity status. Therefore the provisions provided in the NRRP are inadequate to provide sufficient protection of the natural values that have been outlined by the expert witnesses.

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