

Decision No. C135/2005

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of an application for a water conservation
order pursuant to section 201 of the Act

BETWEEN RANGITATA SOUTH IRRIGATION
LIMITED
(RMA 807/02)

TIMARU DISTRICT COUNCIL
(RMA 808/02)

TRUSTPOWER LIMITED
(RMA 809/02)

RANGITATA DIVERSION RACE
MANAGEMENT LIMITED
(RMA 810/02)

FEDERATED FARMERS OF NEW
ZEALAND INCORPORATED
(RMA 812/02)

CANTERBURY REGIONAL COUNCIL
(RMA 815/02)

Submitters

AND

NEW ZEALAND AND CENTRAL
SOUTH ISLAND FISH AND GAME
COUNCIL

Applicant

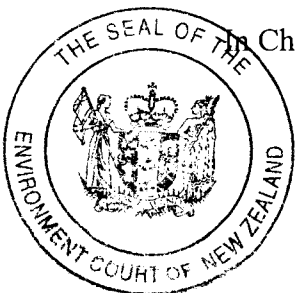
BEFORE THE ENVIRONMENT COURT

Environment Judge J R Jackson (presiding)

Environment Commissioner C E Manning

Deputy Environment Commissioner R Grigg

In Chambers at Christchurch



Submissions by:

Mr S W Christensen and Ms M A Baker for the applicants

Ms A Douglas for the Canterbury Regional Council

Mr P Milne for the Timaru District Council and Rangitata South Irrigation Limited

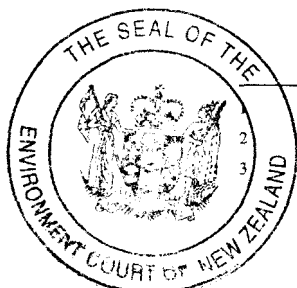
**FINAL REPORT ON A PROPOSED RANGITATA WATER
CONSERVATION ORDER**

Introduction

[1] The Court issued its interim report¹ on 5 August 2004. Attached to the interim report was a draft Water Conservation (Rangitata River)² Order. An interim report was issued to allow the parties to make written submissions on changes or corrections to the draft order as were considered necessary to meet the spirit of the substantive findings and to deal with any matter inadvertently omitted. Directions were made for the lodgement and service of those submissions³.

[2] By 29 October 2004 three submissions had been received:

- (a) From the applicants - the Fish and Game Councils - advising that they and Rangitata Diversion Race Management Limited and Trust Power, Ashburton Rangitata Instream Users Group and the New Zealand Recreational Canoeing Association (who, for convenience, I will collectively refer to as “the applicants”) have agreed on suggested changes or additions to the draft water conservation order recommended in the Interim Report. A complete set of proposed changes was attached to counsel’s memorandum and it also notes that the Canterbury Regional Council agrees to some of the changes;



C 109/2004.
Appendix 5.2 to the report.
C 109/2004 para 264.

- (b) From the Timaru District Council and Rangitata South Irrigation Limited (“TDC/RSIL”) requesting one change to clause 9(2)(c) of the draft Order; and
- (c) From the Canterbury Regional Council (“CRC”) seeking different changes especially in relation to groundwater issues.

[3] On 12 November 2004 responses to the submissions were received from the applicants and TDC/RSIL. These commented on each other’s previous submissions, and on those of CRC. No response was received from CRC at that time.

[4] Further responses were also received from TDC/RSIL on 7 December 2004 (correcting some errors in the earlier submission) and, pursuant to a further minute from the Court dated 13 January 2005, from CRC on 10 February 2005 and from the applicants on 11 February 2005.

[5] Some difficulties have been experienced in aligning the various responses of the parties. Those difficulties have resulted from some proposed changes being commented on while others are not. In such cases, the lack of comment in opposition has been taken to infer agreement.

[6] The difficulties led to a further draft order being distributed for final comment (“final draft circulation”). The applicant for clarity and consistency suggested minor alterations and those changes have been made to the final draft order. The CRC has signalled that they do not disagree with any of those further changes, no response was received from TDC/RSIL, so again agreement has been inferred.

The changes

[7] The starting point for the changes to the draft order is the comprehensive set of amendments proposed by the applicant (which we call “the redraft”). TDC/RSIL and CRC, in their initial submissions, referred to various clauses of the draft order.

Some of those changes were also included in the applicant’s redraft, though some were not. The subsequent submissions tended to relate to the applicant’s redraft, and opposition or proposed changes to clauses contained in that. Therefore, so far as the



redraft has not offended the spirit and intent of the interim decision, and the other parties have been silent or agreed (specifically or by making the same submission), those changes have been made.

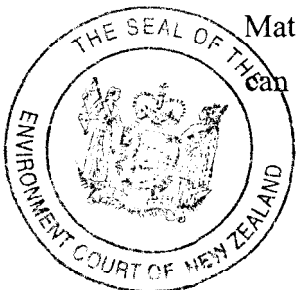
[8] The specific changes covered below relate to matters which were raised by TDC/RSIL and CRC that were not included in the applicant's redraft, or where TDC/RSIL and CRC have either objected to changes or proposed further amendments to the redraft.

[9] The first category of changes relates to the *Interpretation* section of the order, and seems relatively non-contentious. Definitions will be added for "calculated river depletion effect" and "minimum flow" (as per the CRC definition). Minor corrections to the designation of map references are also made.

[10] The next suite of changes occurs in clause 8 of the order: *Restrictions on the Damming of Waters*. Several agreed changes have been made (e.g. replacement of "permitting" with "authorising"). However, CRC raises two issues relating to this clause which differ from the redraft. The first relates to which schedule should be referred to in clause 8(1). The redraft amended the draft order by referring to schedule 2 (instead of 3). CRC submits that it should refer to schedules 1 and 2. There does not appear to be any reason why clause 8(1) should not also refer to schedule 1, so it has been included in the final order.

[11] The second issue for CRC lies in some of the words that are submitted as being too subjective. Words such as "reduce", "material" and "reduction" (amongst others) are of concern to CRC. This issue also arises in clause 9. The issue for CRC is that they require interpretation as to their meaning that could result in unnecessary argument.

[12] The applicants submit that such words are consistent with other water conservation orders and points to those applying to the Buller, Rangitikei and Maitai rivers as examples. The basic submission is that these are not ultra vires and can be included.

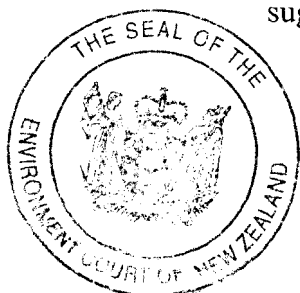


[13] While the CRC position is understandable, there are two problems with their position. The first is that they do not offer an alternative to the words in question, which leads the Court to wonder what they would consider an acceptable alternative. The second issue is that a small degree of subjectivity is inevitable on certain aspects of the water conservation order as it relates to a dynamic system. There may be room for some debate as to actual river conditions at specific times. The crucial aspect is that the specific parameters (i.e. the minimum flows) that are set are enforced.

[14] Accordingly, it is hard see how the words that CRC complains of can be replaced without introducing a degree of complexity that is likely to be somewhat abstract and difficult to enforce. Without being offered any specific suggestions, we do not think that the finalising of this order should be delayed by attempting to remove all words that might contain an element of subjectivity. In any event, the Court has confidence in the expertise of the Council's staff to interpret such words in a robust and workable manner.

[15] Moving to clause 9: *Restrictions on Alterations of River and Form*. This clause was both reformatted and amended by the redraft. TDC/RSIL and CRC each had comments on the various changes. Both agree with (or do not comment on) many of the changes made, such the reformatting of clause 9(1) of the draft order. That caused the creation of a new clause 9(2) in the redraft. We will use the redraft numbering from this point on when referring to clause 9, though certain further changes have also been made following the final draft circulation.

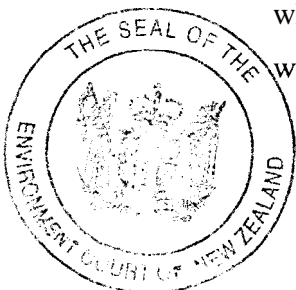
[16] The inclusion of a reference to hydraulically connected groundwater throughout clause 9 is also supported. TDC/RSIL suggested a change in that reference from "streamflow depletion effects" to "Calculated River Depletion Effects". That change was in turn supported by the applicants. CRC makes no specific suggestion as to how hydraulically connected groundwater should be referred to, but confirms that its concerns appear to be covered by the applicants suggested amendment.



[17] Clause 9(3) of the redraft, was the focus of submissions from all of the parties. The redraft, as well as including the reference to hydraulically connected groundwater, also deleted other provisions. One was clause 9(3)(b)(ii). That deletion was supported by TDC/RSIL and it again appeared to answer a concern of CRC. The CRC also appeared to advocate the deletion of clause 9(3)(c)(ii). The CRC position was confirmed in its last submission. That course was not opposed by the applicants for the same reasons as the deletion of clause 9(3)(b)(ii): that Klondyke flows above $110\text{m}^3/\text{s}$ do not need to be controlled by the water conservation order and can properly be dealt with through a Regional Plan. The possible deletion of clause 9(3)(c)(ii) was not referred to by TDC/RSIL. We find that clause 9(3)(b)(ii) and clause 9(3)(c)(ii) can both be deleted. There will also be consequential re-numbering. This has been amended further following the final draft circulation with (a) and (b) now amalgamated, so we are left with clauses 9(3)(a), (b), (c) and (d).

[18] TDC/RSIL do comment on an issue raised by CRC in relation to clause 9(3)(b) and its potential impact on augmentation of as well as abstraction from the naturally occurring river flow. This, it is submitted could result in the minimisation of augmentation. TDC/RSIL submit that the concern could be removed by the replacement of the word “alteration” with the word “decrease”. This appears to be a sensible suggestion and that amendment will be made to what is now 9(3)(a), and also to 9(3)(b), in the final order. No comment was made by the applicants on this point except after the final draft circulation where the change was also applied to the following clause for consistency.

[19] More issues arise in relation to clause 9. The first relates to the words “immediately or within 150 days” from clauses 9(3)(c) and 9(3)(d) [now (b) and (c) after final draft circulation]. The applicant submitted that those words should be removed as potentially confusing. TDC/RSIL submitted that only “immediately or” should be deleted: a 150 day limit being sufficient. The applicant clarified its reason for the deletion of any timeframe at this point in clause 9 by reference to clause 9(9), which is the definitive clause for the calculation of river depletion effects. We agree with the applicant, so the timeframe will be removed from those clauses. It should be

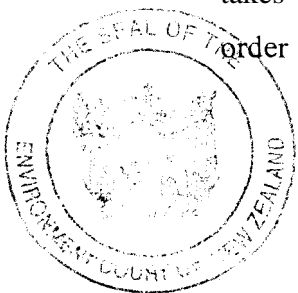


noted that the additions to those clauses, agreed to by TDC/RSIL, mean that clause 9(9) is now specifically referred to in both clauses.

[20] The redraft also added a term to clause 9(3)(d)(i) [now part of 9(3)(c) after final draft circulation] that created, in effect, a one for one additional extraction rate when the naturally occurring flow at Klondyke exceeds $110\text{m}^3/\text{s}$. The rationale was to avoid the possibility that abstractors might take more than is allowable as soon as flows exceed $110\text{m}^3/\text{s}$ at Klondyke. TDC/RSIL oppose that additional term. They say that the amount of extraction at flows above $110\text{m}^3/\text{s}$ can be “sorted out” through the Regional Plan and resource consent processes. The applicant does not comment further on this point in its later submissions.

[21] How the additional flows above $110\text{m}^3/\text{s}$ may be allocated can be dealt with in a Regional Plan (as is recognised above when discussing the deletion of 9(3)(b)(ii) and 9(3)(c)(ii)). It is the setting of the minimum flow and maximum extractions at flows above the minimum but less than $110\text{m}^3/\text{s}$ for the protection of identified values which is the purpose of the water conservation order. We find that the additional clause suggested by the applicants does little more than clarify the volumes available when flows exceed $110\text{m}^3/\text{s}$. Accordingly, we can see no reason for not including the additional term. It is intended for clarity, and does not impose any further controls.

[22] Clause 9(3)(e) [now (d) after final draft circulation] relates to the maximum number of principal take sites (meaning sites taking more than 100 l/s), which are restricted to four. The applicants redraft includes an amendment identifying that the maximum refers to these principle sites. CRC sought (and TDC/RSIL supported) an amendment to specifically exclude groundwater takes from the calculation. The applicants confirmed that they agreed with that amendment. However, in its last submissions CRC appeared to do an about-face on this issue and state that the applicant’s redraft satisfies CRC’s concerns. We find that excluding “groundwater takes” aids clarity, so an amended clause 9(3)(e)[d] will be included in the final order as follows:



(e)(d) *if the effect is that the number of takes sites (excluding groundwater take sites) authorised to take more than 100 l/s at each site from those parts of the Rangitata River specified in items 4 and 5 of Schedule 2 is greater than a maximum of four.*

[23] Clause 9(5)(b) of the redraft is also amended and that amendment appears to answer CRC criticism of the Court’s draft version. That was confirmed by CRC with one minor typographical amendment for consistency between the sub-clauses.

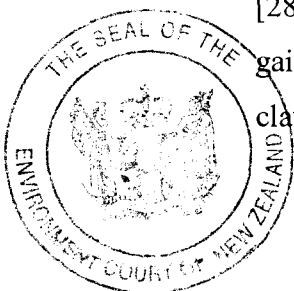
[24] Clause 9(6)(a) of the redraft is amended by the addition of the word “fully” before the word “exercised. That is agreed to by TDC/RSIL and receives no comment from CRC.

[25] Clause 9(8) of the redraft includes minor amendments (renumbering). CRC submitted a changed wording that was supported by TDC/RSIL. However, the applicant’s amendment to Item 3, Schedule 3 seems to have the same effect. We find that the applicant’s amendment is now sufficiently clear to alleviate the concerns of CRC and should be included in the final order.

[26] There are further amendments in the redraft that similarly answer concerns raised by CRC in relation to clauses 10(2), 11(3)(b)(ii) and 11(3)(d)(ii). These will be included in the final order. Some minor changes for consistency were suggested following the final draft circulation and those are also included in the final order.

[27] The redraft also amends clause 12: *Scope of the Order*. While amending 12(2) the applicants states that it is “unclear why special exception should apply to Department of Conservation”. Then, without noting that clause 12(2) of the draft order should be deleted, the applicant re-numbers clause 12(3) to 12(2). This renumbering is continued, clause 12(4) is deleted and clause 12(5) re-numbered to 12(3).

[28] Neither TDC/RSIL and CRC comment on clause 12 so no assistance can be gained by their comments. Without a clear explanation of why the applicant opposes clause 12(2), we find that, in its amended form and as it relates to only minor water



uses that may in any event be otherwise permitted by or acceptable under the water conservation order, clause 12(2) should remain in the final order. The remainder of the clause will again be re-numbered.

[29] The only remaining amendments relate to the schedules which the applicant cross-checked following the final draft circulation and corrected as necessary and whose cross-checking has been confirmed as accurate by CRC.

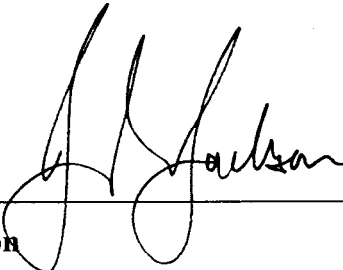
Recommendation

[30] Accordingly, this Court **RECOMMENDS** that the order attached to and forming part of this final report be accepted by the Minister of Conservation and a Water Conservation Order be made for the Rangitata River in accordance with the terms of the attached order.

[31] We record our thanks to our research counsel Mr Andrew Schulte for pulling all the complex streams of submissions together and for drafting this Final Report.

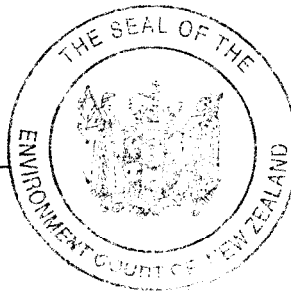
DATED at CHRISTCHURCH 22 September 2005

For the Court:

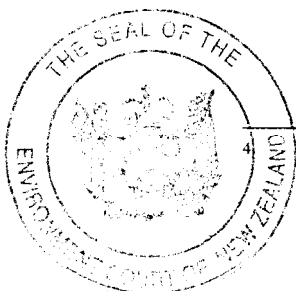


J R Jackson

Environment Judge



Issued⁴: 23 SEP 2005



WATER CONSERVATION (RANGITATA RIVER) ORDER

1. TITLE

This order is the Water Conservation (Rangitata River) Order 2005.

2. COMMENCEMENT

This order comes into force on the 20th working day after the date of its notification in the Gazette.

3. INTERPRETATION

In this order, unless the context otherwise requires:

“**Act**” means the Resource Management Act 1991.

“**Biomass**” in relation to weed or periphyton means “of the exposed substrata (tops and sides of stones) averaged over the full width of a channel run or reach”

“**Calculated River Depletion Effect**” means the effect on river flows resulting from the pumping of water from groundwater wells in proximity to the river and its tributaries and calculated using the methods developed by Jenkins (1977) and Hunt (2003) or such other method as Canterbury Regional Council approves from time to time.

“**Minimum flow**” means the flow at which all abstraction shall cease and the point at which it is measured is Klondyke recorder site.

“**Reasonable mixing**” means the mixing that occurs:



- (a) Within a maximum radius of 200 metres from a discharge into a still water body;
or
- (b) Within a maximum distance of 100 metres downstream from a discharge into the river including all tributaries (both named and un-named on the NZMS 260 maps) and in particular including the Ealing Springs and McKinnons Creek.

“River” means the mainstem of those waters identified in the Schedules to this Order. The mainstem shall be the river with that name on the NZMS 260 series topographical maps between specified lower and upper limits as defined by map references in the Schedules to this Order.

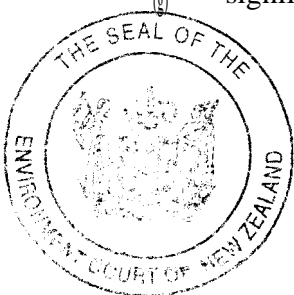
“Tributaries” means all the tributaries of the rivers or sections of rivers identified in Schedules 1, 2 and 3.

“Klondyke” means the site of the water level recorder on the Rangitata River at or about NZMS 260 J36:666149.

4. OUTSTANDING CHARACTERISTICS AND FEATURES

The waters specified in either Schedule 1, 2 or 3 include or contribute to, to the extent identified in Schedule 1, 2 or 3, the following outstanding characteristics, features, and values:

- (a) amenity and intrinsic values;
- (b) habitat for terrestrial and aquatic organisms;
- (c) fishery values;
- (d) wild, scenic and other natural characteristics;
- (e) scientific and ecological values;
- (f) recreational, historical, spiritual or cultural characteristics;
- (g) significance in accordance with tikanga Maori.



5. WATERS TO BE RETAINED IN NATURAL STATE

Because of the outstanding characteristics, features, and values identified in clause 4, the quality, quantity, level and rate of flow of the waters specified in Schedule 1 are to be retained, as far as possible, in their natural state.

6. WATERS TO BE PROTECTED

Because of the outstanding characteristics, features, and values identified in clause 4, the waters specified in Schedule 2 are to be protected in accordance with the relevant conditions in clauses 8 to 11, as specified in Schedule 2.

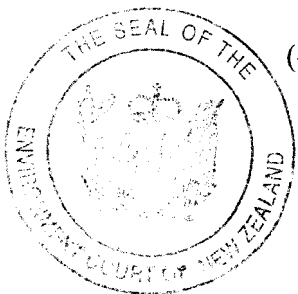
7. WATERS TO BE PROTECTED AS CONTRIBUTING TO OUTSTANDING FEATURES

Because of their contribution to outstanding characteristics and features identified in clause 4, the waters specified in Schedule 3 are to be protected in accordance with the relevant conditions in clauses 8 to 11, as specified in Schedule 3.

8. RESTRICTIONS ON DAMMING OF WATERS

(1) No resource consent may be granted or rule included in a regional plan authorising the damming of the waters specified in Schedules 1 and 2. For the purposes of this clause, damming does not include any intake or deflection structure that does not -

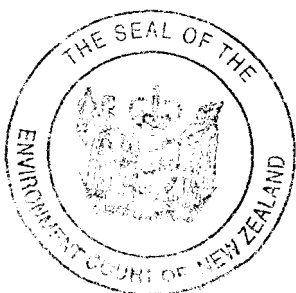
- (a) prevent the passage of any salmon; or
- (b) reduce the use of the waters for rafting or canoeing; or
- (c) reduce the aquatic bird habitat; or



- (b) intrude visually to the extent that it reduces wild and scenic values.
- (2) No resource consent may be granted or rule included in a regional plan authorising the damming of the waters specified in Schedule 3, whenever that Schedule refers to this clause, if that will cause, either by itself or in combination with any other existing consents as at 1 January 2000, or rules -
- (a) material alteration of the naturally occurring sediment delivery to the mainstem Rangitata River; or
 - (b) reduction of the aquatic bird habitat.
- (3) Clauses 8 (1) and 8 (2) do not apply to the maintenance authorised by the Canterbury Regional Council of existing rock weirs and river works to the same level and extent as occurring as at 1 January 2000 or to the placing of raw rock works and the carrying out of river engineering works necessary for flood and asset protection purposes.

9. RESTRICTIONS ON ALTERATIONS OF RIVER FLOWS AND FORM

- (1) No resource consent may be granted or rule included in a regional plan that will cause the material alteration of the channel cross-section, or meandering pattern, or braided river channel characteristics of the form of any river specified in Schedule 2;
- (2) The restriction in clause (1) does not apply in respect of dams, weirs, roads, fords, bridges, or fish passes authorised at the date this order comes into force.
- (3) No resource consent may be granted or rule included in a regional plan -

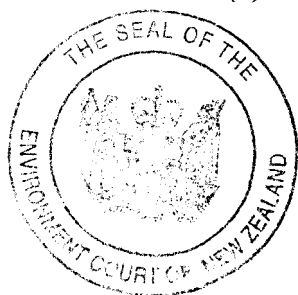


- (a) authorising the abstraction of water from any part of the Rangitata River (including any and all calculated river depletion effects resulting from the taking of water from hydraulically connected groundwater sources as calculated in accordance with clause 9 (9)) specified in items 1, 2 and 3 of Schedule 2 and item 1 of Schedule 3 that will cause, either by itself or in combination with any other existing consents or rules, decrease of the naturally occurring instantaneous flow of water at Klondyke by more than 2% when the naturally occurring flow at Klondyke is less than or equal to $110 \text{ m}^3/\text{s}$; or
- (b) authorising the abstraction of water will cause, either by itself or in combination with any other existing consents (including any and all calculated river depletion effects resulting from the taking of water from hydraulically connected groundwater sources as calculated in accordance with clause 9 (9)) or rules, decrease of the naturally occurring instantaneous flow of water in any river specified in item 2 of Schedule 3 by more than 15% when the naturally occurring flow at Klondyke is less than or equal to $110 \text{ m}^3/\text{s}$; or
- (c) authorising the abstraction of water that will cause, either by itself or in combination with any other existing consents (including any and all calculated river depletion effects resulting from the taking of water from hydraulically connected groundwater sources as calculated in accordance with clause 9 (9)) or rules, total abstraction from all parts of the Rangitata River specified in Schedules 1, 2 or 3 to exceed a maximum of $33 \text{ m}^3/\text{s}$ unless the naturally occurring flow at Klondyke exceeds $110 \text{ m}^3/\text{s}$ at which point the maximum may be extended from $33 \text{ m}^3/\text{s}$ to $33 \text{ m}^3/\text{s}$ plus any naturally occurring flow in excess of $110 \text{ m}^3/\text{s}$; or
- (d) if the effect is that the number of take sites (excluding groundwater take sites) authorized to take more than 100 l/s at each site from those parts of

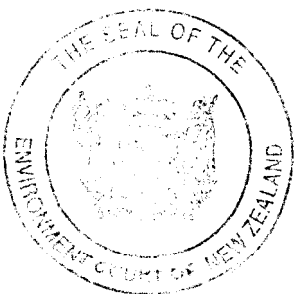


the Rangitata River specified in items 4 and 5 of Schedule 2 is greater than a maximum of four.

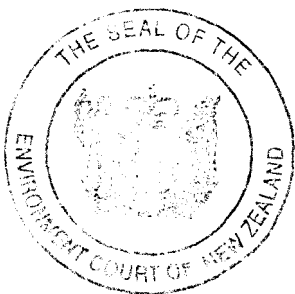
- (4) For the period from 15 September to 14 May in the following year, there shall be a flow management regime in respect of the main stem of the Rangitata River (including any and all calculated river depletion effects resulting from the taking of water from hydraulically connected groundwater sources as calculated in accordance with clause 9 (9)) comprising -
- (a) a minimum flow of 20 m³/s; and
 - (b) when the flow at Klondyke is greater than 20 m³/s but less than 40 m³/s all flow in excess of 20 m³/s is available to be taken; and
 - (c) when the flow at Klondyke is greater than 40 m³/s but less than 66 m³/s, up to 33 m³/s may be taken on the basis of a 1: 1 sharing between instream retention and water abstraction; and
 - (d) when the flow at Klondyke is greater than 66 m³/s and less than 110 m³/s no more than 33 m³/s shall be taken.
- (5) For the period 15 May to 14 September each year, there shall be a flow management regime in respect of the main stem of the Rangitata River (including any and all calculated river depletion effects resulting from the taking of water from hydraulically connected groundwater sources as calculated in accordance with clause 9 (9)) comprising -
- (a) a minimum flow of 15 m³/s; and
 - (b) when the flow at Klondyke is greater than 15 m³/s and less than 30 m³/s all flow in excess of 15 m³/s is available to be taken; or



- (c) when the flow at Klondyke is greater than $30 \text{ m}^3/\text{s}$ and less than $66 \text{ m}^3/\text{s}$, up to $33 \text{ m}^3/\text{s}$ may be taken, on the basis of a 1: 1 sharing between instream retention and water abstraction.
 - (d) When the flow at Klondyke is greater than $66 \text{ m}^3/\text{s}$ and less than $110 \text{ m}^3/\text{s}$ no more than $33 \text{ m}^3/\text{s}$ shall be taken.
- (6) All applications for water permits to take groundwater shall be assessed as if:
- (a) all surface abstractions and abstractions of hydraulically connected groundwater sources as calculated in accordance with clause 9 (9) are being fully exercised; and
 - (b) the Rangitata River flow never exceeds $110 \text{ m}^3/\text{sec}$ at Klondyke.
- (7) No resource consent may be granted or rule included in a regional plan that will cause, either by itself or in combination with other existing consents (including any and all calculated river depletion effects resulting from the taking of water from hydraulically connected groundwater sources as calculated in accordance with clause 9 (9)) or rules, reduction of the naturally occurring instantaneous flow in McKinnons Creek at Wallaces Bridge (map reference NZMS 260 K38:887716) below a minimum flow of 300 l/s.
- (8) The restrictions in clauses (3) - (6) do not apply in respect of any waters specified in item 3 of Schedule 3 that are not hydraulically connected to the Rangitata River or its tributaries.
- (9) (a) If the calculated river depletion effect from groundwater abstraction is equal or greater than 90% of the bore pump rate after seven days continuous steady pumping, then:



- (i) it shall be managed as though it is a surface water abstraction; and
 - (ii) the maximum instantaneous pumping rate from the bore shall be included in the surface water allocation total.
- (b) If the calculated river depletion effect from groundwater abstraction is less than 90% of the bore pump rate after seven days continuous steady pumping but greater than or equal to 50% of the bore pump rate after 150 days continuous steady pumping, then:
- (i) it shall be managed so that any calculated river depletion effect which is greater than 5 L/s is subject to surface water allocation rules; and
 - (ii) the effect on river flow after 150 days of pumping at the continuous rate required to deliver the seasonal volume shall be included in the surface water allocation total.
- (c) If the calculated river depletion effect is less than 50% but greater than or equal to 25% of the pump rate after 150 days continuous steady pumping, then:
- (i) the abstraction should not be subject to any surface water restriction rules; and
 - (ii) the effect on river flow after 150 days of pumping at the continuous rate required to deliver the seasonal volume shall be included in the surface water allocation total for those consents where the effect is greater than 5 L/s.



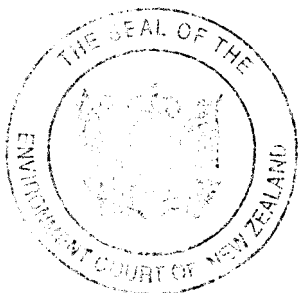
- (10) The restrictions in clauses 9 (3) - 9 (5) do not apply in respect of a take of water for the purpose of a fish bypass system and which is discharged back into the Rangitata River within 2500 metres downstream of the point of abstraction.

10. REQUIREMENT TO MAINTAIN FISH PASSAGE

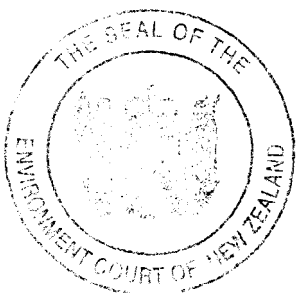
- (1) No resource consent may be granted or rule included in a regional plan relating to the waters identified in Schedule 2, authorising an activity that will adversely affect the passage of salmon, where Schedule 2 identifies salmon passage or salmon spawning as an outstanding characteristic or contributing to an outstanding characteristic.
- (2) No resource consent in relation to an intake site may be granted, or rule included in a regional plan, for the waters specified in Schedule 2 authorising an activity unless that resource consent provides for fish exclusion or a fish bypass system to prevent fish from being lost from the specified waters.

11. RESTRICTIONS ON ALTERATION OF WATER QUALITY

- (1) No resource consent may be granted or rule included in a regional plan authorising a discharge into any of the waters identified in Schedules 2 or 3 at any time, if, after allowing for reasonable mixing of the discharge with the receiving waters, the discharge will alter the natural temperature of the receiving water by more than 3 degrees Celsius provided that:
- (a) the alteration does not increase the water temperature to more than 12 degrees Celsius during the months May to September (inclusive); and
- (b) the alteration does not increase the water temperature to more than 20 degrees Celsius during the months October to April (inclusive).



- (2) No resource consent may be granted or rule included in a regional plan authorising a discharge into any of the waters identified in Schedule 2 or Schedule 3, unless, after allowing for reasonable mixing of the discharge with the receiving waters, any change in the acidity or alkalinity in the receiving waters, attributable to that discharge, maintains the pH within the range of 6 to 9 units.
- (3) No resource consent may be granted or rule included in a regional plan authorising a discharge into any of the waters identified in Schedule 2 or Schedule 3, unless, after allowing for reasonable mixing of the discharge with the receiving waters -
- (a) there will be no undesirable biological growths attributable to the discharge;
- (b) in particular there will be no:
- (i) bacterial and/or fungal slime growths that are visible to the naked eye; and/or
- (ii) maximum biomass cover of streams or river beds by:
- I. periphyton as filamentous growths (longer than 20 mm) exceeding 30%; and/or biomass exceeding 120 mg/m² as chlorophyll a, and/or biomass exceeding 35 g/m² ash free dry weight, as area of exposed substrate (i.e., tops and sides of visible stones) and/or
- II. periphyton as diatoms or mats (more than 3 mm average thickness) exceeding 60%; and/or biomass exceeding 200 mg/m² as chlorophyll a, and/or biomass exceeding 35 g/m²

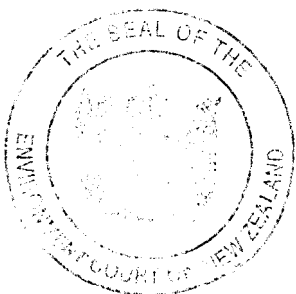


ash free dry weigh, as area of exposed substrate (i.e., tops and sides of visible stones).

- (c) aquatic organisms shall not be rendered unsuitable for human consumption through the accumulation of contaminants; and/or
- (d) the water is not made unsuitable for contact recreation by:
 - (i) the presence of contaminants; or
 - (ii) a single sample of bacterial values exceeds 550 *E. coli* per 100 ml.
- (4) No resource consent may be granted or rule included in a regional plan authorising a discharge into any of the waters identified in Schedule 2 or Schedule 3 if, after allowing for reasonable mixing with the receiving waters, the discharge will reduce the concentration of dissolved oxygen below 80% of saturation.

12. SCOPE OF ORDER

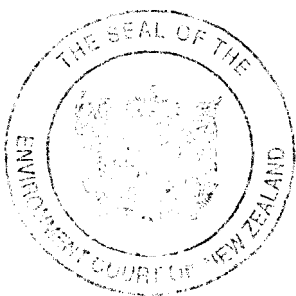
- (1) This order does not limit section 14(3)(b) and (e) of the Act relating to the use of water for domestic needs, for the needs of animals, and for, or in connection with, fire-fighting purposes.
- (2) This order does not restrict or prevent grant of water or discharge permits to the Department of Conservation or rules being included in a regional plan that will permit minor water uses if those minor uses are necessary for conservation purposes for the management of land administered by the Department.
- (3) This order does not restrict or prevent the grant of resource consents for the purpose of -



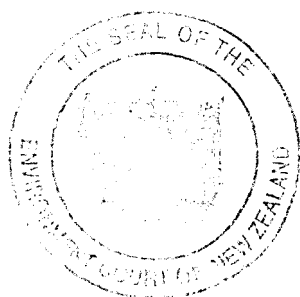
- (a) research into, and enhancement of, fisheries and wildlife habitats; or
 - (b) hydrological or water quality investigations; or
 - (c) the construction, removal, maintenance or protection of any road, ford or bridge, or the maintenance and protection of any network utility operation (as defined in section 166 of the Act); or
 - (d) the construction and maintenance of soil conservation and river protection works undertaken pursuant to the Soil Conservation and Rivers Control Act 1941.
 - (e) extraction of gravel for commercial purposes where the extraction does not cause the material alteration of the channel cross section, or meandering pattern, or braided river characteristics of the subject water body.
- (4) This order does not prevent the granting of further resource consents for the Rangitata Diversion Race on similar terms and conditions to those imposed on the resource consents held on the date this order comes into force including a stepped flow regime.

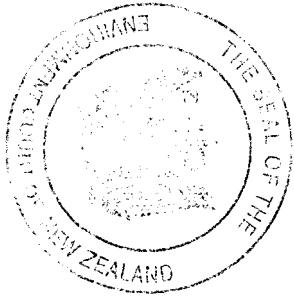
13. EXEMPTIONS

- (1) Nothing in this order prevents the grant of a resource consent that would otherwise contravene the conditions set out in Clauses 8 to 11 if -
 - (a) a consent authority is satisfied that -
 - (i) there are exceptional circumstances justifying the grant of the permit; or



- (ii) the permit is for a discharge that is of a temporary nature; or
 - (iii) the permit is for a discharge that is associated with necessary construction and maintenance work relating to works and structures not otherwise prohibited by this Order; and
- (b) the exercise of any such resource consent would not compromise the preservation and protection of the outstanding characteristics and features identified for the waters specified in the Schedules.

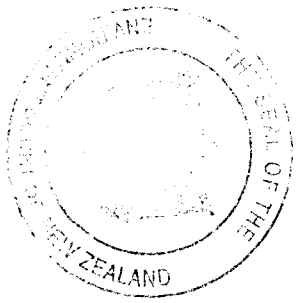




Schedule 1 Waters to be retained in natural state

All map references are to NZMS 260 series

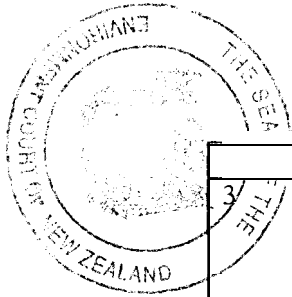
Item	Waters	Outstanding characteristics or features	Conditions to apply
1	Clyde River and all tributaries	Amenity and intrinsic values Indigenous plant communities Wild and scenic and other natural characteristics Significance for Ngai Tahu	Natural state
2	Havelock River and all tributaries	Amenity and intrinsic values Indigenous plant communities Wild and scenic and other natural characteristics Significance for Ngai Tahu	Natural state



Schedule 2 Protected waters

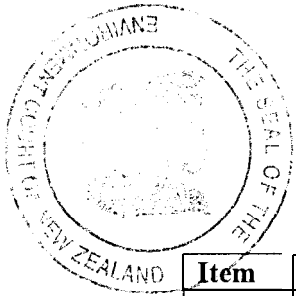
All map references are to NZMS 260 series

Item	Waters	Outstanding Characteristic or Features	Conditions to apply
1	Rangitata River main stem from confluence with Clyde and Havelock Rivers to the top of the gorge (at or about J36:636174) "upper Rangitata"	Waters in a natural state Amenity and intrinsic values Habitat for aquatic birds Aquatic macro-invertebrates Salmon spawning and salmon passage Salmon fishing Wild, scenic and other natural characteristics Indigenous plant communities Spiritual, cultural and historical values Rafting, canoeing and jet-boating Significance for Ngai Tahu Scientific - braided river	Clauses 6, 8(1), 8(3), 9(1), 9(3)a and c 9(4), 9(5) 9(10) 10, and 11.
2	Rangitata River main stem from the top of the gorge (at or about J36:636174) to the water level recorder at Klondyke (at or about J36:666149) "the gorge"	Waters in a natural state Amenity and intrinsic values Wild, scenic and other natural characteristics Indigenous plant communities Rafting, canoeing Significance for Ngai Tahu Contributes to salmon spawning and salmon passage Aquatic macro-invertebrates	Clauses 6, 8(1), 8(3), 9(1), 9(3)a and c 9(4), 9(5) 9(10) 10, and 11



Schedule 2 Protected waters (continued)

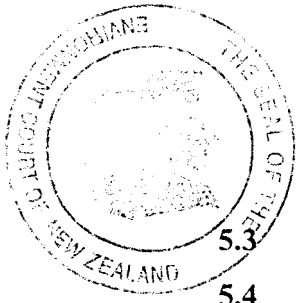
	Waters	Outstanding Characteristic or Features	Conditions to apply
	<p>Unnamed tributaries of the Rangitata River and other water bodies adjacent to the Rangitata River joining the Rangitata River at or about J36:390316 and known as Brabazon Fan; J36:348379 and known as Black Mountain Stream; J36:414330 and known as Deep Creek (Mt Potts); J36:460242 and known as Deep Stream (Mesopotamia)</p>	<p>Salmon spawning</p>	<p>Clauses 6, 8(1), 8(3), 9(1), 9(3)a and c 9(4), 9(5) 9(10) 10, and 11.</p>
4	<p>Rangitata River from map reference (at or about J36:666149) to SH 72 bridge at Arundel</p>	<p>Salmon fishing Salmon passage Water-based recreation Significance for Ngai Tahu Aquatic Macroinvertebrates Scientific - braided river</p>	<p>Clauses 6, 8(1), 8(3), 9(1), 9(3)c and d 9(4), 9(5), 9(10) 10, and 11.</p>
5	<p>Rangitata River from SH 72 bridge at Arundel to coast</p>	<p>Aquatic bird habitat Salmon passage Salmon fishing Spiritual and cultural values Significance for Ngai Tahu Aquatic macroinvertebrates Scientific -braided river</p>	<p>Clauses 6, 8(1), 8(3), 9(1), 9(3) c and d 9(4), 9(5), 9(10) 10 and 11.</p>
6	<p>Unnamed tributary known as Ealing Springs Stream joining Rangitata River at or about K37:824831</p>	<p>Salmon spawning Significance for Ngai Tahu</p>	<p>Clauses 6, 8(1), 8(3), 9(1), 9(3)c, 9(4), 9(5), 9(10) 10 and 11.</p>
7	<p>Unnamed tributary known as McKinnons Creek joining Rangitata River at or about K38 893702</p>	<p>Salmon spawning Significance for Ngai Tahu</p>	<p>Clauses 6, 8(1), 8(3), 9(1), 9(3)c 9(4), 9(5), 9(7), 9(10) 10 and 11</p>



Schedule 3 Waters to be protected for their contribution to the above mentioned outstanding features

All map references are to NZMS 260 series

Item	Waters	To maintain	Conditions to apply
1	All tributaries of the Rangitata River from the Clyde/Havelock confluence to the water level recorder at Klondyke (at or about J36:666149) except those otherwise referred to in Schedules 1,2 or 3.	Adequate water of sufficient quality for the outstanding aquatic bird habitat; braided river characteristics; salmon passage, spawning & juvenile habitat; salmon fishing; rafting and canoeing; aquatic macro-invertebrates; indigenous riverbed plants; and significance for Ngai Tahu	Clauses 7, 8(2), 8(3), 9(3)a and c, 9(4), 9(5) 9(10) and 11
2	All tributaries of the Rangitata River from the water level recorder at Klondyke (at or about J36:666149) to the sea except those otherwise referred to in Schedules 1, 2 or 3.	Adequate water of sufficient quality for the outstanding aquatic bird habitat; braided river characteristics; salmon passage; salmon fishery; water based recreation; aquatic macro-invertebrates; and significance for Ngai Tahu	Clauses 7, 8(2), 8(3), 9(3)b and c 9(4), 9(5), 9(10) and 11
3	Groundwater determined through application of Clause 9(9) to be hydraulically linked to: (As per Court's statement at para 249) (a) the main river downstream from Klondyke (at or about J36:666149) (b) the unnamed tributary known as McKinnons Creek joining Rangitata River at or about K38:893702 (c) the unnamed tributary known as Ealing Springs Stream joining Rangitata River at or about K37:824831	Adequate water in the Rangitata River and tributaries for the outstanding aquatic bird habitat; braided river characteristics: salmon fishery; rafting and canoeing; aquatic macro-invertebrates; and significance for Ngai Tahu	Clauses 7, 9(3)b and c, 9(4), 9(5), 9(6), 9(7), 9(8) and 9(9)



5.3

HYDROGRAPH FOR THE 1998/9 YEAR

5.4

MAPS : Figure 1 - Rangitata River Catchment

Figure 2 - The lower Rangitata River