

## Appendix 20

**IN THE MATTER** of the Resource Management Act 1991 (the Act)

**AND**

**IN THE MATTER** of a request for change of consent conditions pursuant to Section 127 of the Resource Management Act 1991 by Tararua District Council (TDC) for:

- a. 101169 - Water Permit to abstract water from the Makakahi River.

### DECISION OF THE HEARING COMMISSIONERS

#### A. APPLICATION FOR VARIATION TO RESOURCE CONSENT

1. On 11 August 2008 the Manawatu-Wanganui Regional Council (the Council) received an application to change Condition 3 of Resource Consent Number 101169.

The existing condition read as follows:

*Subject to Condition 1 and 2, the maximum rates of abstraction from the Makakahi River under the authorisation of this Permit shall not exceed the following rates:*

- a. *For the first five years following the commencement of this Permit (13 December 2004 – 13 December 2009);*
  - i. *Up to 750 m<sup>3</sup>/day at 15 L/s when flow in the Makakahi River measured at the Manawatu-Wanganui Regional Council's flow gauging station at Hamua is at or between 412 and 325 litres per second (412 and 325 l/s); and*
  - ii. *Up to 450 m<sup>3</sup>/day at 10 L/s when flow in the Makakahi River measured at the Manawatu-Wanganui Regional Council's flow gauging station at Hamua is below 325 litres per second (325 l/s).*
- b. *For the remaining term of this Permit (13 December 2009 – 19 November 2019)*
  - i. *Up to 750 m<sup>3</sup>/day at 15 L/s when flow in the Makakahi River measured at the Manawatu-Wanganui Regional Council's flow gauging station at Hamua is at or between 412 and 325 litres per second (412 and 325 l/s);*
  - ii. *Up to 450 m<sup>3</sup>/day at 10 L/s when flow in the Makakahi River measured at the Manawatu-Wanganui Regional Council's flow gauging station at Hamua is at or between 325 and 240 litres per second (325 and 240 l/s); and*
  - iii. *Up to 165 m<sup>3</sup>/day at 5 l/s when flow in the Makakahi River measured at the Manawatu-Wanganui Regional Council's flow gauging station at Hamua is below 240 litres per second (240 l/s).*

**Note:** *Flow information for the Makakahi River at Hamua can be obtained by phoning the Manawatu-Wanganui Regional Council's Interactive Voice Response System (Phone 0508 435 663) or web site on [www.horizons.govt.nz](http://www.horizons.govt.nz).*

The Applicant sought to delete this Condition 3 and replace it with the following condition:

*The Permit Holder shall implement a water conservation campaign when flow in the Makakahi River measured at the Manawatu-Wanganui Regional Council's flow gauging station at Hamua is at or below 345 L/s. The water conservation campaign shall be as prescribed in the management plan prepared in accordance with Condition 10.*

## **B. THE HEARING COMMITTEE**

2. The Hearing Committee comprised of Councillors Annette Main (Chair) and Lindsay Burnell. Under Section 34A(1) of the Act the Hearings Committee held delegated authority from the Council to hear and decide the applications.
3. The Hearing was held at the Horizons Regional Council Offices in Woodville on Thursday 18 December 2008. The Hearing was completed that same day, with the applicant undertaking to provide a new proposal for the wording of the conditions by 23 December. This date was subsequently extended to 23 January 2009 at the request of the applicant, and deliberations took place on 4 February. A site visit was not undertaken.

## **C. NOTIFICATION / SUBMISSIONS**

4. The application was publicly notified on Saturday 27 September 2008 (Manawatu Standard) and Monday 29 September (Bush Telegraph). Submissions closed on Wednesday 29 October 2008. Six submissions were received.
5. The submitters were:
  - i. Eketahuna Community Board
  - ii. Jim Sutherland
  - iii. Jim Sutherland for the Eketahuna Golf Club
  - iv. MidCentral Health
  - v. Fish and Game New Zealand
  - vi. Department of Conservation
6. The submissions were summarised in Section D of Ms Barton's Section 42A Officer's Report.

## **D. EVIDENCE PRESENTED AT THE HEARING**

7. At the Hearing we heard from the applicant, submitters and council officers and their consultants and counsel, as follows.
8. For the applicant, Andrew Cameron (Counsel), Edward Sides (Senior Freshwater Ecologist with Boffa Miskell), Stephen Taylor (Manager District Assets for TDC) and Annette Sweeney (Good Earth Matters Consulting Limited) tabled and read written evidence and answered questions from the Commissioners
9. Counsel for the Applicant advised that subsequent to preparing the application to vary Conditions TDC now considers that an approach based on a maximum of 900 m<sup>3</sup> per day when flows are at MALF or less would be preferable as it would define the maximum level of abstraction, The Commissioners requested the applicant provide a proposed amended wording of Condition 3 and proposed wording for any additional conditions suggested by the applicant during the course of the hearing.

10. The submitters who spoke to their submissions were Peter Wood (Drinking-Water Assessor, Public Health Unit, MidCentral Health), Corinna Jordon (Wellington Fish and Game) and Jim Sutherland (Eketahuna Golf Club Inc). Ms Jordon also read a submission on behalf of Emily Greenberg (Department of Conservation).
11. Richard Munneke (Policy and Consents Manager), Raelene Hurdell (Environmental Scientist - Water Quantity) and Clare Barton (Senior Consultant Planner), spoke to their Section 42A Officer's Reports. Ms Barton tabled a memorandum from Greg Bevin (Senior Investigator) outlining the compliance history for the Eketahuna and Woodville Water Supply consents.
12. Ms Barton supported a step-down approach and highlighted the alternative condition contained in her officer report.

Date		At Flows Greater than 345 l/s at Makakahi at Hamua		At Flows Equal to or Below 345 l/s at Makakahi at Hamua	
From	To	Maximum Daily (m <sup>3</sup> /day)	Maximum Instantaneous Rate (l/s)	Maximum Daily (m <sup>3</sup> /day)	Maximum Instantaneous Rate (l/s)
Commencement	30-Jun-09	1424		900	10.5
1-Jul-09	30-Jun-10	1424		850	10.5
1-Jul-10	30-Jun-11	1424		800	10.5
1-Jul-11	30-Jun-12	1424		750	10.5
1-Jul-12	30-Jun-13	1424		700	10.5
1-Jul-13	30-Jun-14	1424		650	10.5
1-Jul-14	30-Jun-15	1260		600	10.5
1-Jul-15	1-May-16	1260		550	10.5
		1260		500	10.5
	19-Nov-19	1260		450	10.5

13. The written evidence and reports tabled and presented by these parties is held on file at the Council. This material is not recorded in any detail in this decision. However, specific issues raised in the material are referred to as appropriate in Section E, Evaluation of the Decision.
14. The amended wording of Condition 3 proposed by the applicant and provided as agreed subsequent to the hearing is as follows:

*Subject to Conditions 1 and 2, the maximum rate of abstraction from the Makakahi River under the authorisation of this permit shall not exceed 900 m<sup>3</sup> per day when flow in the Makakahi River measured at the Manawatu-Wanganui Regional Council's flow gauging station at Hamua is at or below 345 litres per second.*
15. The Applicant also proposed the following new conditions:
  - i. *By 1 December 2009, the Permit Holder shall install a valve on the intake line downstream of the abstraction point and prior to the first connection. The valve shall be controlled to ensure compliance with Conditions 1, 2 and 3.*
  - ii. *In the period January to March in the years 2009, 2010 and 2011 the Permit Holder shall carry out surveys of macroinvertebrate (MCI, QMCI, %EPT taxa and %EPT individuals) and periphyton (chlorophyll a and total periphyton cover) communities from the Makakahi River at a site located in the reach 200 metres upstream of the abstraction point and two sites in the reach 100 metres to 250 metres downstream of the abstraction point.*

*The surveys shall generally be carried out following a period when flow in the Makakahi River has been less than half median for more than 14 consecutive days. The methodology and precise locations for monitoring shall be determined in consultation with Manawatu-Wanganui Regional Council's Environmental Compliance Manager. The Permit Holder shall forward a comprehensive report on these surveys to Manawatu-Wanganui Regional Council's Environmental Compliance Manager by 31 July each year commencing 31 July 2009. The reports shall include an assessment of the effects of the Permit Holder's abstraction on the Makakahi River.*

- iii. *Prior to 1 July 2009 the Permit Holder shall develop a water supply strategy for the Eketahuna water supply. The strategy shall detail:*
- (a) estimates of current water use for the community during times of normal and low flow conditions. This shall include estimates of stock; household; commercial and other water uses;*
  - (b) considerations of measures to improve water efficiency throughout the network and by end-users both during normal use and at times of low flow. As a minimum, the strategy shall consider the effectiveness of, and costs and benefits of installation of water savings devices; rain water harvesting tanks; reticulation upgrades; metering and charge; and*
  - (c) consideration of alternative supply strategies including groundwater, storage and alternative surface water supplies.*
- iv. *By 1 July 2010, the Permit Holder shall provide the Manawatu-Wanganui Regional Council (Team Leader Compliance) with a clear statement as to which measures contained within the water supply strategy it intends to implement, the timeframe for that implementation and expected outcomes.*

16. Our view is that apart from the suggested revised Condition 3 the additional conditions cannot be considered for inclusion in our decision as they were not included in the original application.

## **E. EVALUATION**

### **Statutory Considerations and Consent Category**

17. Section 104 of the Act is the principal provision that sets out the matters that we need to have regard to when determining the application. We note that Section 104 matters are subject to the purpose and principles of the Act as set out in Part 2.
18. Ms Barton notes in paragraph 17 of her report that the application for change of conditions must be considered as a Discretionary Activity, as per Section 127 of the Act. The substantive content of the resource consent granted in 2004 will not change as a result of this decision.

### **Matters of Contention**

19. Section 113 of the Act requires us to focus on the principal issues of contention and to state our main findings of fact in relation to those issues. Accordingly, based on the application documents, the submissions received, the Officer's Report and the evidence presented at the Hearing, the following issues that were in contention are now addressed in a sequential fashion:

- a. ability to meet the existing condition;
- b. management of existing supply; alternative sources;
- c. legislative matters;
- d. low flow adverse impacts.

### **Ability to Meet the Existing Condition**

20. Mr Cameron and the other witnesses for the applicant presented considerable evidence outlining the reasons for TDC's inability to meet existing Condition 3, and asserted that TDC want to continue to work with the Regional Council to achieve improvements over time. We were advised that the suggestion for a revised Condition 3 and suggested additional conditions proposed by the applicant after the Hearing would reflect this willingness to work together to ensure TDC can meet its obligations under the Act.
21. However based on the answers to questions posed to the applicant during the hearing we note that many of the actions proposed in the Management Plan required to be implemented under Condition 10 of the existing consent have not occurred.
22. We also note that the applicant was provided with opportunities to develop a workable solution to the not inconsiderable non-compliance issues which have occurred during the term of the current consent and encouraged to develop a mutually acceptable approach which would eventually meet the water quality objectives of the Regional Council plans and that the Regional Council appears to have taken a flexible approach recognising the limitations faced by TDC.
23. We do not consider that the applicant's initial proposal, to replace Condition 3 with a simple requirement to implement a water conservation campaign during periods of low flow, would adequately mitigate the effects of the continued abstraction on the Makakahi River.

### **Management of Existing Supply; Alternative Sources**

24. There was general agreement between the applicant, the Council and submitters that the management of the Eketahuna water supply requires further improvement. There is a significant quantity of water unaccounted for, a considerably higher rate of water use by the community than the recommended guidelines for domestic use, and uncertainty around the quantity and impact of the number of historical takes for farming purposes prior to the township.
25. We consider these issues need to be addressed urgently to ensure TDC can meet the terms of its consent.
26. We note the applicant is currently preparing a plan for the ongoing supply of water for Eketahuna as part of a wider strategy for the sustainable supply of adequate water for all municipal water reticulation in the Tararua District, and that the strategy will include an investigation of alternative sources. We were advised that this strategy is due to be presented to HDC prior to 1 July 2009, and will consider issues such as alternative water supplies, water saving methods, and reticulation upgrades in order for HDC to meet its obligation to its communities.
27. Although the development of this strategy has been offered as an additional consent condition we consider imposing this as a condition to be outside the powers of this hearing committee because it was not notified as part of the application to vary Condition 3 of the existing consent.

28. We note the concerns raised by submitters that developing alternative sources of water may incur significant costs, and that any alternatives must meet drinking water quality standards.
29. We note the stated intention to install a valve to ensure the quantity of water that can be taken does not exceed the consented level, by 1 December 2009, however we consider that this is outside the scope of this application and cannot be imposed by a condition to this effect for the reason stated above in Paragraph 27.

### **Legislative Matters**

30. Section 5 (2) of the Act was brought up by many submitters, generally in the context of asking the panel to consider matters in relation to a particular aspect (such as the social, economic or cultural impact) of this section.
31. We believe the variation to Condition 3 granted by this decision is necessary to provide balance to the conflicting priorities contained within the purpose of the Act.
32. Peter Wood asserted that Condition 3 does not currently allow Eketahuna township sufficient water to meet the basic needs of drinking and sanitation during periods of low flow. He also expressed concern that the excess pipe capacity would have an effect on water pressure which could impact on the availability of water for fire fighting purposes.
33. We consider that the proposed step-down approach and review date will give adequate time for TDC to address the issues of supply and demand for water for Eketahuna and to implement the existing management plan.

### **Low Flow Adverse Impacts**

34. Conflicting evidence regarding the importance of trout fishing to the area and the presence and importance of native fish was presented by Ms Jordan (and on behalf of Ms Greenberg) and Mr Sutherland.
35. However the evidence presented to us led us to accept that the area is an important habitat for both trout and native fish.
36. We also heard conflicting evidence on the impacts of low flows on the ecology of the river, with considerable expert and lay evidence from both the applicant's consultant ecologist, submitters and the Council's scientist.
37. We accept that there are adverse effects on the River by taking water during low flows, and agree there has been insufficient research carried out to assess the extent of those effects.
38. We note the Applicants offer to accept a condition to carry out surveys based on methodology and locations as determined between TDC and the Regional Council and while we agree the information gained from these surveys will be necessary to a review process we consider that it is outside the scope of this hearing to impose an additional condition to this effect.
39. The impact on the River of the abstraction during low flows must be balanced against the fundamental need for the Eketahuna Township to take water. We consider that the new condition provides for that balance.

## Duration and Review

40. The duration of the resource consent will not change as a result of this decision.

## F. DETERMINATION

41. Having read and heard the submissions, read the reports and listened to the evidence presented, and having considered the requirements of the Act and Regional Statutory Documents we are satisfied that on balance:
- a. the actual and potential adverse effects of the activity can be adequately avoided, remedied or mitigated by the imposition of conditions under Section 108 of the Act.
  - b. The activity, if undertaken in accordance with the conditions of consent, will be consistent with the Purpose and Principles of the Act.
44. We are therefore able to **grant** consent to vary Condition 3 as follows:

*Subject to Conditions 1 and 2, the maximum rates of extraction from the existing intake at map reference T25:318-520 under the authorisation of this consent shall not exceed the following when flow in the Makakahi River measured at the Manawatu Wanganui Regional Council's flow gauging station at Hamua is equal to or below 345 litres per second*

- i. 900 m<sup>3</sup> per day until 30 June 2009; and*
- ii. 850 m<sup>3</sup> per day from 1 July 2009 until 30 June 2011.*

*This condition will be subject to a review in July 2011 which would take into account the monitoring data at low flows, the data obtained from the weekly reading of metered users [include parameters as determined in discussion with Regional Council], the installation of the flow restriction valve and the district water strategy.*



Annette Main  
**CHAIRPERSON**

17 February 2009

**FOR THE PURPOSE OF CLARITY THE CONDITIONS OF WATER PERMIT (SURFACE WATER) 101169/2 SHALL NOW READ AS FOLLOWS:**

- A. The Team Leader Consents of the Manawatu-Wanganui Regional Council (trading as Horizons Regional Council) has considered this notified application. On 19 November 2004 the Team Leader, pursuant to delegated authority under Section 34A of the Resource Management Act grants Water Permit 101169 pursuant to Section 104 (B) of the Act to Tararua District Council to abstract surface water from the Makakahi River at Kaiparoro Road, Eketahuna for a term expiring on 19 November 2019 subject to the following conditions:
1. The maximum daily abstraction of surface water from the Makakahi River for the purposes of rural stock, domestic and urban water use (Eketahuna Water Supply) at approximate map reference (T25:318-520) shall not exceed
    - i. 1,600 m<sup>3</sup>/day for the first two years from the date of commencement of this Water Permit (until 13 December 2006);
    - ii. 1,424 m<sup>3</sup>/day from the 2<sup>nd</sup> year anniversary of commencement of this Water Permit through to the 10<sup>th</sup> year of this Water Permit (13 December 2006 – 13 December 2014); and
    - iii. 1,260 m<sup>3</sup>/day from 10<sup>th</sup> anniversary of commencement of this Water Permit through the remainder of the term of this Water Permit (13 December 2014 – 19 November 2019).
  2. Subject to Condition 1, the maximum instantaneous rate of abstraction from the Makakahi River shall not exceed 75 cubic metres per hour (75 m<sup>3</sup>/hr) or 21 litres per second (21 l/sec).
  3. Subject to Conditions 1 and 2, the maximum rates of extraction from the existing intake at map reference T25:318-520 under the authorisation of this consent shall not exceed the following when flow in the Makakahi River measured at the Manawatu Wanganui Regional Council's flow gauging station at Hamua is equal to or below 345 litres per second
    - i. 900 m<sup>3</sup> per day until 30 June 2009; and
    - ii. 850 m<sup>3</sup> per day from 1 July 2009 until 30 June 2011.

This condition will be subject to a review in July 2011 which would take into account the monitoring data at low flows, the data obtained from the weekly reading of metered users [include parameters as determined in discussion with Regional Council], the installation of the flow restriction valve and the district water strategy,

**Note:** Flow information for the Makakahi River at Hamua can be obtained by phoning the Manawatu-Wanganui Regional Council's Interactive Voice Response System (Phone 0508 435 663) or web site on [www.horizons.govt.nz](http://www.horizons.govt.nz).
  4. By **30 December 2004** the Permit Holder shall provide the Manawatu-Wanganui Regional Council with near real time access, as described in Appendix 1, to its telemetered water abstraction data for the Eketahuna township reticulation. This data will be sourced from two flow meters:
    - i. One located immediately downstream of the abstraction point, prior to any abstraction or loss from the reticulation system; and
    - ii. One located immediately upstream of Eketahuna township.



5. The Permit Holder will provide the Manawatu-Wanganui Regional Council with near real-time water use (hourly total volumes of water abstracted) information from both flow meters within the Eketahuna Water Supply System.

**Advisory Note:** The use information from these two flow metres shall be available on the Tararua District Council's FTP Server 15 minutes after the finish of each hour (Quarter past each hour of the day).

6. The Permit Holder shall supply the water use information via files generated from the Abbey Systems telemetry system utilising Tararua District Council's FTP Server.
7. The Permit Holder shall ensure that the Manawatu-Wanganui Regional Council has electronic access to the Tararua District Council's FTP Server, that the Abbey SCADA Server is appropriately configured and that the Telemetry Protocols as outlined in Appendix One, attached to and forming part of this consent, are adhered to.
8. The Permit Holder shall provide to the Manawatu-Wanganui Regional Council's Team Leader Compliance, by **30 October** each year the monthly and annual net total of water abstracted by metered rural users.
9. The Permit Holder shall, by **May 2008**, undertake at least ten gaugings, at least seven days apart, above the site of the take when the flow at Hamua is less than 500 l/s, with at least five of these measurements taken when the flow is less than 350 l/s.
10. Within **4 months** of commencement of this Permit, (by 30 March 2005) the Permit Holder shall submit an updated management plan for the Eketahuna Water Supply for review and comment to the Manawatu-Wanganui Regional Council's Team Leader Compliance. The Management Plan shall include but not be limited to matters contained in the Draft Management Plan submitted during the Consent Application process. In addition the Management Plan will address the following matters:
  - i. Reduction of water use during the times of restriction specified in Condition 3;
  - ii. Management of rural, stock and domestic use;
  - iii. Prevention of illegal water usage within the rural area;
  - iv. Potential storage;
  - v. How restrictions will be applied within the Eketahuna township;
  - vi. Addressing leakage within the reticulation system; and
  - vii. An implementation plan detailing completion dates of management initiatives.

The Permit Holder shall operate in accordance with the Management Plan at all times.

11. The Management Plan shall be reviewed by **October 2005**, and every three years thereafter commencing **October 2008**. A revised copy shall be submitted for review and comment to the Manawatu-Wanganui Regional Council's Team Leader Compliance prior to **30 October** of that year.
12. The Permit Holder shall provide the Manawatu-Wanganui Regional Council Resource Information and/or Compliance Monitoring Staff or its agents with reasonable access to sites, flow meters and telemetry equipment to enable monitoring of water use.

13. The Manawatu-Wanganui Regional Council may, under Section 128 of the Act, initiate a review of Conditions this Permit in the month of November each year for the term of this Permit. The reviews shall be for the purpose of reviewing the effectiveness of the conditions in avoiding, or mitigating any adverse effects on the environment which may arise as a result of the exercise of this Permit;

The review may be necessary to:

- i. assess the water abstraction volumes and rates detailed in Conditions 1 and 2 of this Permit for consistency with the Regional Water Allocation policy, and if necessary change the monitoring outlined in this Permit;
- ii. change the flow recording site the flow restrictions are measured from, and the flows at which restrictions come into force;
- iii. deal with any significant adverse effects on the environment which may arise as a result of this Permit; and
- iv. deal with any other matters relevant to the authorised activity that may be raised through the review.

The review of conditions shall allow for:

- i. the deletion or amendment of any of the conditions of this Permit; or
- ii. the imposition of different low flow cut off parameters in condition (3); or
- iii. the addition of new conditions as necessary to avoid, remedy or mitigate any adverse effects on the environment.

**Note:** Any review exercised under this condition may result in the abstraction volume and/or rate being reduced and/or restricted, or further restrictions being placed on the abstraction volume and/or rate during low flow conditions.

14. The Regional Council may, under Section 128(1)(b), of the Resource Management Act 1991, initiate a review of all of the conditions of this Permit at any time throughout the term of this permit, when a regional plan has been made operative which sets rules relating to maximum or minimum levels or flows or rates of use of water and in the Regional Council's opinion it is appropriate to review the conditions of the Permit in order to enable the levels, flows, rates, or standards set by the rule to be met. The review shall be for the purpose of reviewing the effectiveness of the conditions in avoiding, or mitigating any adverse effects on the environment, which may arise as a result of the exercise of this Permit in response to any future Regional Water Allocation Plan.

15. Charges, set in accordance with Section 36(1)c of the Resource Management Act 1991, and Section 150 of the Local Government Act 2002, shall be paid to the Manawatu-Wanganui Regional Council for the carrying out of its functions in relation to the administration, monitoring and supervision of this resource consent and for the carrying out of its functions under Section 35 (duty to gather information, monitor and keep records) of the Act.

**[Note:** Section 36(1)c of the Act provides that the Manawatu-Wanganui Regional Council may from time to time fix charges payable by holders of resource consents. The procedure for setting administrative charges is governed by Section 36(2) of the Act and is currently carried out as part of the formulation of the Manawatu-Wanganui Regional Council's LTCCP.]