

# Hearings Committee meeting held 28-30 June and 4-8 July 2011 to hear TrustPower Limited Application numbers 65750, 65751 65752, 65753 and 65754

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**Report from:** Mr Greg Hill (Chairperson)  
Mr Alan Bickers  
Mr Rob van Voorthuysen  
Joint Hearing Commissioners  
  
Peter Weightman  
**Committee Administrator**

**File reference:** 65750, 65751, 65752, 65753, 65754

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## 1 Attendance

### 1.1 Applicant

V Hamm (Counsel for Applicant)  
G Levy  
P Lilley  
K Joynt  
D V Toan  
D Tate  
G Ryder  
B Mikaere  
M Single  
J Goodwin  
R Greenaway  
T Layton  
G Kemble  
I Lees

### 1.2 Regional Council staff

H Creagh	(Senior Consents Officer)
L Faithful	(Consents Officer)
W J Philpott	(Consulting Engineer)
S D Iremonger	(Environmental Scientist)
P Scholes	(Environmental Scientist)
M Bloxham	(Environmental Scientist)

### 1.3 Submitters

A Law  
P Gow  
B Kerrison  
M Kearney  
T Wara (On behalf of Ngāti Haka Patuheuheu)

R Pouwhare	(On behalf of Ngāti Haka Patuheuheu)
A Hare	(On behalf of Ngāti Haki Patuheuheu)
H McCorkingdale	(On behalf of Ngāti Haki Patuheuheu)
K Tupe	(On behalf of Ngāti Haki Patuheuheu)
W Checkley	
M Gow	
S Berry	(Counsel for Environmental Hazards Group)
J Vella	(Counsel for Environmental Hazards Group)
K Tarboton	(On behalf of Environmental Hazards Group)
C Holmes	(On behalf of Environmental Hazards Group)
B Crabbe	(On behalf of Environmental Hazards Group)
P Wheeler	(On behalf of Environmental Hazards Group)
G Williams	(On behalf of Environmental Hazards Group)
B Hughes	(On behalf of Ngāti Awa)
P Ngaropo	(On behalf of Ngāti Awa)
T Waikato	(On behalf of Ngāti Awa)
P Morris	(On behalf of Ngāti Awa)
G Johnston	
S Muir	
P Leaming	
I Kinvig	
M Hudson	
R Hunter	
M O'Halloran	(On behalf of Environmental Hazards Group)
R Burchett	(On behalf of Environmental Hazards Group)
C Dawson	(On behalf of Environmental Hazards Group)
L Conning	(On behalf of Forest & Bird Society)
M Fort	(On behalf of Forest & Bird Society)
B Clarke	(On behalf of Forest & Bird Society)
C Hammond	
R Gardner	(Counsel for Federated Farmers)
G van Beck	(On behalf of Federated Farmers)
M Gow	(On behalf of Federated Farmers)
M Noord	(On behalf of Federated Farmers)
D Tawa	(On behalf of Dept of Conservation)
H Neale	(On behalf of Dept of Conservation) (Evidence tendered)
D Kelly	(On behalf of Dept of Conservation) (Evidence tendered)
R Lander	(On behalf of Dept of Conservation)
M Dedual	(On behalf of Dept of Conservation)
J Kalan	(On behalf WDC Māori Liaison Committee)
M Sisley	(On behalf WDC Māori Liaison Committee)

## 2 The Hearing

### 2.1 Introduction

Joint Commissioner and Chairperson Mr G Hill opened the hearing and introduced the other members of the Committee, Mr A Bickers and Mr R van Voorthuysen, the members of the Regional Council staff attending, other parties present and outlined the procedures to be followed.

### 2.2 Ms Hamm Counsel for the Applicant introduced the team for the Applicant TrustPower Limited and tabled the evidence to be given (**Tabled document 1**) (two large red folders) and a copy of the Government National Policy Statement for Renewable Electricity Generation 2011 (**Tabled document 2**).

#### 2.2.1 Staff advised there was one preliminary matter to be considered that being an application for the receipt of a late submission from the Ngāti Tūwharetoa (BOP) Settlement Trust.

Ms Hamm counsel for the Applicant advised that TrustPower Limited did not consent to the Commission receiving a late submission as considerable time had lapsed since the closure date of submissions of which the Trust were aware of.

After hearing the Trust spokesperson the Chairperson requested that the submission be tabled but that he would undertake legal advice as to its admissibility and would rule later in the hearing (**Tabled document 3**).

## 3 The Applicant

**Ms Hamm** counsel for TrustPower Limited commenced by addressing the legal issues involving the consent and outlined the proposals and evidence to be presented contained in the application. She advised that TrustPower was wishing to modify the existing operation of the Matahina Hydroelectric Power Scheme to respond to the declining inflows into Lake Matahina and to the variable demands of electricity facing the industry. This this would enable the more efficient use of an existing resource.

To achieve this the Applicant seeks to modify the present consent by increasing the number of allowable operating peaks as allowed under the present consented scheme and change the allowable water flow rates.

Staff tabled a letter from Stevenson Group Limited expressing concern over a resource consent they were about to file that may be affected by the TrustPower consent (**Tabled document 4**).

Ms Hamm answered points of clarification from the Commissioners and referred to a judgement from the High Court in *Frasers Pāpāmoa -v- Tauranga City Council* (**Tabled document 5**).

#### 3.1 Mr Graham Levy a technical director in the firm of Beca Infrastructure Ltd (BECA) and specialising in hydrology and hydraulics gave a PowerPoint presentation (**Tabled section 2 of document 1**) on the overview of the proposed operating changes. The presentation covered the reasons for the proposed change in operation, and an overview of the current and proposed future operating conditions and the Flood Management Plan.

The modified scheme was to give greater operational flexibility, improved ability to match generation to demand, improved efficiency, and greater flexibility to meet changing energy demand patterns.

- 3.2 **Mr Peter Bryan Lilley** TrustPower Hydro Development Manager and specialising in the areas of catchment hydrology, river hydraulics and water resource engineering gave his evidence (**Tabled section 3 of document 1**) and addressed the hearing on the background and the development of the modified operating regime and efficiency benefits.

Mr Lilley answered points of clarification on the present key restraints, ramping rates, erosion control, safety issues, water storage limits and history of peaking.

- 3.3 **Ms Kirsty Ann Joynt** TrustPower Environmental Advisor specialising in environmental management gave evidence (**Tabled section 4 of document 1**) on the consultation programme undertaken with the submitters. The planning for the project had commenced in 2005.

Ms Joynt clarified points concerning the consultation and agreement being proposed between TrustPower and Fonterra, the situation regarding downstream abstractors, the TrustPower/Regional Council contribution formula, and fish protection issues.

**The Hearing adjourned to 29 June 2011 at 9.00 am.**

#### **4 Reconvened hearing at 9.00 am on Wednesday, 29 June 2011**

- 4.1 **Graham John Levy** Technical Director in the firm of Beca Infrastructure Ltd specialising in the field of hydrology and hydraulics with a focus on water resources development and its effects gave extensive evidence (**Tabled section 5, document 1**) regarding the hydrological change proposed by the application.

Staff tabled a letter from the Regional Council to the Stevenson Group in reply to the letter tabled refer document 4 (**Tabled document 6**).

Staff further tabled a report by Council consultant William John Philpott in addition to and updating issues in his report as previously filed (**Tabled document 7**).

The Commissioners requested clarification on the contribution cost sharing figures as noted in the updated report of Mr Philpott and requested further information on the differences between the reports.

Further queries were addressed concerning flow rates and measurements over the river, bank stabilisation, setting of ramping rates, financial contributions, flood damage control and the scope of the Regional Council in flood times.

- 4.2 **Mr Peter Bryan Lilley** gave further evidence and clarified issues of water flows.

A graph of Mean Annual Low Flow and Moderate to High Flow was discussed (**Tabled document 8**).

- 4.3 **Mr Do Van Toan** Chief Geotechnical Engineer for Beca Infrastructure Ltd specialising in land stability, earthworks, erosion and groundwater gave evidence (**Tabled section 6, document 1**) concerning the effects of the proposal on river bank processes. His evidence considered the geology of the river, flood damage, erosion risks, river bank instability, and commented on the Philpott report.

In reply to questions from the Commissioners he submitted that for purposes of determining river management maintenance contributions that the Commissioners consider dividing the river into three sections, those being close to the dam face, then a middle section and finally a third section nearer the river mouth with contributions in the vicinity of 5%, 10% and 15%.

- 4.4 **Mr Donald Robert Tate** a director of Riley Consultants Ltd specialising in geotechnical and water resources engineering gave evidence (**Tabled section 7, document 1**) on the proposed river management costs, stopbank integrity and their risks, and in particular the design and construction of the Rangitaiki River stopbanks.

(**Tabled document 9**) Information on the dam and power house.

**Hearing adjourned to Thursday, 30 June 2011 at 8.30 am.**

## **5 Reconvened hearing Thursday, 30 June 2011 at 8.30 am**

- 5.1 **Mr G Ryder** director of Ryder Consulting Limited a water quality scientist and aquatic ecologist gave evidence (**Tabled section 10, document 1**) on the physical and ecological descriptions of the Rangitaiki River and its existing values including water quantity, quality, periphyton, macrophytes macroinvertebrates and fisheries. His evidence included the effects on the ecology with the existing operation and the proposed changes to the scheme.

The Commissioners sought clarification on the effects on the River of low flow and water temperatures and the increase of peaks and if there would be any effect on the Fonterra discharge.

- 5.2 **Mr B Mikaere** director of Buddy Mikaere and Associates and specialising in tangata whenua consultation and cultural issues arising from Resource Management Act applications gave evidence (**Tabled section 12, document 1**) on the issues concerning consultation and cultural matters involving the application.

### **5.2.1 Procedural matters**

The Chairperson referred to the application by the Ngāti Tūwharetoa for a late submission (refer to tabled document 3).

The legal opinion obtained advised that the late submission could not be accepted and accordingly was refused.

Staff advised that a further report of clarification prepared by Mr W J Philpott was available (**Tabled document 10**).

- 5.3 **Mr M B Single** Director and Environmental Consultant for Shore Processes and Management Ltd gave evidence (**Tabled section 13, document 1**) on the affects the modified scheme would have on the lake shore, erosion, and River mouth.

The Chairperson advised the hearing that the Commissioners would be undertaking a site visit of the River from below the dam the following day.

**The hearing was adjourned to Monday, 4 July 2011 at 10.30 am.**

## **6 Reconvened hearing on Monday, 4 July 2011 at 10.30 am**

### **6.1.1 Procedural matter**

The Chairperson advised that a site visit had been undertaken of the River below the dam.

- 6.2 **Mr J L Goodwin** Landscape Architect and Director of Boffa Miskell Ltd gave evidence (**Tabled section 14, document 1**) on assessments on the landscape effects the proposed scheme would have on the project.

**(Tabled document 11)** (Supporting figures to Mr Goodwin's evidence).

In reply to questions from the Commissioners he advised that he did not consider that increasing the number of peaks per day would have any effect on the River or on his assessments.

- 6.3 **Mr R J Greenaway** of Rob Greenaway and Associates and Global Leisure Group Ltd specialising in leisure and open space gave evidence **(Tabled section 15, document 1)** on the effects the scheme would have on the recreational facilities of the proposed scheme.

In reply to questions from the Commissioners he advised that he did not consider that the number of peaks would have any effects on his assessments but that a very sharp reduction or increase to water levels would not be appropriate. Clarifications were sought on the low flow effects would have on users especially during long dry periods. Local knowledge would mitigate effects.

- 6.4 **Mr T B Layton** independent expert in the fields of economic regulation, environmental policy, climate change, energy economics, and international trade relations gave evidence **(Tabled section 16, document 1)** an economic assessment on the proposal.

The Commissioners requested clarification on the economic effects of the flood level triggers and flood management costs. There was a cost when water was needlessly spilled from the dam and greater flexibility was desired. The scheme would benefit from better control during times of peak pricing.

- 6.5 **Mr G D Kemble** Director of Ryder Consulting Ltd and experienced in environmental planning gave evidence **(Tabled section 18, document 1)** on the context of the relevant provisions of the Resource Management Act and the statutory planning instruments.

6.5.1 **Procedural matters**

The Commissioners requested information on the required flow levels to "flush" the River.

Staff advised there was a supplementary statement available from a previous witness Mr G Levy clarifying the areas of difference between his and Mr Philpotts evidence concerning the cost calculations for TrustPower contributions to the Rangitāiki/Tarawera River scheme **(Tabled document 12)**.

**The hearing adjourned to Tuesday, 5 July 2011 at 10.00 am.**

7 **Reconvened hearing on Tuesday, 5 July 2011 at 10.00 am**

7.1.1 **Procedural matters**

Staff advised that a legal opinion regarding the financial contributions issue had been received via email **(Tabled document 13)**.

- 7.2 **Mr I Lees** of TrustPower Ltd employed as the Canterbury Development and Wind Energy Asset Manager and previously the Asset Manager Generation gave evidence **(Tabled section 17, document 1)** on the operation of the power station and plant and the effects of the rough running range on the turbines.

In reply to questions from the Commissioners he advised that optimal efficiency was obtained when the scheme was operated at high discharge rates. There had never been a replacement of the turbine runners.

- 7.3 **Mr G Kemble** was recalled to clarify earlier matters relating to policy, river flow and contributions.

## 8 **Submitters**

- 8.1 **Mr Alan Law** of Wyndlea Farms Ltd tabled his evidence and addressed the hearing. **(Tabled document 15).**

His evidence covered issues of future water take demands, river bank erosion, management of flood events, proposed minimum river flows negative impacts, the December 2009 low flow trials and the TrustPower Abstractors Contract.

He submitted that the scheme allowing a river flow of 20 cumecs with a 72 hour envelope be declined.

In reply to questions from the Commissioners he stated that he would be more comfortable with a 300 cumecs trigger point rather than a requested 500. Also he considered that the company should have acted two to three days sooner to alleviate the 2004 flood waters.

- 8.2 **Mr Platt Gow** retired dairy farmer tabled his evidence and addressed the hearing. **(Tabled document 16) and (photographs document 17).**

The evidence covered his professional history in the district, the history of the Power Station and his experiences with the River.

Issues covered were the actions of TrustPower in the 2004 flood, and the costs of flood damage and ongoing river maintenance. Main issues were flood control mismanagement, river safety and long term river health.

- 8.3 **Mr Bill Kerrison** of the Kokopu Trust and **Mr M Kearney** of Te Whare Wananga o Awanuiarangi presented joint evidence on the passage of fish management up and downstream of the Matahina Dam **(Tabled document 18).**

They reported that they were responsible for the movement of fish through the dams and reported that some 2 million or nearly 2,000 kgs of fish had been transferred. They had the support of TrustPower in their endeavours and were happy with the arrangements. New methods were being considered and they were happy to trial the new proposals.

- 8.4 **Ngāti Haka Patuheuheu**

**Ms Terena Wara** legal counsel for Ngāti Haka Patuheuheu advised that in addition to her submissions Mr R Pouwhare, Mrs A Hari, Mrs H McCorkingdale and Mr K Tupe would be making submissions to the hearing **(Tabled document 19).**

The Commissioners pointed out that as the legislation stood there was no option but to grant a consent. Ms Wara acknowledged she was aware of the legislation.

Ms Wara read the evidence and advised that Ngāti Haka Patuheuheu were not satisfied that proper consultation had taken place and until this had, consent should not be given.

- 8.5 **Mr Robert Pouwhare** on behalf of Ngāti Haka Patuheuheu Trust gave evidence on the historical nature of the tribes affiliation to the land and river, to the adverse effects on the Mauri and Mana of the River and on the impact on the relationship to the River, with the interference and degradation of wahi tapu and concerns with the lack of meaningful consultation.

- 8.6 **Ms A Hare** on behalf of the Waiohau School gave a history of the district and River advising that over the period of time the demise of the River as a food source.
- 8.7 **Ms H McCorkingdale** Chairperson of the Waioau Marae Committee spoke on the importance of the River as a food source and the effect on the tribes' traditional hospitality role.
- 8.8 **Mr K Tupe** on behalf of Te Umutaoroa spoke on the demise of fish stocks, the erosion of the lake and river banks, disturbed and destroyed wahi Tapu areas.
- 8.9 **Mr Wayne Checkley** a property owner adjacent to the River read his evidence and referred to photographs (**Document 20**). His evidence covered water intakes and irrigation concerns, river low flows and the salinity wedge. He also stated he had concerns on river bank erosion.
- 8.10 **Mr Matt Gow** a fourth generation farmer on the River read his evidence (**Tabled document 21**). His evidence related to navigational safety caused by the proposed low flows, effects on water quantity and quality, flood management, erosion, and future generations.

**5.20 pm Hearing adjourned to Wednesday, 6 July 2011.**

## **9 Meeting reconvened on Wednesday, 6 July 2011 at 8.30 am**

### **9.1 Submissions of Bay of Plenty Regional Council Environmental Hazards Group**

- 9.1.1 **Mr S J Berry** Counsel for BOPRC EHG summarised the issues and in reply to questions from the Commissioners stated that they did have jurisdiction to issue a consent with a lesser regime than was at present being operated under and referred the Chairperson to the relevant case law – *Contact Energy Ltd v Waikato Regional Council*, *Alexandra District Flood Action Society Inc v Otago Regional Council* and *Marr v Bay of Plenty Regional Council*.

He outlined the scope of the Commissioners jurisdiction submitting that the twin peak consent had expired and so was totally reviewable.

He further defined the existing environment for the purpose of assessing effects, the significance of the National Policy on Renewable Energy, flood management, and the appropriate resource management response (**Tabled evidence of group submissions document 22**).

- 9.2 **Mr K Tarboton** Environmental Hazards Group Manager of EHG read his evidence, (**section 2, document 22**). He provided an overview of EHG and of its responsibility for rivers and drainage schemes, the river schemes' assets and funding of them.

The Commissioners sought clarification on the modelling methods, on the cumecs measuring, the trigger flows and river bank damage causes.

- 9.3 **Mr C Holmes** a farmer from Galatea whose farm adjoins the Rangitāiki River read his evidence, (**section 3, document 22**). He stated he was a member of the River Liaison Group for many years, Chairman of the Galatea Murupara Irrigation Society which has a Memorandum of Understanding with TrustPower. His evidence gave aspects of the local economy, recent history and flood management. It was his opinion that any new conditions should follow the run of the River flow as closely as possible as it will be the fluctuations that cause the problems.



- 9.4 **Mr B Crabbe** the Rivers and Drainage Operations Manager for EHG read his evidence, (**section 4, document 22**). He gave an overview of the flood protection scheme and its history, the works and costs that EHG undertake, the impact of recent floods on the scheme, and the monitoring concerns.

The Commissioner sought clarification on the river bank repair methods and its costs, the relation and monitoring methods of EHG and TrustPower, and the relation of costs involved between the three sections of the river.

- 9.5 **Mr P Wheeler** economist and acting as adviser to EHG read his evidence (**section 8, document 22**) and reported on the issues involved in the likely economic effects of the proposed regime by TrustPower, and in particular those involved in flood management. Mr Wheeler clarified issues raised on the costing methods raised by the Commissioners.

- 9.6 **Mr G Williams** a practicing consulting engineer specialising in water and soil engineering read his evidence (**section 6, document 22**), and reported on river dynamics and management and the effects on the Rangitāiki River, the operating regime and the potential stopbank failure modes, a qualitative assessment of the adverse effects of the HEPS in terms of expenditure and appropriate monitoring and contributions to river management.

In reply to points of clarification from the Commissioners he advised that he would not wish to see the low flow level at less than 40 cumecs, as that larger the flow range the greater the damage to the river banks. Other issues clarified related to the river bank maintenance method with the rip rap using soft rock being the most suitable. He did not consider that contributions to river maintenance could outweigh the advantages of run of river flow.

#### 9.6.1 **Procedural matters**

The Chairperson advised that the following day would commence with the submissions from Ngāti Awa with the balance of submissions of the EHG being heard later in the hearing

**6.10 pm the hearing adjourned to Thursday, 7 July 2011.**

### 10 **Reconvened hearing on Thursday, 7 July 2011 at 8.30 am**

Hearing commenced with a Karakia by Mr R Paul.

- 10.1 **Mrs Beverley Hughes** Environmental Manager Ngāti Awa and spokesperson authorised to make submissions on behalf of Ngāti Awa gave evidence and tabled her submissions. (**document 23**). The evidence embraced issues of the Ngāti Awa relationships with the Rangitāiki River, the cultural, spiritual, historical, and traditional associations with the River and Ngāti Awa.

In reply to questions from the Commissioners Ms Hughes reported that the flow rates were of real concern as was the erosion of the river banks. There was also uncertainty and concern on whose decision it would be in times of flood management on the River. The Iwi were not happy with the present operating regime conditions but hoped to be able to win back some concessions with the new consent. The Iwi did not consider Mr Mikaere's evidence to be relevant as he was not of the area and did not comprehend the Mauri of the River.

- 10.2 **Mr P Ngaropo** gave evidence in Māori which was translated by Mr P McGarvey. He spoke of the Mauri of the River, the genealogy, and the historical significance of the River to the people.

### 10.2.1 Procedural matter

An application to lodge a late application for a submission by the Nga Maihi Hapū, (**document 24**) was withdrawn after discussion with the Chairperson.

Ms B Hughes the speaker for Ngāti Awa consented to Nga Mahi being called as witnesses for them.

Ms Hamm counsel for the Applicant TrustPower had no objection to this course of proceedings.

- 10.3 **Tania Waikato** tabled her evidence and submissions and read to the hearing, (**Tabled document 25**). She advised that she was a land owner adjacent to the river and a local who had lived in Te Teko most of her life.

Her evidence covered issues of failure by the Applicant to undertake effective consultation, a failure of an effective description of the proposed changes, the adverse effects on the recreational activities, and the levels of mitigation to overcome any consented effects.

Points of clarification raised by the Commissioners concerned the minimum flows and where should the measurement be situated, the length of the consent and should it be reduced to 10 years.

### 10.3.1 Procedural matter

At this point of the hearing the Chairperson allowed several school children to read letters in opposition to the application. There were also brief statements from Kaumatua who were in attendance with the children. (**Tabled a box of letters from school children document 26**).

- 10.4 **Ms P Morris** spoke and gave a history of the local association of the Te Teko district with the Rangitāiki River.
- 10.5 **Mr G Johnston** a local resident who had been associated with the Rangitāiki River since 1950 read his evidence (**Tabled document 27**). He stated concern with river bank erosion, low flow regime causing problems navigating the river mouth bar, fish depletion, and waka sports. He would not accept a flow less than 40 cumecs.
- 10.6 **Mr Scotty Muir** a dairy farmer with land adjacent to the River at Galatea read his evidence, (**Document 28**). His concerns were that of flood management and trigger levels, and river flows preferring a run of river flow except for times of flood control.
- 10.7 **Mr P Leaming** a dry stock farmer and kiwi fruit orchardist with property adjacent to the River, read his evidence, (**Tabled document 29**). His concerns were water quality and availability, bank erosion and flood management and safety issues during ramping levels.
- 10.8 **Mr Ian Kinvig** a kiwi fruit orchardist adjacent to the River read his evidence, (**Tabled document 30**). His concerns related to water use for frost protection and irrigation and water levels at the river mouth for recreational users.
- 10.9 **Mr M Hudson** a kiwi fruit orchardist adjacent to the River read his evidence, (**Tabled document 31**). His opposition was to the number of peaks per day and the reduction in water flows. There had been no commitment by TrustPower to give a satisfactory alternative to his present water supply. The 35 year consent as sought was far too long.

- 10.10 **Mr R Hunter** representing Horticulture NZ and the NZ Kiwifruit Growers Inc read his evidence, (**Tabled document 32**). He reported that his industry's concerns were the proposed low flows, and the need for relevant flow monitoring and reporting.

(**Tabled document 33, supplementary evidence of Mr K Tarboton**). Answer to an earlier question from Commissioner Bickers.

The submissions on behalf of the EHG recommenced at this time.

- 10.11 **Ms M O'Halloran** sole practice geotechnical engineer and owner director of Ice Construction Ltd and Ice Geo and Civil Ltd read her evidence (**Section 5, document 22**). Evidence related to the geology and topography of the Rangitāiki River and Plains, stopbank failure mechanisms, geotechnical problems along the River (heave and piping), stopbank investigations and remediation measures, effect of water level fluctuations on surface erosion and stability of stopbanks, and effects of the proposed operating regime on the flood protection scheme.

The Commissioner sought clarification on the percentage of at risk or marginal stopbanks, whether reducing peaking by numbers or size will have effects on the banks, and would there be an effect on the protective silt layers, and what increase in risk to river banks.

#### 10.11.1 Procedural matter

Council for the Applicant Ms Hamm questioned whether the evidence of submitters concerning the run of river issue was in the scope of the hearing as this had not been an issue previous raised.

- 10.12 **Mr R Burchett** a self-employed electricity generation business engineering consultant advising the EHG advised his evidence in chief and supplementary evidence could be taken as read (**section 7, document 22**). His evidence related to operational issues, alternatives available to the Applicant to avoid effects caused by low flows, and made comment on issues relating to monetary mitigation methods. Specific issues were water flows being measured in units of water flow and not units of electricity, with comments on alternatives to the rough running range.
- 10.13 **Mr C Dawson** a senior planner at Bloxham Burnett & Olliver experienced in resource management planning advised his evidence be taken as read (**section 10, document 22**). His evidence covered his opinion as to the planning status of the application under the Operative Bay of Plenty Regional Water and Land Plan, his assessment against the relevant generation, the provisions of the Operative Bay of Plenty Regional Policy Statement and rule 47C of the Water and Land Plan.
- 10.14 **Mr Berry** Counsel for EHG submitted that there was scope for the consent to remain as is and with the single peak regime.

**5.15 pm the hearing adjourned to Friday the 8 July at 8.30 am.**

11      **Reconvened hearing on Friday 8 July 2011 at 8.30 am**

12      **Forest and Bird Protection Society NZ Inc submissions**

12.1      **Ms L Conning** independent planner and specialist in resource and environmental planning read her evidence, (**Tabled document 35**). She advised the Society's evidence would include the areas of concern for Forest and Bird and relate to the natural character of the Rangitāiki River in terms of erosion, effects of the flow regime on the aquatic ecology, fish passage, water quality and land scape, amenity and recreational values. Ms Conning addressed the areas of minimum flows, climate change, the statutory frame work, mitigation and conditions.

12.2      **Mr Mark Fort** Chairperson of the Eastern BOP Branch of Forest and Bird read his evidence, (**Tabled document 36**). His evidence related to fish habitat – river bank characteristics and erosion, fish habitat – water levels, low flow trial, fish passage, water quality, and the natural character – landscape, amenity and recreational values.

12.3      **Mr Bill Clarke** a long time resident of the area and river user for most of his life spoke as a witness on behalf of the Forest and Bird. His evidence related to the recreational use of the River.

Mr Clarke tabled a petition that had been circulated in the area by the Forest and Bird Society that contained 1,440 signatures requesting that the River flow not be reduced to below its present levels (**Tabled document 38**).

12.4      **Mr C Hammond** a local dairy farmer of Thornton with significant experience on the River gave oral evidence on behalf of the Forest and Bird Society. His evidence covered points on the options from TrustPower for water abstraction during low flow periods.

12.5      **Ms Conning** readdressed the hearing and answered questions from the Commissioners relating to the recording equipment at Te Teko, the effects the low flows will have on farming operations and the River health in general.

12.6      **Mr J Philpott** consulting engineer on behalf of the Bay of Plenty Regional Council was recalled and gave further written evidence, a final report (**document 39**). The report considered the evidence presented during the hearing and offered his final opinion on all issues.

The Commissioners clarified points relating to the rip rap rock protection works, the vegetation growth at water levels, and financial contributions levels.

13      **Federated Farmers of New Zealand**

13.1      **Mr Richard Gardner** legal counsel and in house lawyer for the Federated Farmers of NZ made legal submissions (**Tabled document 40**), and a copy of his PowerPoint presentation (**Tabled document 41**). Mr A Law an earlier submitter (4.1) gave evidence relating to the taking of the photographs.

The Commissioners requested clarification on the submission relating to the consent as being a discretionary activity.

13.2      **Mr G van Beck** a member of Federated Farmers and a Whakatāne District Council councillor read his evidence (**Tabled document 42**). His evidence covered points concerning the 2004 flood and subsequent damage, flood attenuation of Lake Matahina, capacity of the Rangitāiki flood protection works, and climate changes.

13.3 **Mr M Gow** a previous submitter (4.2) submitting on behalf of Federated Farmers read his evidence (**Tabled document 43**) and referred to the photos (document 41). His evidence related to his present irrigation consent, the TrustPower trial, and TrustPower mitigation and consultation.

13.4 **Mr M Noord** read his evidence (**Tabled document 44**). His evidence related to the TrustPower trial deficiencies, the mitigation deficiencies, and impact on business.

The Commissioners requested clarification on the proposed abstraction pumps and costs concerned. Mr Noord confirmed there was good ground water deeper than 150 metres.

**Mr Gardner** concluded the evidence of Federated Farmers by summarising his submissions.

#### 13.4.1 **Procedural matter**

**Mr G Ryder** witness for Applicant (4.3) was recalled to clarify an earlier issue and questions from the Commissioners concerning the flow required to flush the River of bacterial and algae blooms. He advised that no definite flow had been ascertained as river bed condition would impact on this. A rough formula was three times the usual flow would be sufficient for most rivers.

### 14 **Department of Conservation**

14.1 **Mr D Tawa** of the Department of Conservation tabled evidence to be taken as read.

14.2 **Helen Neale**, Community Relations Officer (Planning) (**Tabled document 45**). Her evidence related to effectiveness of the upstream trap and transfer programme, the fish recruitment and survival of fish, effectiveness of downstream passage for adult eels, dam intake screening, effects on littoral vegetation, erosion, salt wedge and oxygen levels.

14.3 **David Kelly**, a scientific officer in the Research and Development Group of (DOC) tabled as read his evidence, (**document 46**) relating to concerns over the fish and aquatic life of the River.

14.4 **Ms R Lander** a fresh water technical support officer for (DOC) gave evidence (**Tabled document 47**), on the indigenous fisheries values, the existing and potential effects of the Matahina HEPS on the Rangitāiki River, and the potential effects on the inanga spawning.

14.5 **Mr M Dedual** a fishery scientist with the (DOC) gave evidence (**Tabled document 48**) on the effects of minimum flow, the ratios between high and low flows, the changes to river depths, and ramping rates of the proposed regime.

### 15 **Whakatāne District Council Māori Liaison Committee**

15.1 **Mr J Kalan** of the Whakatāne District Council Māori Liaison Committee addressed the hearing in Māori interpreted by Mr P McGarvey. His evidence related to the support of the Ngāti Awa submission in that the River united all Iwi in the district. He did not want any further disruption to the life force of the River and was concerned with the length of the consent being asked for and the change to the River flows.

15.2 **Ms M Sisley** spoke on the food source of the River and in particular the importance of the preparation of the Māori delicacy ..... rotten corn which was very important in the hospitality role of Iwi.

### 15.2.1 Procedural matter

(**Tabled document 49**) (a photographic journey of a site visit taken on 3 July 2011).

(**Tabled document 50**) (Legal opinion on late submission by Ngāti Tūwharetoa)

**2.30 pm      The hearing adjourned on a date to be fixed**

## 16      **Reconvened hearing on Wednesday 12 October 2011 at 8.30 am**

### 17      **Procedural matters**

The Chairperson reconvened the hearing and advised that staff had pre circulated evidence for the Committees consideration.

Counsel for the Environmental Hazards Group would commence the proceedings and have witnesses available to respond to questions previously raised by the Committee.

18      Staff tabled a letter received from a previous submitter Te Runanga O Ngāti Awa (**Tabled document 51**)

19      Counsel for the Environmental Hazards Group Mr Berry addressed the hearing and (**Tabled document 52**) (various case law) and made submissions to the Committee.

19.1      Mr **P Wheeler** gave evidence of answers to questions raised (**Tabled document 53**), and (**Tabled document 54**) table of contribution estimates.

19.2      Staff tabled documents previously distributed to the Committee as follows.

(**Tabled document 55**) Letter from Fonterra advising its withdrawal of its submissions in opposition to the Resource Consent application

(**Tabled document 56**) Written legal submission of Counsel for EHG Mr Berry.

(**Tabled document 57**) Supplementary evidence of Mr P B Wheeler (EHG)

(**Tabled document 58**) Supplementary evidence of G L Williams (EHG)

(**Tabled document 59**) Supplementary evidence of B G Crabbe (EHG)

19.3      Mr **G L Williams** and Mr **K Tarboton** who had previously presented evidence answered questions as required from the Committee

20      Ms **Hamm** Counsel for Applicant TrustPower requested that the Committee adjourn for one hour to enable it to read the further evidence that was to be presented.

- 20.1 **(Tabled document 60)** Folder containing the further evidence in reply of witnesses for the applicant as follows.

P Lilley, G Levy, D V Toan , D Tate , B Layton , I Lees , B Walpole , G Ryder , B Mikaere , J Goodwin , R Greenaway , G Kemble , Legal submissions V Hamm.

- 21 Staff advised that witness J Philpott had replied to comments by email and **(Tabled document 61)** (email addressed to staff Faithfull).

- 22 Staff further tabled revised proposed conditions of consent that had been revised to reflect submitters evidence, **(Tabled document 62)**.

- 23 Mr Berry advised that he had available for tabling answers to questions earlier raised by Commissioner Bickers **(Tabled document 63)** (Estimates of TrustPower contributions).

Also **(Tabled document 64 )** Draft BoPRC 10 year plan relating to Rangitāiki – Tarawera Rivers scheme.

- 24 **Procedural matters**

The Chairperson advised the Committee did not require all of the witnesses for the applicant (in document 60) to give their reply evidence in person.

- 25 Ms Hamm counsel for the applicant TrustPower referred the Committee to the evidence contained in document 60.

- 25.1 **Mr G Levy** referred to his evidence **(Section 2 document 60)** and responded to questions from the Committee.

- 25.2 **Mr D V Toan** referred to his evidence **(Section 3 document 60)** and responded to questions from the Committee

- 25.3 **Mr I Lees** referred to his evidence **(Section 6 document 60)** and responded to questions from the Committee.

- 25.4 **Mr B Walpole** referred to his evidence **(Section 7 document 60)** and responded to questions from the Committee. Clarity was sought on the minimum river levels and the flood management plan and issues raised concerning sections 70 and 71 of the consent conditions.

- 25.5 **Dr B Layton** referred to his evidence **(Section 5 document 60)** and responded to questions from the Committee. Clarification was given on proposed scheme being able to accommodate the market demands.

- 25.7 **Mr G Kemble** referred to his evidence **(Section 12 document 60)** and responded to questions from the Committee.

**4.20 pm the hearing adjourned to reconvene on the 13 October 2011 at 8.30 am**

- 26 **Reconvened hearing Thursday the 13 October 2011 at 8.30 am**

- 27 **Bay of Plenty Regional Council staff submissions.**

- 27.1 **Mr D Iremonger** referred to his evidence (**Tabled document 65**) and responded to questions from the Committee.
- 27.2 **Mr P Scholes** referred to his evidence (**Tabled document 66**) and responded to questions from the Committee.
- 27.3 **Mr M Bloxham** referred to his evidence (**Tabled document 67**) and responded to questions from the Committee.
- 27.4 (**Tabled document 68**) Mr J Philpott - commentary on the supplementary evidence.
- 27.5 **Mr Paul Cooney** counsel on behalf of the BoPRC referred to his submissions (**Tabled document 69**) and responded to questions from the Committee.
- 27.5 **Mr L Faithful** staff consents officer referred to his evidence and the revised proposed conditions of consent (**Tabled document 70**) and responded to questions from the Committee.

There was discussion on the ability to impose as a condition the “financial contribution” issue. Mr Cooney was to advise the Committee as to an acceptable appropriate wording.

- 28 **Ms Hamm** counsel representing TrustPower read her submission (**Tabled document 71**) and responded to questions from the Committee.

The Committee requested written evidence concerning the impact on TrustPower of water flows and what constraints these would place on the operations.

### **Procedural matters**

The Chairperson thanked the parties and all submitters concerned in the application and advised that once the information as requested had been supplied the hearing would be closed and a decision given.

The hearing was adjourned to a date to be fixed



## Table of documents

1	Evidence of Applicants
2	National Policy statement for Renewable Energy
3	Late submission Ngāti Tūwharetoa (BOP) Settlement Trust
4	Letter from Stevenson Group Ltd dated 23 June 2011
5	Legal Decision (Frasers - V – Tauranga City)
6	Letter to Stevenson Group from Regional Council dated 23 June 2011
7	Further report of W J Philpott
8	Graphic Evidence of river flow levels / peaking
9	Drawings of Matahina dam location, powerhouse etc
10	Further report of W J Philpott
11	Figures to accompany evidence of J Goodwin
12	Supplementary statement of G Levy
13	Legal opinion on financial contributions
14	Supplementary evidence of P Lilley
15	Evidence of Alan Law
16	Evidence of Platt Gow
17	Photographs of river banks and erosion
18	Evidence of B Kerrison and M McKearney
19	Evidence of Ngāti Haka Patuheuheu & Extract from Waitangi Tribunal
20	Evidence and photos of W Checkley
21	Evidence of Matt Gow
22	Evidence of EHG Sections 1 to 10 (Large blue folder)
23	Evidence of Ngāti Awa (Beverley Hughes)
24	Application to lodge submission out of time
25	Evidence of T Waikato
26	Letters from school children (In cardboard box)
27	Evidence of G Johnston
28	Evidence of Scotty Muir
29	Evidence of P Leaming
30	Evidence of Ian Kinvig
31	Evidence of M Hudson
32	Evidence of R Hunter
33	Further Evidence of K Tarboton (EHG)
34	Case Law
35	Evidence of L Conning (Forest & Bird)
36	Evidence of M Fort
37	Evidence of B Clark
38	Petition 88 Pages from Forest & Bird
39	Final report of W J Philpott
40	Evidence of R Gardner (Federated Farmers)
41	Copy of Power Point (Fed Farmers)
42	Evidence of G Van Beck
43	Evidence of M Gow
44	Evidence of M Noord
45	Evidence of H Neale (DOC)
46	Evidence of D Kelly
47	Evidence of R Lander
48	Evidence of M Dedual
49	Photographs of 3 July 2011 site visit
50	Not used
51	Letter from Ngāti Awa
52	Case Law EHG
53	Answers to questions Wheeler

54	Estimates of TrustPower contribution
55	Letter from Fonterra
56	Submissions from Counsel Berry
57	Supplementary Evidence Wheeler
58	" " Williams
59	" " Crabbe
60	Red Folder Evidence of witnesses TrustPower
61	Philpott email comments
62	Proposed conditions
63	Estimates TP contribution
64	Draft 10 year plan BoPRC
65	Evidence Iremonger
66	" Scholes
67	" Bloxham
68	Supplementary Evidence Philpott
69	Submissions from Counsel Cooney
70	Submissions from Faithful
71	Submissions and reply Hamm