

## Introduction

My name is Alan Law, and I represent the interest of our family. My Grandfather started farming at Thornton over 80 years ago. I have lived next to the Rangitaiki River all my life. Our family has interests in dairy farms milking just under 1000 cows, at Thornton.

My presentation today covers the 4 main areas we submitted on the 15/10/2009.

- Future water take demands
- Rangitaiki River erosion risk
- Management of flood events
- Proposed minimum river flows

## Future Water Take Demands

Section 5 (2) of the RMA is very clear on its purpose – to promote the sustainable management of our natural and physical resources. Sustainable is a key word in this and the act goes on to explain that the social, economic and cultural well being and health and safety for people and communities needs to be provided for. The RMA isn't only concerned with today. It specifically provides for the needs of future generations.

Early in this consent application process Trust Power were asked what allowance had been made for other future water demands from the river. Their reply was that none at all had been allowed for.

We found this response really disturbing. The core business of this district isn't power generation it is agriculture and horticulture and their manufacturing and service industries. The challenge we face as a food producing and exporting country is meeting the world demand for food. According to the UN, food production must double by 2050 to meet demand from the world's growing population.

What isn't clear to everyone is that if Trust Power is successful, how much water will be left for the social, economic and cultural well being and health and safety for our community? While the total amount of water going down the river will be the same, Trust Power's proposed low flow variation will pose significant constraints on downstream users. Downstream users will have to draw down to lower levels and will have to manage extremely inconsistent river flows. Access to water has to be EVERY hour and EVERY day, especially in a dry period. It is during the most critical time when users need access to water that Trust Power intends to influence water flows the most.

In real terms, how many hectares of pastoral or horticultural land will this provide irrigation for?

If a new food processing company wants to set up in five years time, will they be able to obtain a water right to abstract water from the river?

A dairy farm can lift production by 20% with irrigation. On a 300 cow dairy farm the gain is 300kgMS/Ha and if the payout is \$7/kgMS, this production lift represents \$189,000 per year every year. Trust Power has stated that the change in ramping rate would yield 3GW of additional generation. At \$50 per GW, that equates to their gain of \$150,000. Trust Power is trading off its ability to make more profit today against the opportunity of the farming community to make significant gains for many.

This Trust Power application does not provide for the social, cultural and economic needs of our community today let alone the future.

### **Rangitaiki River Bank Erosion Risk**

We have concerns that the modified operating regime of the HEPS will have an ongoing impact on bank erosion which will further compromise the security of the banks. Historically the capital and maintenance demands of the Rangitaiki River have been significant because of its soil structures and the ramping effect on the river. This has been and will continue to be a big cost and concern to the ratepayers of our district.

In June 2011 we jetboated the river from the sea to the dam. We observed a significant amount of erosion at some 40 sites. Some of these we would describe as major, especially on the upper reaches above Te Teko. At these points it is obvious that the banks are unstable. (Refer to photo number 4) In the lower reaches below Te Teko there are many areas that have been rip-rapped with rock. Whilst this measure is very expensive, it is proven to be very effective in mitigating areas of severe erosion. This work is currently taking place at the settlement of Thornton, 2.5 km upstream, and is ongoing repair of the river scheme following the July 2004 flood. Photo number 3 shows this work. This rip rap costs \$500 a meter, so Trust powers current annual contribution of \$15000 would only cover 30 lineal metres of this work. Photo number 1 illustrates a stable bank planted since 2004 on lower reaches approximately 3km up from river mouth. Photo number 2 shows current erosion damage in the lower reaches 7.5km upstream of river mouth.

We endorse the views expressed by Gary Williams of G&E Williams Consultants in his report to the BOPRC dated October 2009. *"In my opinion there is a clear case of adverse effects which Trust Power should address, and in a real and substantial way. I would also recommend that the less restrictive operating regime not be approved unless there is recognition of the need for additional compensation for the more adverse impacts on river management of this operational change."*

This opinion is supported by Philpott Consulting Engineers in their report to BOPRC. John Philpott wrote: *"In my opinion there is no doubt that there is a negative impact on the Rangitaiki River arising from the existing operating regime of the HEPS and the proposed changes to the operating scheme will not only continue to cause these negative impacts but will increase them."*

As scheme ratepayers we fully endorse BOPRC Consents Officer Luke Faithfull's report relating to the Trust Power annual contribution. We fully endorse the stance of the BOPRC Environmental Hazard Group and we fully endorse the Federated Farmers Submission.

One critical aspect must be the regular monitoring of our river by both Trust Power and independently by BOPRC. The inspection frequency should be determined by BOPRC and they should receive reports of the Trust Power inspections. Any extra erosion and maintenance cost attributable to the proposed operating regime must be met by Trust Power not the ratepayers.

We oppose the new conditions that Trust Power is seeking to implement.

## Management of Flood Events

Section 7 of the RMA covers the responsibilities of any persons managing the use, development and protection of natural and physical resources; stating that they shall have particular regard to the ethic of stewardship.

To us, this not only means individuals doing the right thing, but also having the confidence that those managing our precious resources are also doing what is right.

There has been much debate regarding the events leading up the 2004 flood. We share the view of many in our district that Trust Power mismanaged the spilling of water which led to the July 2004 flooding event on the Rangitaiki Plains. According to BOPRC, Trust Power had little rainfall data from the upper catchment. Did this breach their resource consent? Was this the cause of the river breaching its banks? Were the river stopbanks pushed beyond their designed capacity? While the actual breach was at Sullivans corner, there were numerous sites downstream that were about to overtop.

To demonstrate this, I wish to table this graph obtained from the BOPRC website (appendix 1). It graphs the trend of river levels at the Te Teko River Flow Recording Site for the 7 day period from midnight Thursday 15<sup>th</sup> July 2004.

In our opinion, this graph does not demonstrate ethical stewardship. This was a significant rainfall event. There is a steep incline of river level from lunchtime Saturday until 9:30am Sunday (when the river breached) Does this indicate panic on the part of Trust Power Management? Why wasn't the water spilled earlier? Why did Trust Power not monitor the situation more closely? They must have known what the downstream effect of their management regime would be, and if not why not?

That flood cost our river scheme \$10.5m. This cost covers an enormous amount of repair work carried out to date but there is still a lot to be done. And this work is ongoing. And Trust Power's current contribution? \$15,000 per annum. Wow.

Trust Power has presented much evidence saying it was not responsible for the breach and it might have been farmer activity, disturbing the soil at the stop bank toe, that caused the piping and ultimate failure. This remains the official story and if it were not, Trust Power would then have to shoulder some of the responsibility for the breach. As farmers, we are reliant on the BOPRC to design our flood protection systems including stop bank heights. How is it that Trust Power claims that less than 700 cumecs was being discharged at the time of the breach and water was about to over top stop banks at Law's corner, rated at 755 cumecs plus 300mm of free board? Our community relies on the integrity and management

skills of BOPRC and the operators of Matahina Dam not to be reckless at times of crisis and that profit lost from spilling water is not front of mind when communities and protection structures are under threat.

Flood protection costs millions of dollars to maintain. This investment spans generations.

Trust Power's proposed Flood Management Trigger Level of 500cumecs inflow is too high. Our district cannot afford another episode of flood damage as experienced in July 2004. The new resource consent should state that Trust Power is liable for damages in any repeat occurrence.

Trust Power cannot just focus on maximising its own generating profit to the detriment of the rest of our district. The RMA promises us ethical stewardship – aren't we all entitled to it?

I close by again referring to photograph number 5 showing the impact the low flow had on our intake structures. New data provided by Trust Power shows that the trial lowered the flow, as measured at the Te Teko station, to 27 cumecs. This is equal to the lowest average monthly flow as reported by BECA in their report. It is slightly higher than the lowest average weekly flow reported elsewhere in evidence. It is well above the proposed new low flow of 20 cumecs.

## **Proposed Minimum River Flows**

In this part of our submission we want to focus on these points:

- Negative impacts
- December 2009 Trial
- Trust Power Abstractors Contract & Why our family hasn't signed it

Section 5 (Clauses 2b & 2c) of the RMA covers another key responsibility in sustainable management which is safeguarding the life-supporting capacity of air, water, soil and ecosystems, and involves the avoidance, remedy and mitigation of any adverse effects of activities on the environment.

## **Negative Impacts**

We believe the proposed minimum flows that will drop water levels in the river are too extreme. Even with intake modifications, the impact on water abstractors will still be negative. Our concerns are:

- Security of supply – as permitted abstractors we need water available every hour, every day of the year for our dairy cows.
- Saline intrusion risk – we are not convinced that the impact of salinity on the permitted and consented water takes has been adequately investigated.
- Water quality - we are not convinced that the issue of water quality has been adequately assessed.

Of all the negative impacts, Security of Supply was our number one concern. The December 2009 trial realized our worst fears.

Under the Animal Welfare Act 1999, we as farmers of livestock have a legal obligation to meet the physical, health and behavioral needs of our animals. This includes providing proper and sufficient food and water.

## December 2009 Trial

Our family was advised by Trust Power that a river trial was to be run at low flow on December 7<sup>th</sup> 2009 for 24 hours. The timing of the trial would cover 2 low tides and 2 high tides. We registered our concern that our water intake would be left high and dry at low tide. Trust Power advised that their expert advice from BECA was that there would be no adverse effect on our intake.

I submit this graph prepared by NIWA and supplied to Trust Power on 30<sup>th</sup> June 2011 (Appendix 2). This graph shows that the low flow conditions were only applied for 12 hours and not 24 as originally advised. The 12 hour trial period only witnessed 2 high tides and one low tide. The river flow only went down to 25.8 cumecs at Te Teko, 1400 hours on 7/12/2009 not the 20 cumecs advised in the trial plan or sought by Trust Power in their consent application. Does this mean that the 20 cumecs flow at the dam was assessed on 10 megawatts of generation? This is very confusing, surely the trial should have been based on river flow.

Despite the shortened trial period, and higher than planned river flow, our concerns became reality. The trial began to take effect in the early hours of 7<sup>th</sup> December. The flow went from 49 cumecs down to 25.8 cumecs by 2pm, and it stayed at that low level until 5pm. At this time our 50,000 litre scheme storage at the river was empty and the pump had switched off because of insufficient water. In fact the river intake pump was high and dry.

(Refer photo number 5) 8.3km upstream, The river had emptied out to a level never seen before even in severe drought conditions. The first of the two farms on the scheme relies 100% on this storage & supply facility for livestock water. Their Stock had no water. At this time it was still 1.5 hours away from low tide. The next step was to activate the backup pumps to distribute 75,000 litres of stored water on the second property. At 10:15pm the river intake was still high and dry and water was 5 metres away from the intake. High tide was over 2 hours away. At this point it was realized that the high tide cycle would not provide enough time or water to replenish the empty system.

We tried to contact the BOPRC on their emergency after hours numbers. No response from the managers of the river who had given approval for this trial to take place. This was totally unacceptable. Trust Power representative Kirsty Joynt did answer her mobile at 10:30pm and reported that dam discharge levels to the river had returned to normal at 4:30pm. Levels at our site were expected to stabilize 7-8 hours after that.

At 11pm our pump finally started up, beginning replenishment of supply and reserves, but it took until the 2<sup>nd</sup> high tide, 24 hours later, for all reserves to be restored.

So in essence, our scheme endured

- 9 hours of no pumping,

- all 125,000 litres of tank reserves were emptied
- all 800 cows ran out of water
- the 350 cows on the first farm were without water for 5 hours.

The farmers were unable to meet their obligation under the Animal Welfare Act to provide proper and sufficient water. It took a further 3 days for milk production to return to normal. Quite simply: if a cow can't drink water she can't make milk, and we as farmers cannot fulfil our obligations under the Animal Welfare Act. On hot summer days cows drink the most water after 5pm.

All these negative impacts took place, and our observation is that the trial brief had not been met. Why do we think this? Because Trust Power in their communication letter dated 20/11/2009 had outlined that low river flows were to be down to 20 cumecs for the duration of December the 7<sup>th</sup>, then at 45 cumecs on the 8<sup>th</sup> December (Appendix 3). The trial did not run to the conditions advised by Trust Power. There was a big difference between what they said they would do and what they actually did with this trial.

There were few provisions to provide contingency for adverse effects that could have been predicted on various farms.

This trial had a serious impact on the economic and animal welfare aspects of the two dairy farms affected.

- Notwithstanding our experience with the trial we had experienced issues the 2 previous summers with pumps switching off due to low river flows. We had assumed this was due to summer drought conditions. We modified our river intake during the autumn of 2010 at a cost of \$6500. We have since found out that BOPRC had approved a consent variation for Trust Power to modify their operating regime to run lower minimum river flows at night. Despite having a permitted water take we were never notified of this variation. This brings us back to the clause in the RMA that talks about ethical stewardship.

## **Trust Power Abstractors Contract & Why our family hasn't signed it**

After the trial Trust Power met with our family to discuss their contract (Appendix 4).

On the first day of this consent hearing the Commissioners asked Kirsty Joynt of Trust Power why all the abstractors had not signed their contract. I would like to outline the reasons why our family has not signed.

- We find the contract contradictory. Clause 1.2 Trust Power's obligation says that they undertake intake modifications if the Abstractor considers that there will be adverse effects. Then Clause 3.3 states that if the Abstractor signs the contract, then this disregards the potential for adverse effects on the intake. This is further supported by Clause 3.4 which states that Trust Power will not be required to address the potential for effects on intake at the consent hearing.
- We believe the expert advice is not credible. Clause 3.2 is not correct. This clause states that on the basis of Trust Power's advice there was no adverse affect of the Advised

Operating Regime on the intake anticipated. It appears that the trial effects were disregarded. (Refer to photo 5)

- The gagging order. Clause 2.2 (iii) under the Abstractor's Obligations states that the Abstractor cannot appeal or become party to an appeal in the Environment Court, High Court, Court of Appeal or Supreme Court of New Zealand.
- We felt that it wasn't in the interests of our business to sign.
- When we talked to Trust Power in 2010, the contract was not negotiable. They only told us in May 2011 at a pre consent hearing that these contracts were negotiable.

No compensation is being offered for increased operational costs of abstractor's intakes, like power consumption and increased pump wear. Who will be responsible for the ongoing maintenance of extra equipment [like conductivity probes and control electronics] that are not required today? It seems that once the intakes have been changed they will be vested to the abstractor and all responsibilities going forward become their problem.

We do not believe that Trust Power proposed mitigation will protect our intake against salt water infiltration or other low flow conditions. If Trust Power believes that it can mitigate against identified issues, then Trust Power should be able to indemnify the abstractor for all ongoing costs related to changed intakes and control equipment for the duration of the consent.

Will Trust Power truck in water if an intake is disabled by salinity conditions [or failed conductivity probe] and the abstractor is unable to get enough water for their needs? Will Trust Power increase storage capacity to offer 72 hours of security of supply during their modified flow régime?

We submit that the proposed operating regime for the Matahina Electric Power Scheme which will allow a minimum river flow of 20 cumecs be declined. And that the proposed 72 hour flow envelope is also declined.





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Normal High Tide Mark

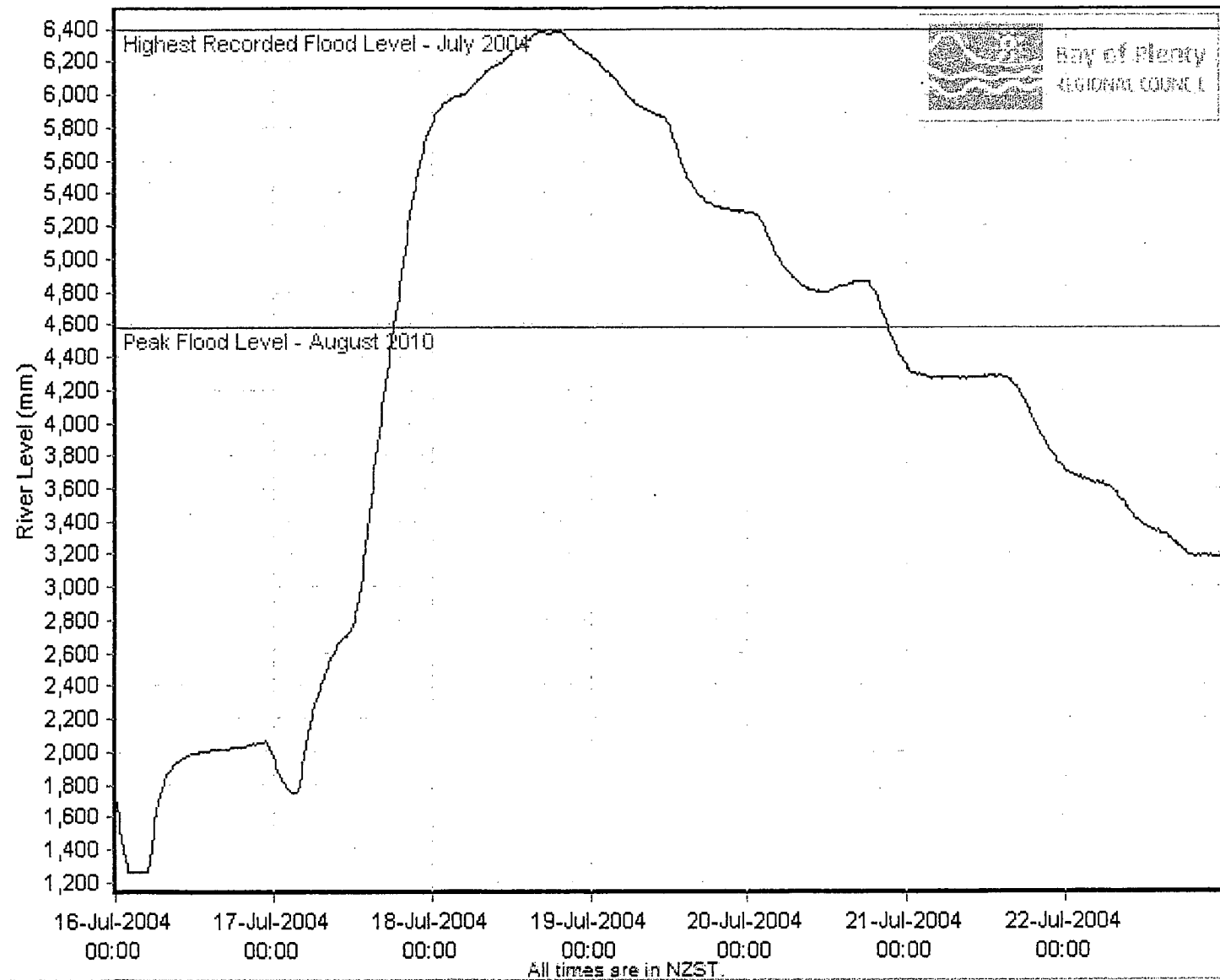
Normal Low Tide Mark

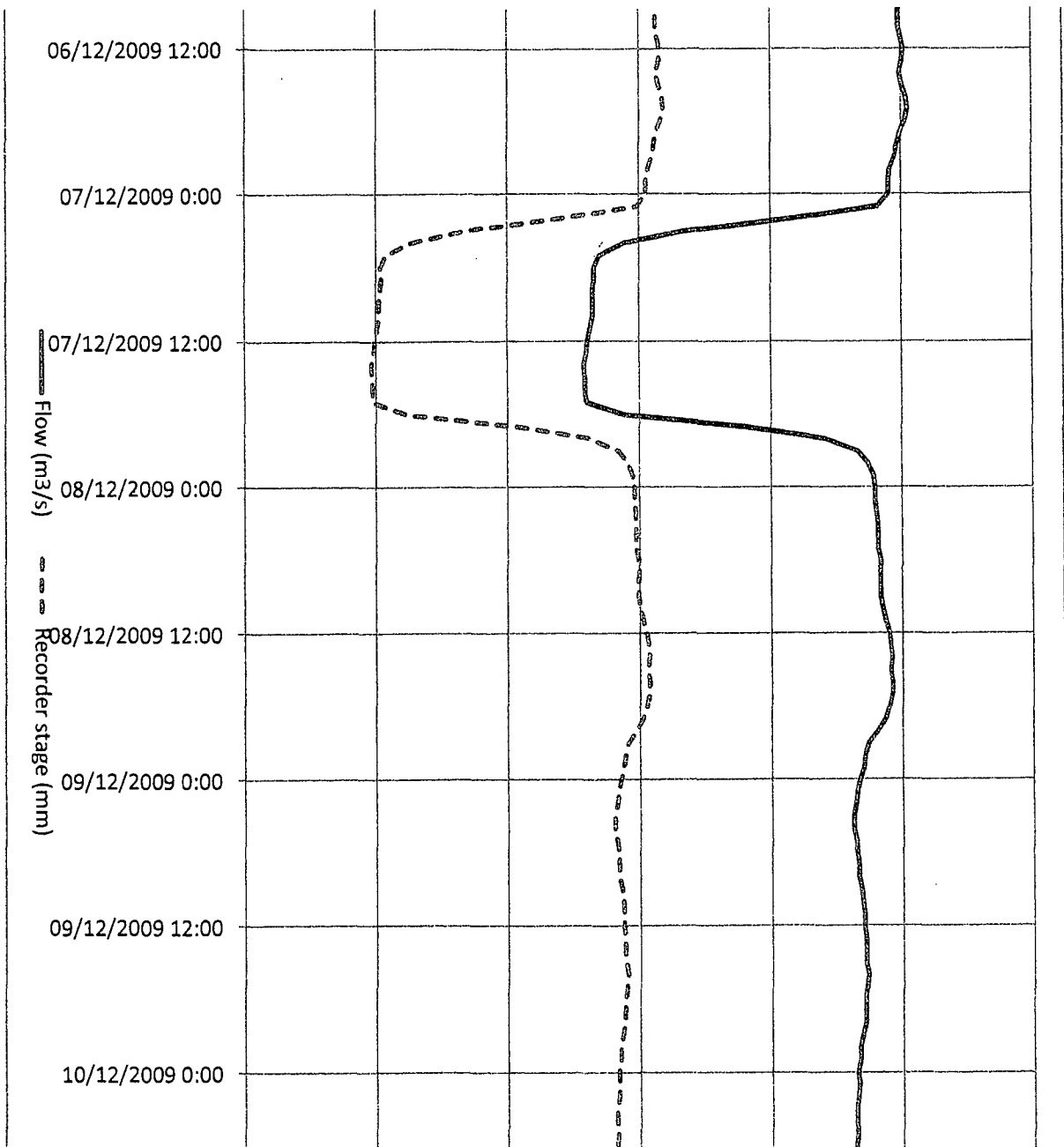
15 m from river bank to water



# Rangitaiki at Te Teko: River Level

Default | Today | This Week | This Month | Yesterday | Last Week | Last Month | Custom Range | Show Summary



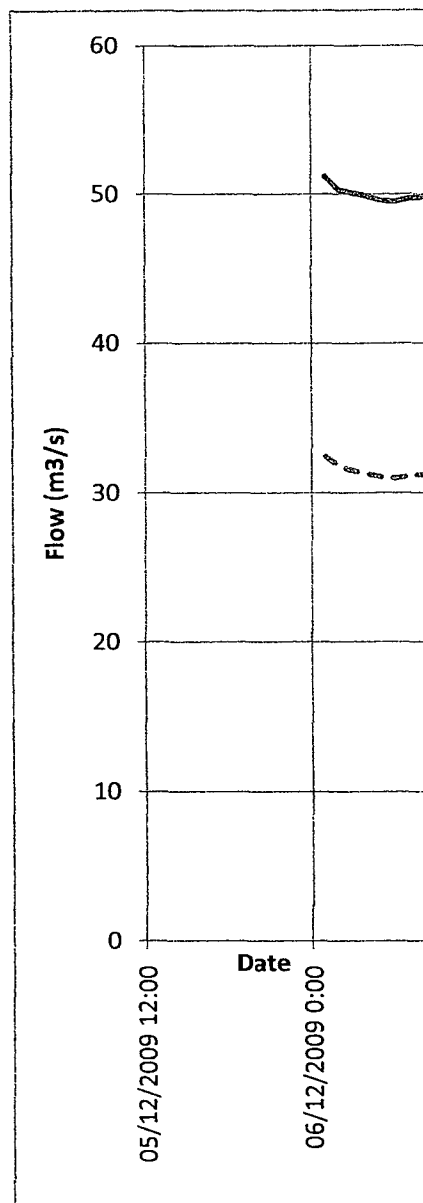




# Flow and water level at Te Teko during the December 2009 low flow trial

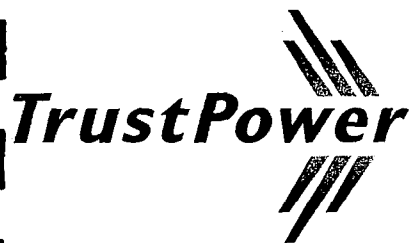
Hourly averages

| Time             | 15412<br>Flow [Water Level]<br>(m3/s) | 15412<br>Stage<br>(mm) |
|------------------|---------------------------------------|------------------------|
| 06/12/2009 1:00  | 51.2                                  | 649                    |
| 06/12/2009 2:00  | 50.3                                  | 635                    |
| 06/12/2009 3:00  | 50.1                                  | 630                    |
| 06/12/2009 4:00  | 49.9                                  | 626                    |
| 06/12/2009 5:00  | 49.6                                  | 622                    |
| 06/12/2009 6:00  | 49.5                                  | 620                    |
| 06/12/2009 7:00  | 49.7                                  | 623                    |
| 06/12/2009 8:00  | 49.8                                  | 625                    |
| 06/12/2009 9:00  | 49.8                                  | 626                    |
| 06/12/2009 10:00 | 49.8                                  | 626                    |
| 06/12/2009 11:00 | 50                                    | 628                    |
| 06/12/2009 12:00 | 50.2                                  | 632                    |
| 06/12/2009 13:00 | 50.1                                  | 631                    |
| 06/12/2009 14:00 | 49.9                                  | 626                    |
| 06/12/2009 15:00 | 50.1                                  | 630                    |
| 06/12/2009 16:00 | 50.4                                  | 636                    |
| 06/12/2009 17:00 | 50.5                                  | 637                    |
| 06/12/2009 18:00 | 50.3                                  | 633                    |
| 06/12/2009 19:00 | 49.9                                  | 626                    |
| 06/12/2009 20:00 | 49.7                                  | 623                    |
| 06/12/2009 21:00 | 49.5                                  | 620                    |
| 06/12/2009 22:00 | 49.1                                  | 614                    |
| 06/12/2009 23:00 | 49                                    | 611                    |
| 07/12/2009 0:00  | 49                                    | 611                    |
| 07/12/2009 1:00  | 48.2                                  | 598                    |
| 07/12/2009 2:00  | 41.7                                  | 482                    |
| 07/12/2009 3:00  | 33.5                                  | 336                    |
| 07/12/2009 4:00  | 28.9                                  | 251                    |
| 07/12/2009 5:00  | 27                                    | 215                    |
| 07/12/2009 6:00  | 26.6                                  | 207                    |
| 07/12/2009 7:00  | 26.6                                  | 208                    |
| 07/12/2009 8:00  | 26.5                                  | 206                    |
| 07/12/2009 9:00  | 26.5                                  | 205                    |
| 07/12/2009 10:00 | 26.5                                  | 205                    |
| 07/12/2009 11:00 | 26.3                                  | 202                    |
| 07/12/2009 12:00 | 26.1                                  | 199                    |
| 07/12/2009 13:00 | 26                                    | 197                    |
| 07/12/2009 14:00 | 25.8                                  | 193                    |
| 07/12/2009 15:00 | 25.9                                  | 194                    |
| 07/12/2009 16:00 | 25.9                                  | 195                    |
| 07/12/2009 17:00 | 26                                    | 196                    |
| 07/12/2009 18:00 | 28.8                                  | 249                    |
| 07/12/2009 19:00 | 38                                    | 416                    |
| 07/12/2009 20:00 | 44.1                                  | 525                    |
| 07/12/2009 21:00 | 46.6                                  | 569                    |



|                  |      |     |
|------------------|------|-----|
| 07/12/2009 22:00 | 47.4 | 583 |
| 07/12/2009 23:00 | 47.8 | 590 |
| 08/12/2009 0:00  | 47.9 | 593 |
| 08/12/2009 1:00  | 47.9 | 593 |
| 08/12/2009 2:00  | 48   | 594 |
| 08/12/2009 3:00  | 48.1 | 595 |
| 08/12/2009 4:00  | 48.1 | 595 |
| 08/12/2009 5:00  | 48.1 | 595 |
| 08/12/2009 6:00  | 48.3 | 599 |
| 08/12/2009 7:00  | 48.3 | 600 |
| 08/12/2009 8:00  | 48.3 | 599 |
| 08/12/2009 9:00  | 48.3 | 599 |
| 08/12/2009 10:00 | 48.5 | 602 |
| 08/12/2009 11:00 | 48.7 | 606 |
| 08/12/2009 12:00 | 49   | 611 |
| 08/12/2009 13:00 | 49.1 | 614 |
| 08/12/2009 14:00 | 49.2 | 615 |
| 08/12/2009 15:00 | 49.1 | 613 |
| 08/12/2009 16:00 | 49.2 | 615 |
| 08/12/2009 17:00 | 49.2 | 615 |
| 08/12/2009 18:00 | 49   | 611 |
| 08/12/2009 19:00 | 48.7 | 606 |
| 08/12/2009 20:00 | 48.1 | 596 |
| 08/12/2009 21:00 | 47.4 | 583 |
| 08/12/2009 22:00 | 47.1 | 579 |
| 08/12/2009 23:00 | 47   | 576 |
| 09/12/2009 0:00  | 46.7 | 572 |
| 09/12/2009 1:00  | 46.5 | 568 |
| 09/12/2009 2:00  | 46.4 | 566 |
| 09/12/2009 3:00  | 46.2 | 562 |
| 09/12/2009 4:00  | 46.2 | 562 |
| 09/12/2009 5:00  | 46.4 | 565 |
| 09/12/2009 6:00  | 46.5 | 568 |
| 09/12/2009 7:00  | 46.6 | 569 |
| 09/12/2009 8:00  | 46.6 | 569 |
| 09/12/2009 9:00  | 46.8 | 573 |
| 09/12/2009 10:00 | 46.9 | 575 |
| 09/12/2009 11:00 | 47   | 576 |
| 09/12/2009 12:00 | 47   | 576 |
| 09/12/2009 13:00 | 47.1 | 577 |
| 09/12/2009 14:00 | 47.1 | 577 |
| 09/12/2009 15:00 | 47.1 | 579 |
| 09/12/2009 16:00 | 47.3 | 582 |
| 09/12/2009 17:00 | 47.2 | 580 |
| 09/12/2009 18:00 | 47.1 | 578 |
| 09/12/2009 19:00 | 47.1 | 578 |
| 09/12/2009 20:00 | 47.1 | 577 |
| 09/12/2009 21:00 | 46.9 | 574 |
| 09/12/2009 22:00 | 46.7 | 571 |
| 09/12/2009 23:00 | 46.7 | 571 |

|                  |      |     |
|------------------|------|-----|
| 10/12/2009 0:00  | 46.5 | 568 |
| 10/12/2009 1:00  | 46.6 | 569 |
| 10/12/2009 2:00  | 46.5 | 568 |
| 10/12/2009 3:00  | 46.4 | 565 |
| 10/12/2009 4:00  | 46.4 | 565 |
| 10/12/2009 5:00  | 46.5 | 567 |
| 10/12/2009 6:00  | 46.4 | 566 |
| 10/12/2009 7:00  | 46.4 | 566 |
| 10/12/2009 8:00  | 46.5 | 568 |
| 10/12/2009 9:00  | 46.8 | 573 |
| 10/12/2009 10:00 | 47.1 | 579 |
| 10/12/2009 11:00 | 47.3 | 582 |
| 10/12/2009 12:00 | 47.2 | 580 |
| 10/12/2009 13:00 | 46.8 | 573 |



20 November 2009

Alan and Wendy Law  
332 West Bank Road  
RD1  
Whakatane

Dear Mr and Mrs Law,

**MATAHINA RECONSENTING PROJECT – MONITORING EXERCISE**

I write to inform you that Beca Infrastructure Limited (Beca) on behalf of TrustPower will be undertaking a monitoring exercise on the 7<sup>th</sup> and 8<sup>th</sup> of December as part of our investigations to inform the reconsenting process for the Matahina hydroelectric power scheme on the Rangitaiki River. Please find attached the methodology for this exercise for your information.

As you may be aware, the current minimum release from the reservoir is approximately 45m<sup>3</sup>/s unless inflows to the reservoir are less than this. We are investigating the impact on the river of running a 20-25m<sup>3</sup>/s release. We will be investigating the effect of running the lower release on salinity in the tidal reaches of the river and water levels between the reservoir and the coast. As part of our investigations, a boat will be travelling along the river to monitor water levels and salinity at intakes.

We have identified you as an existing abstractor from the lower Rangitaiki River and therefore wish to advise you of the monitoring exercise. The exercise would offer you the opportunity to observe the low flows that would be experienced as part of the revised operating regime that is proposed by TrustPower's Matahina Reconsenting Project. Even if you do not intend to pump water on the 7<sup>th</sup> or 8<sup>th</sup>, putting any removable pumps in the water over the those dates will allow the checks to be made on the impact of any change in water level.

The release will be set at 20-25m<sup>3</sup>/s on the 7 December and 45m<sup>3</sup>/s on the 8<sup>th</sup> of December. The second day's monitoring will act as a 'control' to the previous day's lower flows in order to assess the relative impact of the proposed changes to the running. The monitoring exercise has been agreed with Environment Bay of Plenty.

Should you have any questions prior to the monitoring, please do not hesitate to contact me. For any queries during the monitoring exercise on the 7<sup>th</sup> and 8<sup>th</sup> of

**TrustPower Limited**

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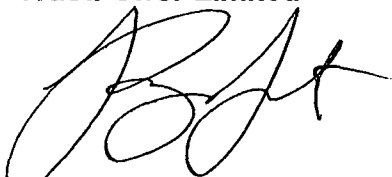
[trustpower@trustpower.co.nz](mailto:trustpower@trustpower.co.nz)

**WEBSITE**

[www.trustpower.co.nz](http://www.trustpower.co.nz)

December, please contact Gordon Henderson at Beca on 09 300 9267 as he will be in contact with those conducting the survey. If you wish to speak to the Regional Council about this exercise, please contact Helen Creagh (Senior Consents Officer) on 0800 368 288 extn: 9463.

Yours faithfully  
**TrustPower Limited**

A handwritten signature in black ink, appearing to read 'K. Joynt', with a stylized flourish at the end.

Kirsty Joynt  
Senior Environmental Officer

Direct Dial: (07) 547 4888 ext 4796  
Mobile: 021 228 6546  
Email: [kirsty.joynt@trustpower.co.nz](mailto:kirsty.joynt@trustpower.co.nz)

TRUSTPOWER LIMITED

"TrustPower"

DAVID MALCOLM LAW,  
RSL TRUSTEE SERVICES LTD and  
SUSANNE MOYA LAW

"Abstractor"

**AGREEMENT**

in relation to the

**Matahina Hydro Electric Power Scheme**



**Holland Beckett**  
**LAWYERS**



## AGREEMENT

Dated

2010

### PARTIES

1. TrustPower Limited, an incorporated company having its registered office at Truman Lane, RD5, Tauranga 3143 together with its successors and assigns ("**TrustPower**"); and
2. David Malcolm Law, Susanne Moya Law and Rsl Trustee Services Limited, together the registered proprietors of 494 East Bank Road, Whakatane [Lot 2 DPS 81292], with its executors, administrators, successors and permitted assigns ("**Abstractor**").

### BACKGROUND

- A. TrustPower owns the Matahina Hydro Electric Power Scheme ("**Scheme**") which is located within the Rangitaiki River catchment in the Western Bay of Plenty.
- B. The Abstractor owns and operates a dairy farm and takes water from the Rangitaiki River for stock water and cowshed washing / maintenance for some 800 cows (Laws and Morgans) under section 14(3)(b) of the Resource Management Act 1991. This abstraction is via an intake consisting of a 3m deep concrete rings fixed in the river bank, a submersible pump and a 65mm PVC pipe ("**Intake**"). The Abstractor has two 25,000L storage tanks onsite.
- C. In May 2009, TrustPower applied to the Bay of Plenty Regional Council for resource consents under the Resource Management Act 1991 ("**RMA**") to authorise the ongoing operation of the Scheme ("**Consent Application**"). As part of the Consent Application, consent is also sought for a revised operating regime whereby Scheme peaking will be unrestricted, maximum and minimum discharge limits will be based upon the average outflow from the Scheme over the previous 72 hours, and minimum flow in the Rangitaiki River below the Scheme will be not less than 20m<sup>3</sup>/s except when inflows into Lake Matahina are less than this in which case outflows from the Scheme shall match inflows ("**Revised Operating Regime**"). Under the Revised Operating Regime, the extent of saline intrusion up the Rangitaiki River will also increase.
- D. TrustPower has taken expert advice from Beca Infrastructure Limited ("**Beca**") regarding the potential for adverse effects on the Intake, with the conclusion being that no effects are likely. While TrustPower, on the basis of such advice, anticipates that the Revised Operating Regime will have no adverse effects upon the Intake, it wishes to enter into obligations under this Agreement to provide for mitigation should adverse effects attributable to the Revised Operating Regime be experienced.
- E. In consideration of TrustPower's securing of expert advice, and of its obligations under this Agreement, the Abstractor agrees to provide written approval to the Consent Application under the RMA, and agrees not to oppose the Consent Application either directly or indirectly.

- F. The Parties have agreed to enter into this Agreement to record their respective rights, interests and obligations to each other. The Parties intend the obligations to be mutually binding and enforceable.

## **AGREEMENT**

The Parties agree as follows:

### **TrustPower's Obligations**

1. In consideration for the Abstractor's undertakings given pursuant to clause 2 of this Agreement, TrustPower:
  - 1.1 Has engaged an independent expert to investigate the potential effects of the Revised Operating Regime on the Intake, including a site visit to the location of the Intake and a report on the Intake; and
  - 1.2 Undertakes, in the event that the Abstractor considers that the Revised Operating Regime is materially and adversely affecting the operation of the Intake, to provide for further investigation and, if necessary, modifications to the Intake in accordance with Clause 4 of this Agreement.

### **The Abstractor's Obligations**

2. In consideration for TrustPower's undertakings given pursuant to clause 1 of this Agreement, the Abstractor agrees:
  - 2.1 To provide its written approval to the Consent Application under the RMA to the Bay of Plenty Regional Council upon signing of this Agreement by both Parties in the form attached as **Appendix One**); and
  - 2.2 Not to oppose the Consent Application directly or indirectly. For the avoidance of doubt, this means that the Abstractor will not:
    - (i) Oppose, or procure or fund any opposition to, or withdraw any authorisation, approval or consent given in relation to, the Consent Application (including the written approval given under clause 2.1 of this Agreement);
    - (ii) Either directly or indirectly, in any capacity, object to or oppose the Consent Application or Revised Operating Regime;
    - (iii) Appeal or become a party to an appeal to the Environment Court, High Court, Court of Appeal or Supreme Court of New Zealand against the whole or any part of any decision relating to the Consent Application otherwise than on terms that support the Consent Application;
    - (iv) Fund, facilitate, assist or promote any other person or entity whether related or not to take any action that would be in breach of this clause if done by that other person or entity.
3. For the avoidance of doubt the Abstractor acknowledges and agrees that:
  - 3.1 TrustPower has taken expert advice from Beca regarding the impact of the Revised Operating Regime on the Intake;

- 3.2 On the basis of this advice, there is no adverse effect of the Revised Operating Regime on the Intake anticipated;
  - 3.3 In providing written approval to the Consent Application, the Consent Authority will be required to disregard the potential for adverse effects on the Intake; and
  - 3.4 TrustPower will, as a result, not be required to address the potential for effects on the Intake at the Consent Hearing;
  - 3.5 David Malcolm Law is authorised to sign the written approval on behalf of the Abstractor.
4. If TrustPower implements its resource consent (if granted) in relation to the Revised Operating Regime, and the Abstractor considers that it is materially and adversely affecting the operation of the Intake then:
- 4.1 The Abstractor shall notify TrustPower in writing, within one month of becoming aware of any adverse effect, how and why it considers that the Revised Operating Regime is materially and adversely affecting the operation of the Intake;
  - 4.2 TrustPower shall engage at its cost a suitably qualified independent expert to assess and report on whether the Revised Operating Regime is materially and adversely affecting the operation of the Intake, and if so, to make recommendations as to how any adverse effect can be remedied or mitigated ("**the Expert Report**");
  - 4.3 If the Expert Report determines that the Revised Operating Regime is adversely affecting the operation of the Intake, TrustPower shall implement at its cost the recommendations of the Expert Report as to how any adverse effect can be remedied or mitigated;

Provided that any issues under this clause can only be raised by the Abstractor within the period of two years from the date on which the Revised Operating Regime commences.

5. The Parties agree that if the Expert Report concludes that the Abstractor's complaint in clause 4.1 is without reasonable cause or basis, then TrustPower's actual costs of commissioning the Expert Report shall be payable by the Abstractor.

#### **Dispute Resolution**

- 6. The Parties acknowledge their desire that all questions or differences which may arise between them concerning this Agreement (whether as to interpretation or otherwise), or as to a matter to be agreed pursuant to this Agreement, or arising out of or in connection with this Agreement, or as to respective rights and obligations of the Parties under and pursuant to this Agreement ("**Dispute**") be resolved amicably and in good faith by discussion between them.
- 7. No Party to this Agreement shall commence any Court or arbitration proceedings relating to a Dispute unless that party has first complied with the provisions of this Agreement relating to mediation.

8. Should the Parties fail to amicably resolve the Dispute within seven working days of one Party giving written notice of the Dispute to the other Party, the Parties agree to mediate the Dispute in accordance with the LEADR New Zealand Incorporated standard mediation agreement.
9. Any mediation shall be conducted by an independent mediator at a fee to be agreed by the Parties. Failing agreement by the Parties, the mediator shall be selected and the mediator's fee shall be determined by the chair for the time being of LEADR New Zealand Incorporated.
10. If following mediation pursuant to clauses 8 and 9 of this Agreement, the Parties fail to achieve agreement or acceptance of the decision of the mediation within 20 working days, either Party may give to the other Party five working days written notice requiring the Dispute or any part of it to be referred to the arbitration of a single arbitrator. Such written notice shall state the subject matter and details of the Dispute or any part of it to be arbitrated. The arbitrator shall be appointed by the Parties or, failing agreement on such appointment within five working days after the date written notice was given, at the request of a Party by the president or vice president for the time being of the New Zealand Law Society or the nominee of such president or vice president. Any arbitration shall be conducted as soon as possible at Tauranga in accordance with the provisions of the arbitration statutes for the time being in force in New Zealand.
11. The Parties shall bear their own costs and an equal share of the costs and expenses of the mediator and arbitrator (as the case may be) provided that in relation to any arbitral proceedings, the arbitrator may determine that a party shall bear some proportion of, or all of, the costs of any other Party because of impropriety, lack of co-operation or unreasonable conduct by that Party.

#### General

12. For the avoidance of doubt, TrustPower shall have no obligation under clause 4 of this Agreement if the Abstractor varies the Intake to take a greater amount of water, moves the Intake, or increases the size of the Intake.
13. This Agreement is made by the Parties directly and on behalf of their successors in title. In that regard, if TrustPower sells the Scheme, it may novate the rights and obligations under this Agreement to the purchaser of the Scheme as follows:
  - 13.1 TrustPower will be entitled to novate its rights and obligations under this Agreement to the purchaser of the Scheme effective upon settlement of such sale;
  - 13.2 The Abstractor hereby consents to such novation, provided that the proposed purchaser enters into a Deed of Novation with TrustPower and the Abstractor whereby such purchaser agrees to be bound by and to comply with the obligations under this Agreement which are to be transferred to it (which Deed of Novation the Abstractor agrees to execute); and
  - 13.3 Such Deed of Novation shall be prepared at TrustPower's cost and TrustPower shall pay the Abstractor's solicitor's reasonable costs for attendances in relation to the Deed of Novation.
14. In the event that the Abstractor sells the Intake or the property upon which the Intake is situated prior to the commencement of any resource consent granted to TrustPower in connection with the Consent Application, the Abstractor will procure from the purchaser of the Intake or property as a condition of that sale agreement, a

deed with substantially the same rights and obligations as this Agreement for the benefit of TrustPower. Should the Abstractor fail to have such a deed executed by the purchaser, then TrustPower shall be under no obligation to undertake actions arising from this Agreement for the benefit of that purchaser.

15. If any provision of this Agreement is invalid or unenforceable, the invalidity or unenforceability of the provision shall not affect the operation, construction or interpretation of any other provision of this Agreement, with the intent that the invalid or unenforceable provision shall be treated for all purposes as severed from this Agreement.
16. This Agreement is to be governed by and construed in accordance with the laws of New Zealand.
17. The Parties shall meet their own costs in respect of the preparation, negotiation and execution of this agreement.

#### EXECUTION:

**SIGNED** for and on behalf of  
**TRUSTPOWER LIMITED** by:

)  
)  
)

Kerry Watson  
TrustPower – Environment Manager

#### Witness:

Signature \_\_\_\_\_

Name (full) \_\_\_\_\_

Occupation \_\_\_\_\_

Address \_\_\_\_\_



Telephone: 0800 ENV BOP (368 267)  
Facsimile: 0800 ENV FAX (368 329)  
Website: [www.envbop.govt.nz](http://www.envbop.govt.nz)  
Address: 5 Quay Street, PO Box 364, Whakatane, New Zealand

# Application for resource consent

## Written consent of affected persons

I/We, David Malcolm Law  
(State Full Name - Please Print)

of, 494 East Bank Road, Whakatane  
(Address)

as representative(s) of or as owner/lessee/occupier (*delete as appropriate*) of the property legally described as:

Lot 2 DPS 81292

I hereby give my approval as an affected person (under s95E(3)(a) RMA) for an application made by:

TrustPower Limited  
(State Applicant's Name)

for a resource consent to:

65750 Use and maintain structures related to the Matahina Dam;

65751 Dam / impound, divert, take and use water; and

65752 and 65753 Discharge water and incidental volumes of contaminants.

I have seen the application and generally understand what is proposed. I understand that the final details of the proposal may be varied as a result of conditions placed on any consent granted by the Regional Council.

Yours faithfully

Signature \_\_\_\_\_ Date \_\_\_\_\_

- 1 You can withdraw this approval up until the date the Regional Council decides whether there are any affected persons or affected customary order holders in relation to the application. Because of the timeframes set in the RMA, the Regional Council needs to make this decision, usually, within five days of receiving the consent application. Therefore, your withdrawal of approval needs to be received by the Regional Council within this timeframe.
- 2 Section 95(d)(e) of the RMA states that in deciding whether an activity is likely to have adverse effects on the environment that are more than minor, the Regional Council "must disregard any effect on a person who has given written approval to the application".
- 3 Section 95E(3)(a) of the RMA states that the Regional Council must decide that a person is not affected in relation to an application for resource consent if "the person has given written approval in a written notice received by the authority before the authority has decided whether there are any affected persons".





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