

**BEFORE THE COMMISSIONERS ON BEHALF OF  
THE OTAGO REGIONAL COUNCIL**

Consent No. RM20.039

**BETWEEN**

**VARIOUS – COLLECTIVELY  
KNOWN AS PIGBURN WATER  
USERS GROUP**

**Applicant**

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**BRIEF OF EVIDENCE OF GAVAN JAMES HERLIHY**

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## BRIEF OF EVIDENCE OF GAVAN JAMES HERLIHY

### INTRODUCTION

1. My name is Gavan James Herlihy. I am the Chair of Greenbank Pastoral Ltd and Hamiltons Dairy Limited a family farming business that has been operating for five generations of the Herlihy family. The two companies are applicants in relation to this resource consent hearing.
2. I have a Masters degree in Agricultural Science from Lincoln University and a Graduate Diploma in Business Studies in Dispute Resolution from Massey University. I have recently retired as a Director of Manaaki Whenua Landcare Research.
3. I have been actively involved in water management matters and deemed permit renewal processes in Maniototo for many years. I was the Chair of the Maniototo Irrigation Scheme in the 1980's which predated the formation of the Maniototo Irrigation Company in the late 1980's. I am the Chair of the Sowburn Water Co Ltd which was set up to provide group managed water and a full catchment environmental response for the Sowburn Creek, which is a neighbouring catchment to the Pigburn. Sowburn Water Co Limited was granted replacement water permits in 2015.
4. It is my understanding that the Sowburn was the first catchment in Otago to adopt a "catchment" approach to the permit replacement process. I facilitated the community response for the project. As part of that process the Sowburn Water Co established covenants over large tracts of wetland land adjacent to the Taieri River as well as access easements for fishermen over private land to the Taieri River fishery. This package of environmental improvements became known as the "Sowburn Settlement". The Sowburn process took 6 years from woe to go. It involved significant effort prior to the filing of the application with interested parties. Fish and Game and DoC attended all 3 site visits that we arranged to facilitate discussions. Iwi were also invited via their consultancy at the time, Kai Tahu ki Otago, but no representatives attended.

5. Since the Sowburn consents were granted things have changed. The permit renewal process has become increasingly complex.<sup>1</sup> It has been my observation that some stakeholder groups are less willing to collaborate to try and work towards mutually acceptable outcomes. In light of this, and due to the complex hydrology of Pigburn catchment the Water Users Group employed external consultants to design and lodge the consent application for the Pigburn, However, during the course of the process I have been the primary contact working with the stakeholder groups to try and negotiate a mutually acceptable outcome. That has been especially so since the pre-hearing meeting in August of last year. I had been hopeful that my experience from the Sowburn would assist and that a similar approach would result in a successful outcome for all involved.
6. This Brief of Evidence is presented in two parts. First, it outlines the history of the catchment group and the journey of this application. Secondly, I will outline the Herlihy family farming operation and the contribution that irrigation water from the Pigburn makes to our farm.

#### **THE PIGBURN APPLICATION**

7. The Pigburn Water Users Group (PWUG) was formed in February 2016 for the purpose of working as a catchment to replace the water permits.
8. Due to the consistent advice from ORC we knew that the status quo could not prevail and that we would need to take a co-ordinated approach to catchment management.
9. To help determine the best approach for the catchment we initiated a monitoring programme of instream flows and abstractions during the 3 seasons - 2015/16 to 2017/ 18. The work was to assist in our understanding of the hydrology of the catchment and abstraction patterns so that we could begin to develop a regime for the renewal application<sup>2</sup>.

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<sup>1</sup> By way of example the Sowburn consents cost approximately \$20,000 in total, including ORC processing fees. For the Pigburn, we have already spent \$60,000 with the costs of this hearing still to come.

<sup>2</sup> Refer Application Appendix D

10. The Pig Burn is a stream that loses and gains water at various points along its length. The PWUG are familiar with this aspect of the stream and the very low flows in summer. To illustrate the flow losses during the season a series of photo sites were chosen in co-operation with Scientist Matt Hickey and then visited regularly through the 2015-2018 seasons to capture this flow variability.
11. The abstraction patterns of the water users reflects the flow characteristics of this stream.
12. In short, the Pig Burn has a relatively small catchment on the Rock & Pillar Range which only yields reliable flows during the spring snow thaw. Once the snow is gone the flows are quite variable and at many times negligible.
13. As mentioned the PWUG users knew it would be important to develop a water management plan that achieved demonstrable improvements for the waterbody to meet the expectations of the community and interested parties (DOC, F&G, Aukaha). The challenges in achieving this coordinated catchment approach are not to be underestimated. It required numerous robust discussions between water users and some external assistance. Matt Hickey of WRM ultimately developed a plan that was accepted by all members of the PWUG.
14. This application is not a simple rollover of existing abstractions - far from it. Figure 3 in the Evidence of Mr Hickey shows in graphic form the proposed abstractions in the application before this hearing compared to the regime that has operated for over a century pursuant to the deemed permits. The proposed regime has endeavoured to reduce the effects of abstraction on the most significant section of the Pig Burn from a juvenile trout habitat perspective.
15. The application was lodged by McKeague Consultancy on behalf of the PWUG in February 2020. DoC elected not to submit having concluded that the application had done a good job of addressing effects. Unfortunately Fish & Game (Otago) and Aukaha were unable to reach the same conclusion.

**Extent of affected party consultation**

16. Given my Sowburn experience I genuinely believed it would be possible to work with affected parties to achieve an agreed outcome. A pre-hearing meeting was convened by the ORC on 27<sup>th</sup> July 2020 to provide an opportunity for parties to discuss the proposal and see if agreement could be reached. It was not successful. At PWUG's request the ORC deferred setting a hearing date to allow us some further time to discuss with Fish and Game and Aukaha.
17. To progress this PWUG presented a proposal to both F&G and Aukaha in Dunedin on 27<sup>th</sup> August 2020 offering the following:
- i. Establish the "Pig burn Eco/Wildlife Reserve" to enhance an existing wetland on Kirkwood' s property near the confluence of the Pig Burn with the Taieri River including a commitment to carry out ecological enhancement works to the tune of \$50,000. These works would have included indigenous vegetation planting, public access and a control structure to prevent drainage etc.
  - ii. on a "best endeavours" basis work with the new owner of "Mathias's Dam" to secure long term public access to the fishery which is one of Maniototo's renowned fishing dams.
  - iii. permit term applied for reduced from 35 to 25 years.
18. Following that meeting the two previous staffers representing Aukaha and working on our application left the organisation in late Spring. To help the new staff come up to speed a further site visit was arranged for 2 December 2020, attended by Tim Vial from Aukaha, and Nigel Paragreen and Morgan Trotter of F&G.
19. It was my feeling from this meeting that there was genuine interest in the proposal, especially relating to the Eco Reserve. At this site meeting the PWUG agreed to further reduce the consent term sought to 20 years.
20. I was approached by F&G on 12<sup>th</sup> February 2021 to give consideration to further reducing the term to 15 years. PWUG agreed that if this was

necessary to get the proposal "over the line" we would commit to a 15-year term.

21. On 9<sup>th</sup> April 2021 the proposal was turned down by both F&G and Aukaha, after 8 months consideration.
22. Understandably the PWUG were totally gutted having spent \$60,000 on consultants plus hundreds of hours of pro bono time by members of the PWUG trying to achieve an outcome. We thus now arrive at this hearing.
23. The process to date has been plagued with uncertainty. This has no doubt been exacerbated in Otago by Plan Change 7. We also expect a reasonable level of uncertainty to persist for some time given the proposed Regional Policy Statement, the coming Taieri FMU process. Not to mention that various other regulatory changes coming out of Wellington.
24. The Taieri Catchment is complicated due to the Maniototo irrigation scheme and its associated storage which effectively controls flow levels in the mainstem. As will be apparent from the application many of the Pigburn users also rely on water delivered by this scheme and operate integrated systems on farm to utilise the available water as efficiently and effectively as possible.
25. In light of that and the increasing emphasis on catchment management PWUG is now seeking an expiry date on these permits that aligns with the permits held by the MIC, being 1 January 2034.
26. The Maniototo Irrigation Scheme manages the Loganburn Reservoir to maintain flows (such as the minimum flow at Waipiata) in the Taieri River and provide irrigation water. They also hold the permit for the Paerau Weir which requires maintenance of a residual flow of at least 850l/s. It is my understanding that the Maniototo irrigation companies hold permits that allow takes of 6000l/s which is a significant proportion of allocation in the catchment. Therefore, those permits will dictate water management in the catchment until they are replaced (or reviewed).
27. The members of the PWUG and their families desperately need some certainty as to their future. An expiry of 2034 is less than we would like, but we are also pragmatic enough to realise that water management regimes

are changing. What we now seek is a chance for any further changes to align with the other major permit holders in the catchment so that the next renewal process provides the best opportunity for integration within the catchment.

#### **THE HERLIHY FARM (GREENBANK PASTORAL LTD & HAMILTONS DAIRY LTD)**

28. In 1876 James Herlihy, who had been a miner on the Hamilton's gold field, bought 200 acres (79 ha) when Hamilton's station was broken up. He then established a small dairy farm. Over the last 145 years our family has continued to farm in this area, incrementally increasing the scale of our dairy and beef operation.
29. My son James and his wife Cate are now the fifth generation to farm the property. It is now a 1300ha operation, run as 3 separate (albeit integrated) units. Hamilton's Dairy is an 800 cow dairy platform, Crieve Dairy is a 750 cow dairy platform and Greenbank Grazing which provides cow wintering, replacement dairy heifers and a beef operation specializing in the production of Wagyu cross premium beef.
30. Irrigation is a cornerstone of the operation with 670 ha irrigated by 7 centre pivots, 185 ha of K Line and 20 ha by Big Gun. We have access to water from the Maniototo Irrigation Scheme augmented by 2 takes from the Sow Burn and 2 permits from the Pig Burn which are part of this application. We have constructed a 380,000m<sup>3</sup> dam that covers 10ha in area and assists in ensuring we have an adequate supply of reliable water. We also have an area of flood irrigation in the Greenbank Grazing block that I discuss further below.
31. Of the current deemed permits from the Pig Burn, one is held by Greenbank Pastoral Ltd for 42 l/s (consent No 96394 and commonly referred to as the "Herlihy Gorge take" ) the other is held by Hamilton's Dairy Ltd for 111l/s (Consent No 96230VI and commonly referred to as the "Herlihy FordTake")
32. The Herlihy Gorge Take irrigates an area of approximately 90ha. It is the only water source for this area of land to the east of the Patearoa-Waipia Rd. However, natural creek flows mean that 42l/s is generally

only available for the first 2 months of the irrigation season. Anything after that is a bonus. In the 50 years I have farmed the property 42l/s has never been available for the whole of the irrigation season and I can only recall there being 2 years when some flow was available throughout the season.

33. The unreliability of this supply makes it totally uneconomic to convert the currently flood irrigated area into spray irrigation and both impractical and uneconomic to create adequate storage. But that is not to say that opportunistic use of water from this take during the Spring is not important to our operation.
34. While some without a true understanding of irrigation efficiency would claim that our use of flood irrigation is "inefficient ", not a litre of water leaves the property. The worth of the block (and its use of Herlihy Gorge take water) to the overall farming enterprise is demonstrated by the fact that this area has just completed wintering the 420 heifer replacement stock for our two dairy platforms. As such it is an integral part of our overall operation. Further the spring irrigated pasture provides a major source of the farm's silage requirements.
35. The PWUG application requests similar conditions on the volume and mode of operation of the Herlihy Gorge Take to support this established pattern of use. Mr Hickey's evidence confirms and justifies this.
36. The Herlihy Ford Take permit is currently for a maximum of 111 l/s. Water from this take is metered into the Maniototo East Side Irrigation race (as is the case with our Sow Burn water) and forms part of the total water resource that is used by our integrated irrigation system .
37. Again, the water able to be sourced from the Herlihy Ford Take rapidly reduces in December (at the end of the snow melt) to virtually nothing in January in most years. Under the current take regime the Herlihy Ford take typically extracts all water in the creek from mid-November with the creek bed dry immediately below the Ford.
38. The PWUG application proposes a major change to the operation of the Herlihy Ford Take. The maximum take rate sought from this location is reduced to 70l/s and abstraction will cease when the residual flow at the take drops

below 70 l/s. Hamilton's Dairy Ltd will then be restricted to taking 40% of the water at what will be known as the "Combined Take", equating to a maximum of 24 l/s during these times if creek flows permit.

39. This is one of the examples of how the PWUG has worked together to advance a proposal that provides demonstratable improvements for the health and wellbeing of the waterbody.
40. We strongly disagree with the recommendation to increase the proposed residual flow from 10l/s to 20l/s for this take. The complete proposal advanced by the PWUG has been carefully considered to address environmental effects and provide a workable solution for permit holders. This is not come without considerable compromise between water users to achieve an outcome. The imposition of this higher residual flow will upset this. Evidence from Mr Hickey and Dr Olsen will also address the hydrological and ecological matters associated with this suggestion.
41. Finally, I also wish to oppose the imposition of the Water Use Efficiency reporting conditions as proposed. In my view it is overly onerous, will not deliver on the objective of achieving increased efficiency and duplicates effort. I refer you to the Brief of Evidence of my son James Herlihy on this and other matters relating to the proposed consent conditions. I fully endorse his comments and recommendations.

**Gavan Herlihy**

**Greenbank Pastoral Limited, Hamilton's Dairy Limited**

**30 August 2021**