

5 March 2020

Otago Regional Council
Private Bag 1954
Dunedin

submissions@orc.govt.nz

Dear Sir/Madam,

Hawkdun Pastoral Limited – Mata Creek

I refer to the limited notification of application RM 19.399.01 by Hawkdun Pastoral Limited for primary and supplementary water permits to take and use surface water from Mata Creek, St Bathans, for the purposes of irrigation, stockwater, and domestic use to replacing a primary allocation resource consent.

Please find enclosed a submission by the Director-General of Conservation in respect of this application. You will notice the submission seeks that the application as proposed be declined. The Department considers that the application does not adequately avoid, remedy or mitigate the adverse effects of the proposed activity. The submission identifies the Director-General's concerns in greater detail.

The submission identifies that a pre-hearing may be able to assist with the resolution of issues outlined in this submission. Please contact Herb Familton in the first instance if you wish to discuss any of the matters raised in this submission (027 5367037 or hfamilton@doc.govt.nz).

Yours sincerely



Herb Familton
Planner
For Lou Sanson
Director- General

Enc.

cc

Patterson Pitts Group
PO Box 84
Cromwell 9342
Attn: Peter Dymock

Form 13: Submission on publicly notified application concerning resource consent

Resource Management Act 1991

To: Otago Regional Council

Name of submitter: Director-General of Conservation

Applicant: Hawkdun Pastoral Ltd

Locations: Mata Creek, St Bathans.

Description of activity: To take and use surface water from Mata Creek for the purposes of irrigation, stock water, and domestic supply.

Application number: RM 19.399.01

My submission relates to: The whole application

My submission is: I oppose the application as it is currently proposed.

DOC Role:

The Department of Conservation has statutory functions under the Conservation Act 1987 to protect recreational freshwater fisheries and freshwater fish habitats and preserve as far as practicable indigenous freshwater fisheries (including specific powers for the Director-General under section 53(3)(d)), and to advocate for the conservation of natural resources generally under section 6(ab) and 6(b).

Additionally, the Director-General has responsibilities under the Freshwater Fish Regulations (1983) to manage fish passage by way of approving or providing for a dispensation for a fish facility under section 44 of the regulations.

The reasons for my submission are that:

Term:

I consider that the term of consent sought of 35 years is unjustified. The consents should be limited to a shorter term, preferably within the term of Council's next revised Regional Plan: Water for Otago (RPW). Shorter term consents for deemed permits have been mooted under Council's proposed Plan Change 7.

I note that three other takes in the upper catchment expire in 2023, and the Department is of the view that it would be beneficial to assess all the water takes in the catchment at the same time by ensuring all are consented with a similar term. A shorter duration of consent will enable a more regular review of consented takes in the catchment and will be consistent with the planning cycle so that there is a greater opportunity for these resource consents to be tested against the objectives and requirements of the Regional Water Plan, the revised Regional Policy Statement, and the National Policy Statement for Freshwater Management (2017). It is also more consistent with Professor Skelton's review (2019).

This will ensure that Mata Creek can be managed on an integrated catchment basis with a consistent residual/ minimum flow and allocation regime into the future, consistent with Policy 6.4.19 (RPW).

Fisheries Information

The applicant has not undertaken any fish or macroinvertebrate survey information for Mata Creek. However, there are three existing surveys for the catchment recorded in the New Zealand Freshwater Fish Database (Crow, 2017) which record the presence of upland bully (indigenous: not threatened) and brown trout (sports fish). Majority of the surveys were undertaken upstream of the water take location with only one survey location about 4.7 km downstream.

While no galaxias have been recorded in Mata Creek, they are present in adjacent catchments (Dunstan Creek, Manuherikia mainstem, and Long Gully). A lack of records of galaxias in Mata Creek does not preclude their presence, however it does suggest that if present they may be in low numbers or located in reaches that have not yet been surveyed. The AEE is also unclear what, if, any fish values are present in the water race.

The applicant has not provided any information on the fish communities and habitat immediately downstream of the take that may be affected by the water abstraction which remains an issue of concern.

Minimum Flow:

There is no permanent flow recorder in the Mata Creek catchment, however the applicant has used the NIWA Shiny model to estimate flow statistics. The applicant has stated that the 7-day MALF for Mata Creek at the point of take is estimated by Shiny to be 83 L/s⁻¹. The applicant notes that:

“the way the take is currently operated always leaves a continuous visual residual flow in Mata Creek downstream of the point of take to the St Bathans Loop Road bridge of approximately 1 ‘head’ (28 L/s⁻¹)”

The applicant has proposed a residual flow condition as follows:

“other than exercising this permit for taking domestic and stock water, a connecting visual flow is to be maintained from the point of take to the St Bathans Loop Road Bridge over Mata Creek”.

I am of the view that the use of the “connecting visual flow” is excessively low for a residual flow based on the proposed rate of take, the proposed residual flow, and Policy 6.4.7. A residual flow of 28 L/s⁻¹ or greater is capable of being measured hydrologically as it is greater than 20 L/s⁻¹. The use of a “connected visual flow” as a residual flow is not considered appropriate in this Mata Creek situation and would be inconsistent with Policy 6.4.7 (RPW).

An alternative conservative approach would be to set a minimum flow at 90 % of the 7-day MALF, (i.e. a flow of approximately 75 L/s⁻¹) in the absence of any further fish survey and hydrology work downstream of the take.

Allocation Use and Amount

The applicant is seeking a rate of take of 56 L/s⁻¹ and a yearly take of 800,460 m³ over a 35-year consent term. The proposed rate of take is very high in comparison to the modelled 7-day MALF and represents a take of 67 % of the estimated 7-day MALF of Mata Creek. Additionally, I consider that there is no justification for an irrigation take outside of the irrigation season of October to April, and that the instantaneous, monthly, and year allocation volumes should be adjusted downwards to exclude irrigation takes out of the irrigation season, as outlined in Policies 6.6.3 and 6.4.0A.

The AEE details a water take record for Southern Lakes Holdings, consent RM11.01.02, which is not this consent number. Therefore, a water take record for this consent to satisfy Policy 6.4.2A does not appear to be established within the AEE.

I note that the proposed water take for stock water and domestic purposes falls within the ambit of section 14(3) b, where it does not, or is not, likely to cause an adverse effect on the environment.

Riverbed and Diversion Consents:

The intake structure appears to be a channel dug into the stream that diverts water into a pipe which then discharges into a race. The rate of take is controlled by the use of vehicle tyres. The applicant has stated that periodic in stream work is undertaken to maintain the intake.

The information present in the application makes it difficult to assess the effects and activity status of the intake structure. Based on this information, I am of the view that additional section 13 (Riverbed) and section 14 (Diversion) consents are required under the RMA and Regional Plan Water for Otago under rules 13.2.3.1 (bed: discretionary activity) (if it is greater than 2 square metres) and 12.3.4.1 (diversion: discretionary activity). I note that a gallery intake may be a potential solution to address intake issues.

Hydrology

There is inadequate information on the flow relationship downstream of Mata Creek. It appears that the flow generally increases downstream but beyond that, the quantum is not known. To set a suitable residual flow condition under ORPW Policy 6.4.7, two key elements to understand is the natural character of the flow gain and loss down a stream reach and the aquatic ecosystem values, both of which have not been assessed below the point of take.

The applicant has stated that between the point of take and the St Bathans Loop Road Bridge, Mata Creek gains in flow from several natural springs. More information needs to be provided by the applicant to assess the effects of the rate of take on the hydrology of Mata Creek downstream of the point of take. Information on how much the creek gains from spring inputs will allow a better understanding on how the 56 L/s⁻¹ take and any proposed residual flow will be replenished downstream.

A condition requiring a programme of gauging under various flow conditions, suitably naturalised, is needed to ascertain the flow losses and gains down Mata Creek is required to validate the proposed residual flow under Policy 6.4.0.

Fish Screening:

The application, at page 6 of the AEE proposes a fish screening condition for the intakes. More detail in the conditions of the:

- type,
- dimensions
- Screen aperture size
- and design of the fish facility,
- the sweep and approach velocities of the screen
- and the location of screening

is required to avoid the need for a section 44 Fish Passage consent by the Director-General under the Fish Passage Regulations (1983). I note that a gallery intake may be a potential solution to address any intake issues.

Review Clause:

The consent should be subject to an appropriate review condition to align the consent conditions to a future reviewed NPS Freshwater compliant Otago Regional Water plan.

Statutory Planning Matters:

As currently configured, the application is inconsistent with the following Objectives and Policies:

National Policy Statement for Freshwater Management 2014:

- The proposed activity is contrary Objectives A1 and B1 in failing to safeguard the life-supporting capacity, ecosystem processes and indigenous species including their associated ecosystems; and
- the proposed application is contrary to Objective A2 and B2 in that it does not avoid further over-allocation of freshwater.

Otago Regional Policy Statement 1998:

- The proposed activity is contrary to Objectives 6.4.1, 6.4.3, 6.4.4 and their corresponding policies

Proposed Regional Policy Statement 2019 (partially operative)

- The proposed activity is contrary to Objectives 3.1, 6.4.3, 6.4.4 and corresponding Policies 1.1.2, 2.2.2, 3.1.1, 3.1.2, 3.1.3, 3.1.4, 3.1.9, and 6.5.1.

Regional Plan: Water for Otago 2012:

- The proposed activity is contrary to Objective 8.3.1, 5.3.1, 5.3.2, 6.3.1, and corresponding Policies 8.4.1, 8.4.2, 8.5.1, 8.6.1, 5.4.2, 5.4.8, 5.4.9, 6.4.0, 6.4.0 A, 6.4.1, 6.4.2, 6.4.3, 6.4.5, 6.4.7, 6.4.9 and 6.4.10

Otago Conservation Management Strategy (CMS):

- The application is contrary to relevant Objectives and Policies of the Otago CMS, including Objectives 1.5.1.1 and 1.5.1.6, and Policies 2.10.2, 2.10.4, 2.10.6, 2.10.7, 2.10.8.

Decision sought:

1. That the application is **declined**; or
2. That should resource consent be granted, that appropriate conditions be imposed to adequately address the matters set out in this submission.
3. I consider that a pre-hearing meeting would be useful to address the issues raised above.

I **do wish to be heard** in support of my submission. If others make a similar submission, I will consider presenting a joint case with them at a hearing.

Mike Tubbs

Operations Manager / *Pou Matarautaki*

Central Otago/ *Te Haehae Moana*

Alexandra

Department of Conservation

(Acting pursuant to delegated authority from the Director-General of Conservation¹)

Date: 05/03/2020

¹ Note: A copy of the Instrument of Delegation may be inspected at the Director-General's office at Conservation House / *Whare Kaupapa Atawhai*, 18/32 Manners Street, Wellington
hawkdun pastoral ltd submission - doc-6227951