



STICKING TO THE LAW

Lessons from an Upper Waitaki Challenge

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INTRODUCTION

This talk will cover:

1. Resource Management (measurement & reporting of water takes) Regulations 2010
2. Upper Waitaki and the perfect storm
3. A Regulation 10 challenge

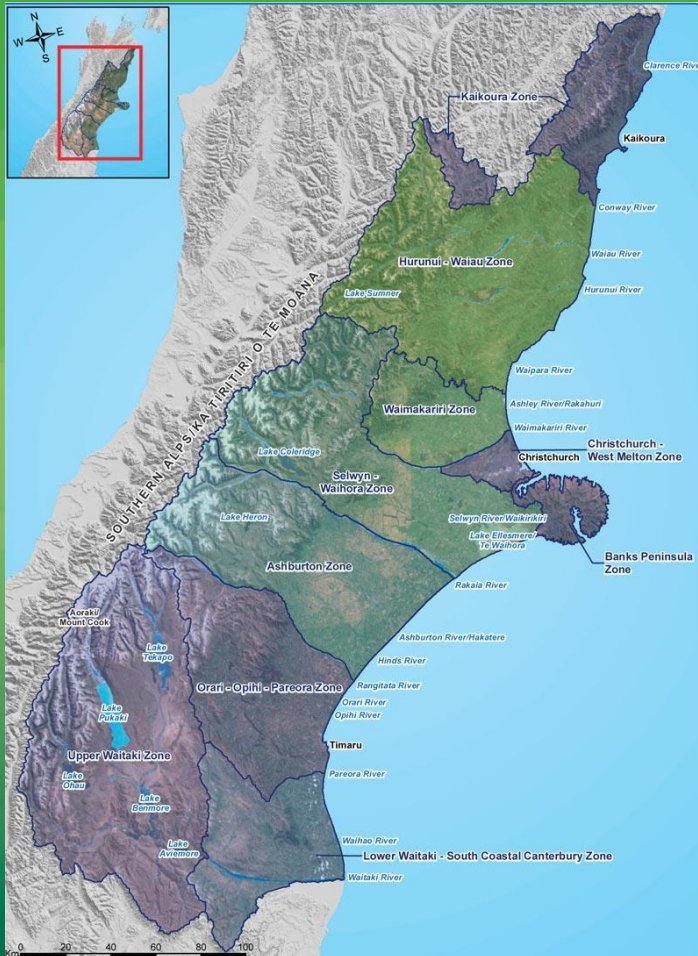
Resource Management (Measurement and Reporting of water takes) Regulations 2010

- In 2006, 1/3 of the total allocated volume of water in NZ required active measurement
- Aim – by November 2016, 98% of allocated water in NZ actively measured

Regulation 10

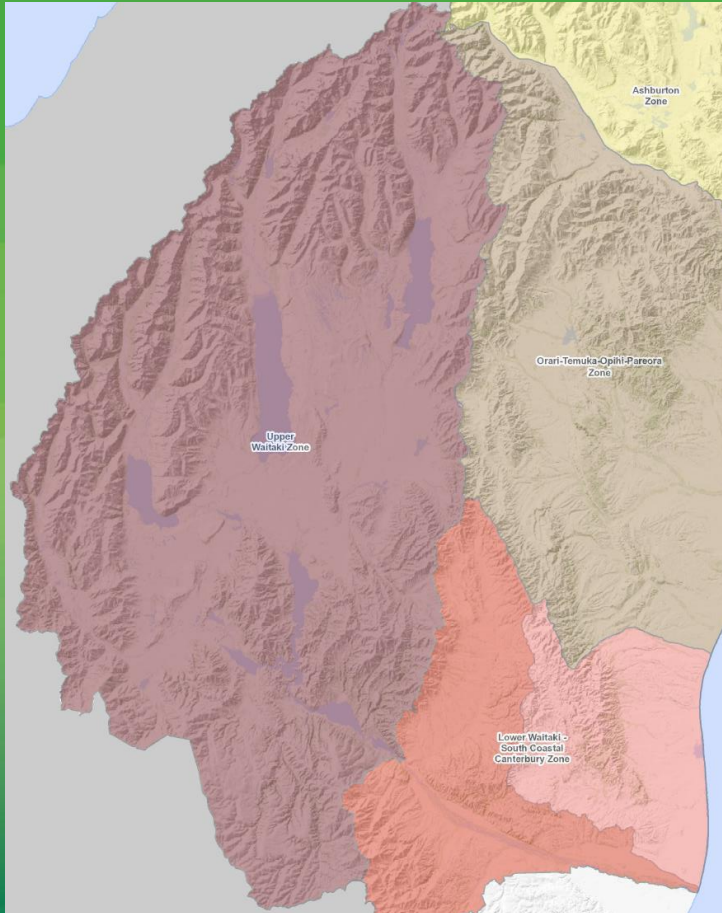
- **Approval to use device or system installed near (instead of at) location from which water taken**
 - “Regional council may...grant approval to... install [ed] as near as practicable to the location (instead of at that location).”

The Waitaki Catchment



- Situated in South Canterbury
- Largest catchment in Canterbury

The Waitaki Catchment



- One of the iconic landscapes of NZ
- Water short, high demand of water
- Number of circumstances - the “perfect storm”

Project Aqua

- “Project Aqua” – Meridian Energy Ltd
- No water allocation planning framework for Waitaki Catchment
- All water permit applications in process called in

Derogation Approval

- 2004 High Court declaration
 - where a resource is fully allocated to a permit holder, a consent authority cannot lawfully grant another party a permit to use the same resource, unless specifically empowered to do so by statute.

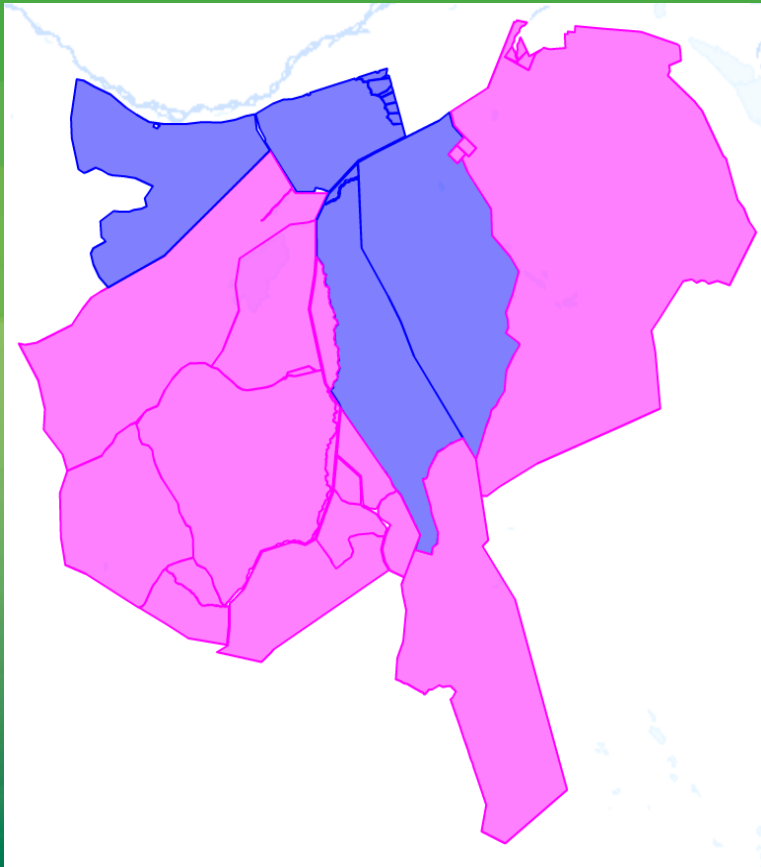
Mackenzie Irrigation Company

- Represents majority of farmers in Upper Waitaki
- Agreement with Meridian Energy Limited (and Genesis) for 150 million cubic metres per year to be taken within catchment for irrigation

Waitaki Catchment Water Allocation Regional Plan (WCWARP)

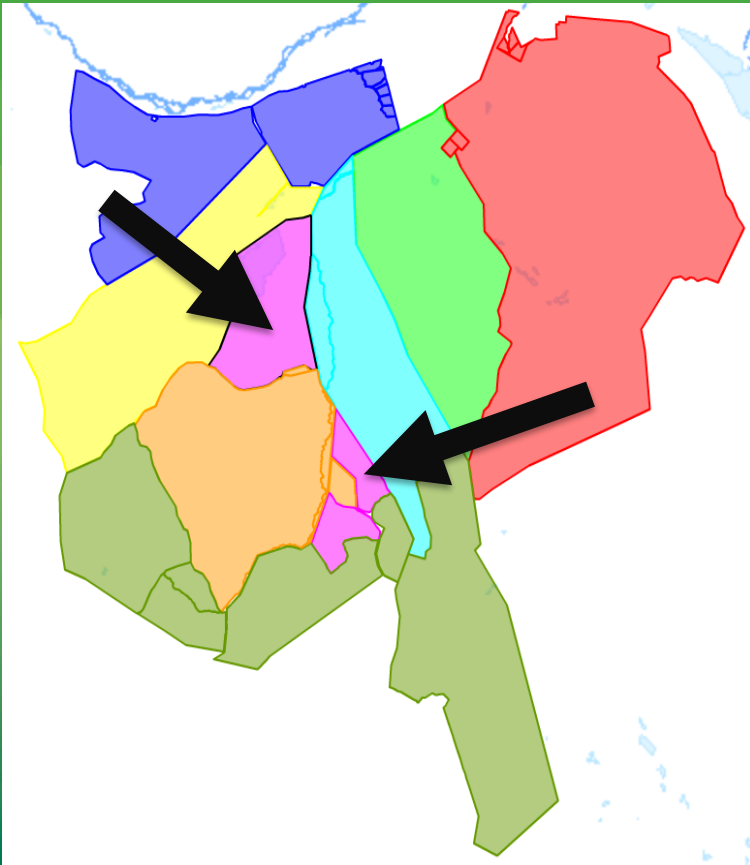
- 2006 –WCWARP became operative
- All consent applications re-notified
- Upper Waitaki Hearing
 - 33 consent applicants, 109 consent applications
 - 2 applicants, 2 consents still being processed today
 - Stringent consent conditions

“Catchment A” – a case study



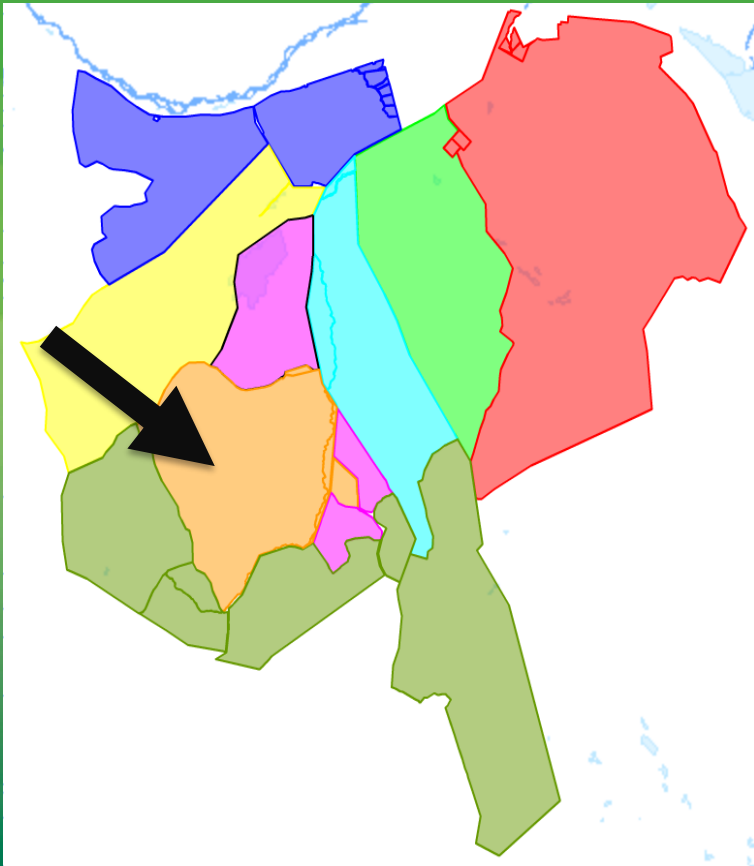
- Post- WW2 majority of catchment owned by one farmer

“Catchment A” - Today



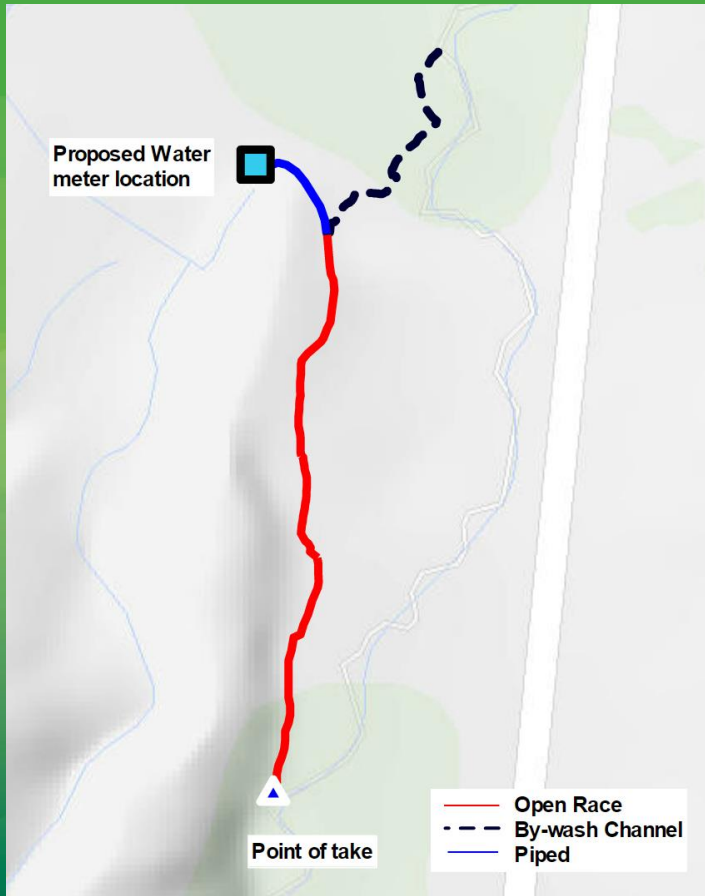
- 6 properties, plus DoC blocks
- Remaining property now owned by daughter ‘Farmer A’
 - Strong feelings to protect what was once “hers”

Regulation 10 Challenge



- Complaint re neighbour 'Farmer B'
 - Location of water meter
 - Inefficient use of water

Regulation 10 application



- At point of take:
 - No power
 - No cell phone coverage
 - Flood risk
- Open channel to water meter and then piped

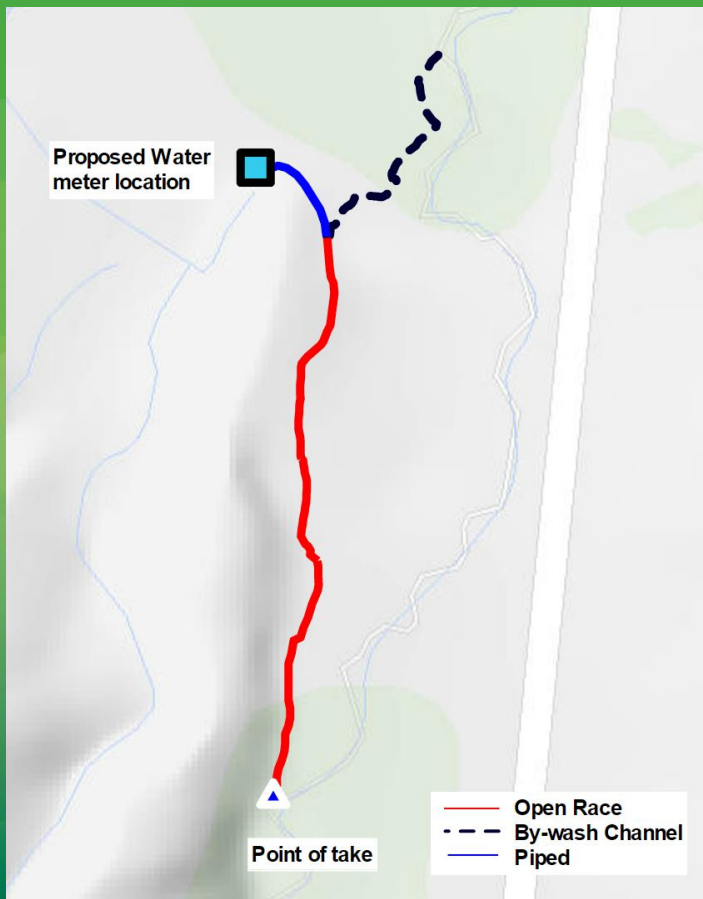
Second Complaint

- Due to hearing process, consents are more stringent
- By-wash channel discharges after her point of take
- Requirement in Farmer B's consent that “stock water supply must be piped”

Response by Environment Canterbury

- Regulation 10 put on hold
- Clarification on consent conditions sought
 - Not taking stock water therefore condition 8 not applicable
 - Condition 7 states “For as long as any water race remains, ensure water races... well maintained to minimise loss”

Resolution? Mediation?



- Agreement stated:
 - Point of take gauged
 - Water level recorder at point of take
 - Open channel race piped by mid 2016

BUT!

- Cost of equipment \$1,300 plus installation and calibration costs
- 2 ls^{-1} loss from open channel
- Farmer B decides that this is not an acceptable temporary fix
- Farmer A engages her lawyer

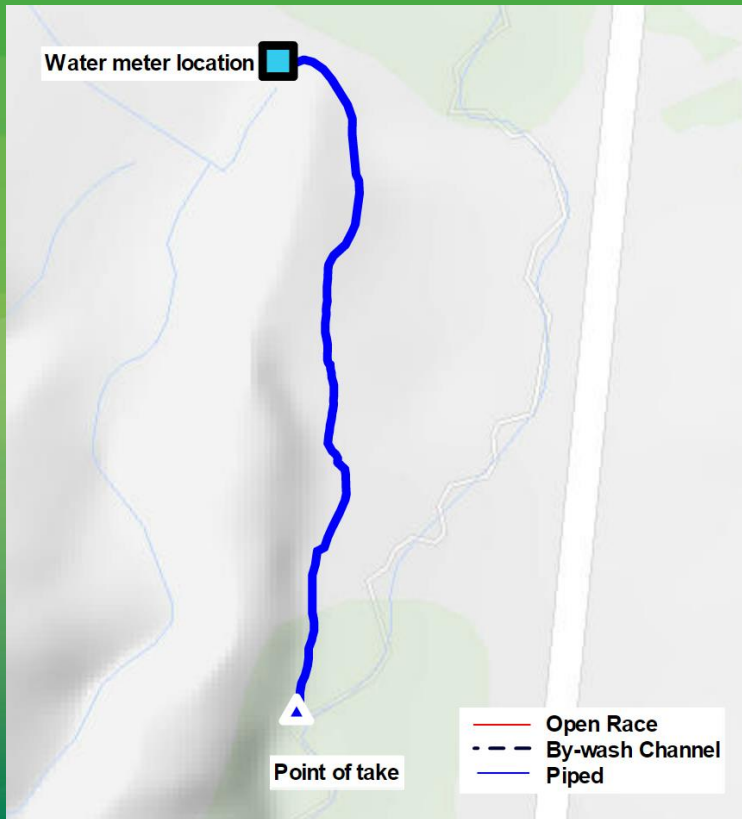
Regulation 10

- “...grant approval to ...install[ed] as near as practicable to the location
- The council must grant approval by providing a written notice to the permit holder that specifies—
 - the location... device... may be installed...is as near as practicable; and
 - the period of approval.

Findings from external lawyer

- Legal review of case found approval:
 - Not “as near as practicable”
 - Did not state location nor the period of approval
- Application still “live”

Reviewed Application



- Farmer B given option to review application
- Updated application
 - Pipe between point of take and meter
 - Water meter at pivot

Final Outcome

- Reviewed application approved
 - Total abstraction metered
 - Location of water meter “as near as practicable”
- Second complaint closed down
- Relationship between farmers still fragile

Take home messages

- Always refer back to the law & stick to it
- You can't please everyone all the time
- Consider the cause and effect of your decisions

Questions?

