

Date 28th May 1999.

Parties

WAIMAKARIRI DISTRICT COUNCIL
(WDC)

WAIMAKARIRI IRRIGATION LIMITED
(WIL)

DEED OF LICENCE TO USE WATER
RACE SYSTEM

 **Chapman Tripp**
Barristers & Solicitors NEW ZEALAND

DEED OF LICENCE TO USE WATER RACE SYSTEM

Date: 28/5/99

PARTIES

- (1) WAIMAKARIRI DISTRICT COUNCIL, at Rangiora and its successors and permitted assigns (*WDC*)
- (2) WAIMAKARIRI IRRIGATION LIMITED, at Oxford and its successors and permitted assigns (*WIL*)

BACKGROUND

- A Ownership of the water race system described in the Waimakariri District Council's Stock Water Race Bylaw 1992 (*the Water Race System*) is, by virtue of part XXV of the Local Government Act 1974 vested in WDC.
- B WDC has agreed to make the Water Race System available to WIL for the purposes of an irrigation scheme to be constructed and operated by WIL servicing initially up to 11,000 hectares of land in the area north of the Waimakariri River extending north east towards the Ashley River in North Canterbury (*the Irrigation Scheme*).
- C This licence records the basis on which WDC will make the Water Race System available to WIL for the purposes of the Irrigation Scheme.

THIS DEED RECORDS:

1 DEFINITIONS AND CONSTRUCTION

1.1 Defined Terms

In this agreement, unless the context requires otherwise:

Force Majeure: means any:

- (1) act of God, fire, earthquake, storm, flood, or landslide;
- (2) strike, lockout, work stoppage or other labour hindrance;
- (3) explosion, public mains electrical supply failure, or nuclear accident;



- (4) sabotage, riot, civil disturbance, insurrection, epidemic, national emergency (whether in fact or law) or act of war (whether declared or not);
 - (5) requirement or restriction of, or failure to act by, any government semi-governmental or judicial entity;
 - (6) unavoidable accident, or inability to obtain or delay in obtaining adequate labour, contractors, equipment, materials, transport or supplies;
 - (7) any other similar cause beyond the reasonable control of the party claiming the benefit of the Force Majeure clause in this Deed and which that party is unable to overcome by the exercise of reasonable diligence and at a reasonable cost;
- but does not include
- (8) any event which the party affected could have prevented or overcome by exercising a standard of reasonable care; or
 - (9) a lack of funds for any reason.

Permitted Construction: means the construction, enlargement and modification that is necessary for WIL to use the Water Race System for the purposes of the Irrigation Scheme.

Resource Consents: means the resource consents held by WDC (and to be transferred to WIL) which are listed in Schedule 2.

1.2 Construction

In the construction of this agreement, unless the context requires otherwise:

Business Days: anything required by this agreement to be done on a day which is not a Business Day may be done effectually on the next Business Day;

Clauses and Schedules: a reference to a clause or a schedule is to a clause or schedule of this agreement, and a reference in a schedule to a clause is a reference to a clause in that schedule;

Defined Terms: words or phrases appearing in this agreement with capitalised initial letters are defined terms and have the meanings given to them in this agreement;

Documents: a reference to any document, including this agreement, includes a reference to that document as amended or replaced from time to time;

Headings: headings appear as a matter of convenience and do not affect the construction of this agreement;

Negative Obligations: a reference to a prohibition against doing any thing includes a reference to not permitting, suffering or causing that thing to be done;

No Contra Proferentem Construction: the rule of construction known as the contra proferentem rule does not apply to this agreement;

Parties: a reference to a party to this agreement or any other document includes that party's personal representatives/successors and permitted assigns;

Person: a reference to a person includes a corporation sole and also a body of persons, whether corporate or unincorporate;

Related Terms: where a word or expression is defined in this agreement, other parts of speech and grammatical forms of that word or expression have corresponding meanings;

Schedules: the schedules form part of this agreement;

Singular, Plural and Gender: the singular includes the plural and vice versa, and words importing one gender include the other genders;

Statutes and Regulations: a reference to an enactment or any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations substituted for that enactment or those regulations;

Time: a reference to time is to New Zealand time;

Writing: a reference to "written" or "in writing" includes all modes of presenting or reproducing words, figures and symbols in a tangible and permanently visible form;

2 GRANT OF LICENCE

- 2.1 WDC grants and WIL accepts a licence to use the Water Race System for the purposes of the Irrigation Scheme for a term commencing from 30 September 1998 and expiring on 18 November 2031.

2.2 The licence right granted by this Deed includes the rights, whether by WIL, its contractors, agents or employees to:

2.2.1 enter the Water Race System;

2.2.2 carry out such construction, enlargement and modification necessary to enable the Water Race System to be used for the purposes of the Irrigation Scheme;

2.2.3 operate and maintain the Irrigation Scheme.

Provided that in exercising such rights WIL must at all times comply with the specifications and requirements set out in Schedule 1 of this Deed.

3 COVENANTS BY WDC

WDC covenants as follows:

3.1 WIL, its contractors, agents and employees shall have access to and the right to use the Water Race System for the purposes of this Deed.

3.2 Provided WIL is complying with the terms of this Deed, WDC will not interfere with WIL's reasonable use and enjoyment of the Water Race System during the term of this Deed.

4 WIL COVENANTS

WIL covenants as follows:

4.1 To use the Water Race System solely for the purposes of carrying out the Permitted Construction and operating the Irrigation Scheme.

4.2 To comply with all statutes, regulations and laws relating to the construction and operation of the Irrigation Scheme and the use of the Water Race System for that purpose.

4.3 To put in place and maintain comprehensive insurances in relation to the construction and operation of the Irrigation Scheme, including without limitation public liability cover of at least \$5,000,000.00.

4.4 To provide WDC with annual reports in the form contained in Appendix B confirming that such insurances are in place.

5 CONSTRUCTION PROCEDURES

In carrying out the Permitted Construction the Parties agree that WIL will be acting on behalf of WDC as WDC's contractor or agent, so that WDC is exercising all necessary powers under part XXV of the Local Government Act 1974 to enlarge the Water Race System. If so requested by WIL, WDC will use its best endeavours to exercise its powers under part XXV of the Local Government Act 1974 and the Public Works Act 1981 to take land to enable the Permitted Construction to occur. Any negotiation with and compensation payable to affected land owners will be carried out or made only with the prior agreement of WIL. WIL will indemnify WDC against any claims or liability for damage or loss, injury or cost incurred by WDC in exercising its powers in accordance with this clause.

6 TRANSFER/ENCUMBRANCE

- 6.1 Neither party may transfer or assign their interests under this Deed without the prior written consent of the other (which shall not be unreasonably withheld).
- 6.2 WDC acknowledges that WIL will require bank funding for the purposes of carrying out the Permitted Construction and that WIL may charge or assign its interest under this Deed by way of charge to its banker without obtaining WDC's prior consent.

7 EXTENSION OF LICENCE TERM

If the terms of the Resource Consents are replaced after their initial terms, WDC shall grant WIL a renewal of the licence granted by this Deed for a concurrent period so that this Deed expires on the same date that the Resource Consents expire.

8 TERMINATION

WDC may terminate the licence granted by this Deed by notice in writing to WIL if WIL breaches any covenant or condition contained in this Deed and fails to remedy it within 10 working days of WDC giving WIL written notice of such default.

9 FORCE MAJEURE

- 9.1 Notwithstanding any other provision of this Deed, non-performance by either of the parties of any of its obligations under this Deed shall be excused, without

liability for non-performance, during the time and to the extent that such performance is prevented, wholly or substantially, by Force Majeure.

- 9.2 The party claiming the benefit of this clause shall promptly give written notice to the other party specifying the cause and extent of its inability to perform any of its obligations under this Deed and the likely duration of such non-performance. In the meantime such party shall take all reasonable steps to remedy or abate the Force Majeure.
- 9.3 No party shall, by virtue of this clause, be required against its will to settle any strike, lockout or other industrial disturbances.
- 9.4 Performance of any obligation affected by Force Majeure shall be resumed as soon as reasonably possible after the termination or abatement of the Force Majeure. If by reason of Force Majeure a party is unable to perform any obligation under this Deed for a period of 90 days the other party may on giving 90 days written notice to that party cancel this Deed.
- 9.5 Cancellation of this Deed under this clause shall not prejudice the rights of either party against the other in respect of any matter or thing occurring under this Deed before cancellation.

10 NATURE OF LICENCE

WIL has a personal right of occupation and use of the Water Race System on the terms specified in this Deed and has no interest in the land on which the Water Race System is situated. The legal right to possession and control over the Water Race System remains vested in WDC throughout the term of the licence.

11 NOTICES

- 11.1 Any notice or other communication given under this Deed to a party shall be in writing addressed to that party at the address or facsimile number from time to time notified by that party in writing to the other party. Until any other address or facsimile number of a party is notified, they shall be set out below its attestation clause at the end of this Deed.
- 11.2 Delivery may be effected by hand, by post with postage prepaid, or by facsimile.
- 11.3 A notice or other communication delivered by hand shall be deemed to have been received at the time of delivery. However, if the delivery is not made on a Business Day or is made after 5.00 pm on a Business Day, then the notice or other communication will be deemed to have been delivered on the next Business Day.

11.4 A notice or other communication delivered by pre-paid post shall be deemed to have been received on the Business Day after posting.

11.5 A notice or other communication sent by facsimile shall be deemed to have been received on the day of transmission. However, if the date of transmission is not a Business Day or the transmission is sent after 5.00 pm on a Business Day then the notice or other communication will be deemed to have been given on the next Business Day after the date of transmission.

12 DISPUTE RESOLUTION

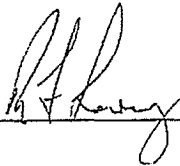
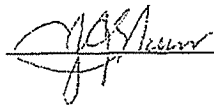
Every dispute that arises out of or in connection with this Deed shall be determined using the procedures outlined in section 13 of NZS3910.1998.

13 NO PARTNERSHIP

Nothing in this Deed shall evidence or be deemed to constitute a partnership between the parties

EXECUTION

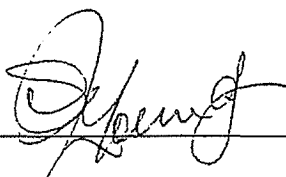
The Common Seal of the
WAIMAKARIRI DISTRICT
COUNCIL was affixed hereto in the
presence of:


_____

Address for service:

215 High Street
Rangiora

WAIMAKARIRI IRRIGATION
LIMITED *by:*



Director

Director

Address for service:

35 Main Street
Oxford

SCHEDULE 1**CONDITIONS FOR USE, CONSTRUCTION AND OCCUPATION
OF WAIMAKARIRI DISTRICT COUNCIL STOCK WATER RACES****1 Existing Conditions**

The Waimakariri District Council Stock Water Races are governed by the Waimakariri District Council Stock Water Race Bylaw 1992. This bylaw sets out conditions by which current water race users are to comply. It will also apply to the users of the irrigation races currently being constructed.

Waimakariri Irrigation Limited has prepared a management plan for the Waimakariri Irrigation Scheme. Pattle Delamore Partners Ltd Ref: CJ495, September 1998. This document shall form part of the conditions of the licence.

Waimakariri District Council has prepared an Asset Management Plan for water races and this document shall form part of the conditions of the licence.

WIL must at all times during the continuance of the Licence, comply with the Pattle Delamore Management Plan and the WDC Asset Management Plan.

2 Specific Characteristics to be maintained

There are a number of important characteristics relating to the operation of the stock water races which will need to be maintained during the construction and occupation of the irrigation races by Waimakariri Irrigation Limited.

The particular characteristics needing control mainly relate to the continuation and quality of supply to existing and future stock water uses.

2.1 Continuity of Supply

The nature of the water race system is such that as individual supply races branch off from the main race the volume of water in the main race steadily decreases. Therefore, the only position feasible to specify a minimum supply volume for is a point on the main race just upstream of the first branch race.

The Council's Water Race Foreman and Drainage Asset Manager have identified the need to specify minimum flows for both summer and winter. It is also recognised there is the occasional need to interrupt the flow during construction and or maintenance activities. The minimum flow requirements are recorded in clause 3 below.

2.2 *Quality of supply (turbidity)*

An important aspect of the supply of water within the race system is quality. As the supply is raw water taken directly from the Waimakariri River the chemical make up is largely dependent on the river water, and so too is the turbidity. As the water progresses along the water race system turbidity generally improves as fine particles settle out.

It is during construction and maintenance works that the turbidity of the water will be affected most. The required turbidity standard is specified in clause 3 below.

3 **Conditions**

WIL shall meet the following conditions during use, construction and occupation of the Waimakariri District Council Stock Water Race System.

3.1 *Waimakariri District Council Stock Water Race Bylaw 1992*

The Waimakariri District Council Stock Water Race Bylaw as amended or reviewed from time to time shall apply to all activities of the Licensee.

3.2 *Management Plan*

WIL shall at all times adhere to the Management Plan for the Waimakariri Irrigation Scheme prepared by Pattle Delamore Partners Ltd Ref: CJ495, September 1998.

3.3 *Asset Management Plan*

WIL shall at all times adhere to the WDC Asset Management Plan as amended or reviewed from time to time.

3.4 *Continuity of Supply*

3.4.1 The following water race flow characteristic shall (subject to 3.3.3) be met, as a minimum available for stock water use.

Season	Minimum Flow (M3/sec) *1	Maximum Time for Zero Flow (hrs) *2
Summer (October – April)	1.5	24
Winter (May – September)	0.75	48

*1 Point of measurement is 5m upstream of Scanlon's Gate off the main race.

*2 Measurement at any point downstream of an obstruction.

3.4.2 WIL shall give the Waimakariri District Council forty eight (48) hours notice in writing of any disruption to the race flow characteristics as defined in 3.3.1.

3.4.3 It is acknowledged that disruption to the flow recorded in 3.3.1 may occur during construction and/or maintenance. Such disruptions will be permitted provided WIL has exercised all reasonable care in minimising the disruptions.

3.5 *Water Quality*

The following water race quality/turbidity standard shall be met:

The increase in Turbidity of water in the race, at a point 500 metres downstream of a disturbance, (construction maintenance, or other) shall be no greater than that measured 5 metres upstream of the disturbance.

3.6 *Health and Safety*

In accordance with the spirit of the Health and Safety In Employment Act WIL shall have the Company Health and Safety Management Plan.

3.6.1 The plan shall include details covering the following areas (note that there may be others required in addition to those listed).

- (a) A Health and Safety Manual specifically listing known workplace hazards and giving clear, precise instructions on how to deal with them. This could include checklists for employee inspections and will have been produced in consultation between management and employees where a process of hazard identification and elimination or minimisation has been worked through on a systematic basis.
- (b) Regular follow up reviewing and monitoring of hazards including management/employee team meetings.
- (c) A system for recording hazards and accidents with a follow up review and monitoring process.
- (d) An emergency plan for dealing with accidents.
- (e) A regular health and safety training programme for employees.

- (f) A system for inspecting the workplace to ensure correct safety procedures (such as use of appropriate protective clothing, equipment and safety devices) are being followed.
- (g) Positive reinforcement such as commendation and/or incentives.
- (h) A methodology for implementation of the Plan for this Licence including identification of any hazard peculiar to this work.
- (i) WIL's Health and Safety Management Plan may include reference to relevant Codes of Practice of Standards such as:
 - Working on the Road.
 - Safety in Construction Series, Department of Labour.
 - Others.

3.6.2 WIL shall complete the attached (Appendix A) Health and Safety Plan Confirmation Sheet on each one year anniversary of the term of this licence.

3.6.3 WIL will be required to submit their Health and Safety Management Plan to the Council.

3.6.4 In the event of work being required that does not have a specification in place, it will be carried out with agreement by both parties.

3.7 *Emergency Procedures*

3.7.1 WIL shall implement and maintain a policy for emergency and force majeure occurrences.

3.7.2 The policy shall record WIL's procedures for dealing with and recovering from emergency and force majeure occurrences.

3.7.3 The policy shall also record any insurances effected by WIL for such occurrences. If WIL adopts a practice of self-insurance, the policy must record this practice.

- 3.7.4 WIL must ensure that the policy is consistent with policies likely to be produced by a reasonable and prudent contractor entering a contract similar to this licence.
- 3.7.5 WIL shall complete the attached emergency procedures and insurance confirmation sheet (Appendix B) on each one year anniversary of the term of this licence.

SCHEDULE 2

CANTERBURY REGIONAL COUNCIL RESOURCE CONSENT

CRC952566 – To disturb the bed of the Waimakariri River at or about map reference L35:355-586 to create a diversion of water to the water intakes of a water management scheme. Expires 18 November 2031.

CRC952567 – To divert part of the flow of the Waimakariri River at or about map reference L35:355-586 to maintain river flow at the water intakes of a water management scheme. Expires 18 November 2031.

CRC952568 – To construct and use a proposed water intake structure and alter an existing water intake structure in the bed of the Waimakariri River at Browns Rock at or about map reference L35:360-584 to provide water for a water management scheme. Expires 18 November 2031.

CRC952569 – To take up to 12 cubic metres per second from the Waimakariri River via two intakes at Browns Rock at or about map reference L35:361-584 for stock water supply, irrigation water supply, augmentation of ground water surrounding the Eyre River and augmentation of surface water flows in the Cust River, Cust Main Drain and Ashley River. Expires 18 November 2031.

CRC952570 – To discharge water and contaminants, being sediment and any other material deposited in a sediment settling pond, at weekly intervals with volumes of up to 5,670 tonnes per annum of sediment and deposited material and up to 32,300 cubic metres of water per annum being discharged, onto land, into or onto the bed of the Waimakariri River and into the water of the Waimakariri River at or about map reference L35:383-558 for the purposes of clearing a settling pond. Expires 18 November 2031.

CRC952571 – To discharge water into ground water in the bed of the Eyre River at a rate of up to 3.0 cubic metres per second at any point between map references L35:463-651 and M35:643-577 to augment the surrounding ground water resource. Expires 18 November 2031.

CRC952572 – To construct and use a water discharge structure in the bed of the Cust River at or about map reference L35:468-698 to discharge water into the Cust River. Expires 18 November 2031.

CRC952573 – To construct and use a water discharge structure in the Cust Main Drain at or about map reference M35:726-640 to discharge water into the Cust Main Drain. Expires 18 November 2031.

CRC952575 – To construct and use a water discharge structure in the bed of the Ashley River at or about map reference M34:529-735 for the purpose of discharging water into the Ashley River.

CRC952577 – To construct and use a water race structure, being an inverted siphon, in and across the river bed of the Cust River at or about L35:486-698 to convey water to be used in a water management scheme. Expires 18 November 2031.

CRC952578 – To construct and use a water race structure, being an inverted siphon, in and across the bed of the Eyre River at or about L35:463-651 to convey water to be used in a water management scheme. Expires 18 November 2031.

CONSENT FROM WAIMAKARIRI DISTRICT COUNCIL

LAND USE CONSENT APPLICATION

A land use consent to construct an intake structure, settling ponds, main distribution race, wetlands and discharge structures extending from the Waimakariri River to the Ashley River within an area bounded by map references L35:350-580, L35:430-520, M34:560-740 and M34:500-740 for the purpose of conveying water to enhance low flows in the Ashley and Cust Rivers, provide an irrigation supply and recharge aquifers. Expires 18 November 2031.

APPENDIX A

HEALTH AND SAFETY MANAGEMENT PLAN

CONFIRMATION SHEET

TO: Waimakariri District Council
Private Bag 1005
RANGIORA

We confirm that this company has a Public Health and Safety Management Plan which complies with the general requirements of the Health and Safety in Employment Act in force and we undertake that this Plan will remain in force and not be amended or cancelled during the period of this Licence.

The following is also confirmed:

1. Hazards are regularly reviewed and monitored including consideration at management/employee team meetings.
2. A company system is in place for recording hazards and accidents.
3. A company emergency plan is in place for dealing with accidents.
4. Our Company carries out regular health and safety training for employees on a minimum monthly basis.
5. Our Company regularly inspects the workplace to ensure compliances with current safety procedures.
6. Our Company has issued to all staff a Company Health and Safety Manual.
7. Our Company employs a supervisor (or supervisors) who has attended a training course in the use of the safety standard Working on the Road and who will be directly involved in overseeing this contract.

His/her name is: _____

Name of Contractor:

Signature:

Name:

Position:

Date:
