

Board Paper

August 2015

Title: Lake Contaminant Allegations

Author: T McCormick

Purpose

This paper is to update the Board on the company's response to date following the allegations of lake bed contamination raised through the media.

The Board's endorsement is sought for the strategies outlined in this paper.

A resolution is proposed for the establishment of a Risk Committee of the OWL Board to oversee the management of the company's response.

Background

OWL was approached on 6 July 2015 by TV3 seeking an interview in response to information they had been provided by OCEPS (Opihi Catchment and Environment Protection Society) alleging that laboratory analysis of samples OCEPS had taken from the lake bed showed levels of DDT higher than national guidelines.

ECan had received a similar enquiry from TV3.

In their contact with TV3, OCEPS had also indicated that they felt OWL had reneged on our undertaking to involve OCEPS in any investigations at the lake and that ECan had been looking in the wrong place in their recent investigations.

TV3 ran an episode on their 3D programme on 26 July which featured key OCEPS personnel and showed them taking the samples from the lake bed and from the riverbed at Skiptons. The episode also featured an interview with ECan CEO, Bill Bayfield, and with OWL CEO Tony McCormick.

OWL Board and management have responded to these allegations. This paper updates the full Board on the response to the allegations and also provides some formal advice received in this context from our Legal and Issues Management & Strategic Communications advisors. Also included with this paper is an Action List that has been developed to date.

Discussion

A committee of the Board, comprising three Directors, has been operating with the CEO and subsequently with the two key advisors (Legal and Issues Management & Strategic Communications) to establish a framework for management of this current issue.

Attached to this paper are two key reports, one from each of the advisors. The report from Tavendale and Partners (T+P) outlines the legal position of OWL in response to questions raised by the CEO and the committee. The report from the Issues

Management & Strategic Communications advisor (Chambers) presents the proposed strategy for OWL's overall management of the issues and, in particular, the communications issues, protocols and processes.

Directors are referred to these attached reports.

The committee needs to be formally ratified by the OWL Board, and a proposed resolution as well as Terms of Reference for this committee (Risk Committee) is also attached. This needs the urgent attention of the Board at the 4 August meeting.

The response to the potentially serious allegations has opened up a wide range of actions on a number of fronts. A table containing the current actions is attached for the information of Directors.

Recommendation

1. The Opuha Board resolve to establish the Risk Committee and adopt the Terms of Reference in the form circulated.
2. The Opuha Board receive the attached reports from Legal and Issues Management & Strategic Communications advisors.



Tony McCormick
Chief Executive
4th August 2015

Attachments:

1. Draft legal advice from Tavendale and Partners [Andrew Leete]
2. Draft summary advice, Issues Management & Strategic Communications [Tracey Chambers] (provided as an attachment to legal advice)
3. Action Summary Table
4. Draft resolution – establish Risk Committee
5. Draft Terms of Reference for Risk Committee

Attachment 1

Draft Legal Advice from Tavendale and Partners
[Andrew Leete]



31 July 2015

Tony McCormick
Chief Executive
Opuha Water Limited
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CONFIDENTIAL AND LEGALLY PRIVILEGED

Email: tony@opuha.co.nz

Dear Tony

LAKE OPUHA – CONTAMINATION ALLEGATIONS AND RELATED MATTERS

- 1 Following on from our recent discussions, we set out below our initial advice (in summary form) on various matters arising from the allegations made on the 3D television programme last Sunday evening.
- 2 We have divided our advice into 4 parts, being:
 - 2.1 Part 1 – Potential RMA liability;
 - 2.2 Part 2 – Matters relating to information disclosure;
 - 2.3 Part 3 – Health and safety and potential non-RMA liability;
 - 2.4 Part 4 – Board delegation and related matters.
- 3 We also attach a report from Tracey Chambers relating to this issue and legal matters outlined in this letter.

PART 1 – POTENTIAL RMA LIABILITY

Introduction

- 4 You have asked for our advice on the potential implications (including liability) for Opuha Water Limited (**OWL** or **Opuha**) and/or its directors if evidence of contamination is found in the bed and/or surface waters of Lake Opuha arising from:¹
 - 4.1 the dumping of banned agri-chemicals including DDT, which allegedly occurred during the construction of the Opuha Dam; and/or
 - 4.2 a former contaminated site, which pre-dates OWL's ownership of the land now comprising the bed of Lake Opuha.

¹ As reported during the 3D programme that screened on TV3 on 26 July 2015.

- 5 We understand scientific testing of silt within Lake Opuha is currently underway to determine the nature and scale of any land contamination. We are unclear as to what, if any, work is being undertaken to determine the risk posed to the wider environment from the former contaminated site and/or potential DDT contamination.
- 6 Until the fact of contamination is established, an evaluation of potential effects from the same is undertaken, and a better understanding of who or what caused any adverse effects, it is very difficult to determine the extent of liability that might arise under the Resource Management Act 1991 (**Act**). We set below a preliminary analysis of the potential enforcement action that may be taken against OWL under the Act.
- 7 In conjunction with this memorandum, we have also provided advice on Official Information and privileged information. That advice is particularly pertinent to communications with Environment Canterbury (**ECan**) and the commissioning of expert advice to establish what, if any, adverse environmental effects exist or could arise. That same memorandum addresses potential common law liability (e.g. negligence or nuisance).
- 8 In our view, OWL should continue to take a proactive approach to identifying any adverse effects that might exist or arise and co-operating with ECan's investigations to the extent that is practically possible in the circumstances.

Summary of RMA potential liability

Enforcement Action requiring remediation and avoidance of effects

- 9 If scientific evidence establishes:

- 9.1 The soil in the Lake bed is contaminated; and
- 9.2 That contamination poses an environmental risk;

we consider ECan is most likely to pursue OWL for "clean up" actions. At this stage we do not know of what the potential costs of this might be, although we assume they could be relatively substantial. It is imperative, in our view, that OWL continues taking steps and engaging expert advice to understand 8.1 and 8.2 above.

- 10 ECan can achieve this outcome through a variety of measures. The most likely are:

- 10.1 An abatement notice; or
- 10.2 An enforcement order; or
- 10.3 A review of the consent conditions for damming Lake Opuha.

- 11 Depending on what is required, ECan may need to pursue a combination of measures.

- 12 OWL's responsibility to deal with any adverse effects that now exist arises regardless of whether OWL caused the adverse effects. It is now the landowner, the occupier and the consent holder in respect of the Lake. That is sufficient for any one or more of the above measures to be employed.

- 13 If OWL is required to comply with an abatement notice, enforcement order or new conditions of consent, failure to do so will result in an offence arising.

- 14 Any "clean up" action required may have implications for the storage of water in Lake Opuha. For example, capacity may be reduced (temporarily or permanently) as a result of actions that need to be taken. This could, in turn, affect reliability of supply.

Prosecution for contraventions

15 There are two potential contraventions of the Act:

15.1 Dumping and burial of DDT;

15.2 Discharge of contaminants to water from inundating the Lake or discharging contaminated water or sediment from the Lake to other parts of the receiving water body(ies).

16 If prosecution action ensues, the outcome will be a financial penalty. Penalties can vary widely and depend on the Court applying a number of factors (referred to as the sentencing factors). These include culpability, how serious the offending was and the deterrence value of a penalty. The ultimate penalty in any case is highly fact-dependent. From our review of case law, they range anywhere from several thousand to several hundred thousand.

17 From our understanding, ECan has not mentioned or does not appear to be looking to prosecute OWL at this stage. This is helpful and further reduces the likelihood of OWL being prosecuted. There is the possibility of a private prosecution (e.g. brought by OCEPS), but these are very rare. OCEPS may also struggle with limitation issues given its allegations in 2011.

Dumping and burial of DDT

18 It is alleged DDT was buried within the Lake bed whilst it was being constructed. If that were proven, it seems an offence against the RMA has been committed. If this was committed by a contractor or employee of OWL, OWL can be held responsible for it. OWL's directors can be held responsible too, although they have more defences available than OWL itself. In neither case does ECan have to prove an intention to commit an offence.

19 Whether or not ECan would prosecute for such an offence is entirely at ECan's discretion. It is a decision made in light of all the facts and in accordance with well-established prosecutorial guidelines. At this time we do not know enough about the facts to attempt any such assessment. From what we know at this time, we see prosecutory action as less likely than "clean up" action. We see action against the directors personally as even less likely again.

20 In addition to the above, the matter is complicated by the events of 2011. The RMA imposes a 6 month limitation period on prosecutions. This period commences at the time an offence became known or *should have become known* to the relevant council. We do not know what happened in 2011, in particular what information ECan received about the alleged dumping/burial of DDT and what investigations ECan took in that regard. We do know something happened which involved an allegation of illegal dumping. It seems possible any prosecution in respect of these actions are time-barred. Again, greater certainty on this could only be gained through heightened understanding of all the facts.

Discharge of contaminants to water

21 Contravention of section 15(1)(a) of the RMA could arise if test results show traces of contamination in the surface waters of Lake Opuha (or groundwater below it).

22 At this time we understand water quality sampling has shown no contamination. We note OCEPS' allegation that contaminated sediment is being carried from the Lake to other parts of the surface water system. In our view, this would likely constitute a discharge under section 15(1)(a). We are not aware of any resource consent that would allow for this type of discharge (i.e. sediment containing DDT or other contaminants).

23 Again, whether or not ECan would prosecute for such an offence is entirely at ECan's discretion. Whilst there may be greater certainty about OWL's responsibility for this type of discharge, we remain of the view such prosecutory action would be less likely than "clean up" action. We also remain of the opinion action against the directors personally would be even less likely again.

PART 2 – MATTERS RELATING TO INFORMATION DISCLOSURE

Official information - LGOIMA

- 24 ECAN falls under the definition of local authority under the Local Government Official Information and Meetings Act 1987 (*LGOIMA*) and therefore any communication with it, and documents provided to it, would be subject to the LGOIMA provisions and potentially, release. This should be borne in mind when communicating with ECAN.
- 25 Official information includes any information held by a local authority, subject only to a few exceptions. Importantly it includes various types of “documents” (i.e. information stored on computer and/or any other device, and therefore extends to emails, whether internal or not, and possibly other forms of communication which falls into the category of official information; maps, drawings, flowcharts e.g. any discussion groups, minutes and so on arising out of this matter) and non-documentary information. It can include information known to and within the organisation albeit not documented or recorded anywhere.
- 26 In a case such as this everything should, from this point on, be treated as if it was going to be disclosed. Not only can an application be made for access to information under the LGOIMA, but if this matter was to proceed to litigation, then everything other than truly privileged communications (where the court does not waive privilege), must be disclosed, whether adverse to OWL’s position or not. This is an essential point for OWL to be mindful of. Internal Board communication may be subject to disclosure in later proceedings if it cannot be protected by legal professional or other privilege (see below).
- 27 As far as internal communications and discussions of a particularly sensitive nature, which do not involve ECAN, then we recommend those are oral discussions at this point as you are not subject to the same disclosure requirements as ECAN. Whilst those discussions may not need to be released, they may come to light during litigation and cross-examination of witnesses. We therefore advise caution in terms of who is part of discussions. We hasten to add the matter is a long way off litigation and will hopefully be resolved short of litigation. Nonetheless, ECAN has duties to release information obtained (if requested) and sensible handling of such information is recommended.

Legal professional privilege

- 28 If this matter was to proceed to litigation there would be a discovery process which would involve disclosure of all relevant information to the parties to any proceedings issued, subject only to a few exceptions, legal professional privilege being one of them.
- 29 The privilege for communication with legal advisers is conferred by Section 54 of the Evidence Act and provides that a person who obtains professional legal services from a legal adviser has a privilege in respect of any communications between the person and the legal adviser “*if the communication was intended to be confidential, and was made in the course of and for the purpose of obtaining or giving professional legal services*”. It is not sufficient that the communication or documentation is communicated to or by a legal adviser. When assessing this the court has taken the approach that the privilege should be as narrow as its principle necessitates, meaning that provision of non-privileged documents to us as your legal advisers are only privileged if their disclosure would reveal a privileged communication.²

Expert reports

- 30 When an expert, such as a scientist is instructed to prepare a report, and that instruction is in anticipation of potential proceedings then section 56 of the Evidence Act provides that privilege can apply on the basis that it forms preparatory materials for proceedings. In relying on this privilege however, the instruction of the expert, and the fact that such an instruction has been given must be kept confidential within the Company (i.e. management and the Board). Disclosing the existence of such an instruction could potentially compromise the ability to claim privilege. If OWL decides to

² *Simunovich Fisheries Ltd v Television New Zealand Ltd* [2008] NZCA

instruct a further expert in this matter, we recommend that we formally instruct them on the basis that we are doing so in accordance with section 56 of the Evidence Act, so that privilege attaches. Once we have received the report an assessment can be made as to whether or not that report and any recommendations or findings arising out of it should be disclosed, thereby waiving privilege.

PART 3 – HEALTH AND SAFETY AND POTENTIAL NON-RMA LIABILITY

Health and Safety

- 31 We note that you have a health and safety policy on your website, and our advice is that you ensure those coming onto the site are familiar with your health and safety requirements. We also advise you to undertake a site induction prior to anyone coming onto the lake for the purposes of testing. If it will be the same team of people coming onto the site over the testing period then it is not necessary to carry out an induction on each occasion, however every new person coming onto the site should be inducted and made aware of the health and safety requirements and policies you have in place prior to commencing work on the site.
- 32 More generally, given the results of the water testing that has been carried out, we do not see any issue in you continuing to allow the public to use the lake (for example, for recreational purposes). However, this is an aspect you should continue to monitor – if any subsequent testing suggested there could be a risk to public health and safety then you should reassess the position and (in the more serious scenario) consider whether access to the lake should be prohibited.

Potential contractual liabilities

- 33 We have considered OWL's position under its form of water agreement with irrigators, and also any potential liability under the power purchase agreement between Pulse Energy Limited and Opuha (the *Power Agreement*), in each case in the context of the lake bed being potentially contaminated as has been alleged. We consider it unlikely that any material liability could arise for Opuha under these arrangements as a result of any adverse test findings.

PART 4 – BOARD DELEGATION AND RELATED MATTERS

Board delegation

- 34 Clause 65 of the Constitution permits the Board to delegate any one or more of its powers to a committee of directors, a Director, an employee of Opuha or any other person.
- 35 Any such delegation is subject to:
- 35.1 the restrictions on delegation in the Companies Act 1993;
 - 35.2 any regulations that the Board may impose under clause 66 of the Constitution;
 - 35.3 the Third Schedule of the Constitution (which governs proceedings of the Board), as if that Third Schedule applied to a committee of directors.
- 36 Therefore, there are no impediments to the Board establishing a committee as contemplated, and we suggest this is formally documented at the next Board meeting.

Composition of the committee

- 37 The suggestions to date have been that the committee comprises (say) three directors (including Jeremy and Nigel (the current independent directors) and a farmer appointed director). There has also been the suggestion that Tracey and the writer form part of that committee.

38 In respect of Tracey and the writer, we do not consider that it is appropriate that they are actual members of the committee, but rather that they sit as invitees of, and observers to, the committee.

Conflicts of interest

39 Some potential or actual conflicts of interest have been identified in the current context, including Tom Lambie's role as Chair of Opuha and also being an Ecan Commissioner.

40 Whether or not a conflict is present in any given situation may be determined by asking the following question:

“Would a reasonably informed objective observer infer from the circumstances that the director's judgement could be likely to be influenced to the detriment of the company's best interests?”

41 We should discuss this area and specific actual or potential conflicts further on Friday. Our initial suggestion is that Tom attend the Board meeting on Tuesday and participate in the decision to delegate this issue to a committee (as contemplated above), but that Tom then absent himself from all other discussion in the meeting relating to this issue.

GENERAL

42 We look forward to discussing the above further with you.

Yours faithfully
Tavendale and Partners

Andrew Leete
Partner
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Attachment 2

Draft summary advice, Issues Management & Strategic
Communications

[Tracey Chambers]

(provided as an attachment to legal advice)

Opuha Water Limited

Strictly confidential and commercially sensitive

Draft summary advice – legally privileged

Prepared on instruction from Andrew Leete from Tavendale + Partners

Friday 31 July

Author: Tracey Chambers – Lead strategic counsel + Director of Chambers

Scope

Opuha Water Limited [OWL] has requested an analysis of possible scenarios as a result of claims from OCEPS in relation to buried chemicals, and in particular DDT, in the lake bed. Other chemicals have also been mentioned.

This advice should be considered alongside the legal advice from Andrew Leete of Tavendale + partners, the situation overview and work plan prepared by Chief Executive Tony McCormick and background papers such as the transcript of the 3D item.

Strategic approach

ECan is the lead authority in relation to this matter and has proactively engaged with OWL whilst ensuring good process and protocols. From a strategic perspective, OWL is taking an open and transparent approach to engaging with ECan, OCEPS and Arowhenua.

The objective is to retain faith and confidence of critical stakeholders and shareholders in:

Governance and management of OWL

Water management and quality of the 'scheme'

Resolution of allegations

Reputation

It should also be made clear that OWL gives a priority to any matters relating to public safety and water quality. OWL is being prudent in taking the resolution of this matter seriously with the emphasis on resolution rather than who is right and who is wrong.

It is the recommendation of the management and advisory team that a subcommittee of the Board is established and that the full Board consider this at its meeting on Tuesday 4 August 2015.

Supporting papers and draft terms of reference have been compiled in relation to this.

It is also recommended that the Board ensures adequate and appropriate resourcing to deal with this matter including:

- 1. Establishment of subcommittee as noted above**
- 2. Understanding that 40-50% of the available time of the CE will be taken dealing with this matter and associated stakeholder engagement over the coming months [and therefore additional resource may be required internally to allow this to happen]**
- 3. Independent scientific resource in relation to development of testing protocols and processes, peer review of findings**
- 4. Strategic issues management [Chambers]**
- 5. Legal counsel [Tavendale + Partners]**

Possible scenarios

1. No evidence of DDT or Dieldrin
2. DDT and/or Dieldrin is detected but all parties agree that it is at accepted safe levels
3. DDT and/or Dieldrin is detected but parties disagree as to whether it is at safe levels or not
4. DDT and/or Dieldrin is detected and requires remediation but not immediate/urgent action required [i.e. can wait for when lake is at suitable level]
5. High levels detected and dump site identified and urgent remediation is required

There are subset scenarios within the above but these 5 overview scenarios will provide enough scope for the Board and management of OWL to seek legal advice, investigate insurance coverage, research remediation options and engage further with ECan and other parties such as Timaru District Council and health authorities.

For each of the above scenarios, OWL needs to scope legal, financial and remediation ramifications and implications.

In particular, the financial implications need to be considered in advance and options explored should any remediation be required. There is a fund managed out of MfE for remediation of

contamination sites where 'offender' cannot be identified or the organisation has ceased to exist. Further research if required on this along with insurance implications and options.

Shareholders will want assurance that should remediation be required, that the company or another source can fund this.

With the above scenarios, the 'rubbish dump' site shown on 3D is excluded. The rationale for this is that this will require remediation as soon as possible. As part of that, it may well be worth exploring whether all steps have been taken to address previous 'dumpings' and to avoid a repeat of this in the future. This does link to who has access to the site given it is private property. There are also associated health and safety risks with this.

Stakeholders

The primary stakeholder audience for OWL is the shareholders and given current drought conditions along with lower dairy payouts, it is recognised that this shareholder community to some degree is already under stress. There is significant concern or 'fear' within the shareholder community about a worst case scenario that could see the lake being lowered to allow for remediation. There are a significant number of stakeholders who have an interest in this matter.

Ministry for Primary Industries [MPI] and Ministry for the Environment [MfE] are now both involved. Given the risk to marine life, Arowhenua has been briefed and has requested being involved throughout the process. It would be our view that TRONT has been briefed, but this does need to be checked with Arowhenua.

Another entity that has been active on social media is Transition Timaru. This group has an environmental focus and a membership of about 200. This group raised the possibility of dieldrin being found in the area which has added to some of the confusion. This group is required as credible albeit with a political undertone.

OWL is requesting from ECan a detailed list of any parties that it has engaged with on this matter.

Tony McCormick, with support from Chambers and Tavendale + partners, has developed a **stakeholder map and analysis**. In terms of engagement with those stakeholders, OWL is liaising with ECan to ensure the appropriate party is leading various engagements and discussions.

Media

There is now significant and likely ongoing media interest in these claims with 3D running an item on Sunday night, 26th July. Radio NZ and Timaru Herald have also covered this story. *[A transcript of the 3D item is attached for reference.]*

It would be fair to say that 3D took an emotive approach to the coverage but that ECan Chief Executive Bill Bayfield provided balance and he is also recognised as someone with significant experience in the field of contamination having worked for regional and district councils in Taranaki and Waikato previously.

It was also clear that 3D was taking some care to leave the door open for the possibility that these claims have absolutely no basis in fact. This is evidenced by use of language such as 'self-proclaimed eco-warriors' and also references to failure to deliver all of the GPS and sample testing information.

OCEPS

There are some credibility issues associated with OCEPS and in particular some of individuals and also some of actions taken to date.

That is primarily for ECan to manage. Some of these matters are though of significant concern from a public safety perspective such as access to DDT, however, ECan has already taken steps to address these further.

The approach of OWL has been and should continue to be to keep a communication channel with OCEPS open. It would be unwise for any criticism to be directed at any individuals. It should also be noted that OWL has no knowledge of any threats made towards members of OCEPS and that such behaviour has no place in this community.

Tony McCormick will address this further at the Board meeting.

Factual baseline and information sources

Management is very clear that they want this matter resolved one way or another but in a way that is scientifically sound.

One of the significant challenges is separating fact and fiction and distilling down some urban myths. Tavendale + Partners is working with Tony McCormick to collate and assess all the available information and also the history to this. It will be just as important to have clarity as to what information is not confirmed fact and where there are substantive gaps.

Andrew Leete is drafting an OIA request to all the relevant authorities for all files and notes relating to Opuha Dam and the scheme since its inception and as part of this, it is hoped that the affidavit referred to within the 3D item will be within one of these files.

This will be a significant file and will involve some financial cost but it is clear that the Board and management need access to as much information as possible in order to manage this situation.

Protocols for testing

Discussions with ECan indicate that the GPS co-ordinates provided by OCEPS are not 'complete' and therefore there are significant gaps in the information provided. ECan is scheduled to meet with OCEPS on Friday 31st July but OWL won't be present at the meeting which is appropriate given the current set of circumstances.

It is our view and advice that before OWL commits to be part of another testing regime involving OCEPS, ECan, Arowhenua and OWL, that there are binding protocols agreed to before any testing commences. This may well take some time to work through but to start testing without full agreement from all the parties around these protocols creates significant risk further down the track.

We have also recommended that consideration be given to an 'independent Chair' role whereby all the results undertaken by each party are provided to this person/organisation for peer review.

This will be particularly important if there are significant degrees of variation in the results. In our experience, and to avoid claims of conflict, it is often necessary to go offshore for this person/organisation.

It is also our recommendation that OWL does not undertake its own testing but rather accepts the testing results of ECan.

DDT and dieldrin

With all of this, it is important that the Board and management have a good understanding about the chemicals that are claimed to have been dumped, industry standards around any potential 'safe' levels, regulatory framework around use, impact on environment and in particular impact on marine life, the food chain and of course, public safety in terms of swimming, drinking etc.

Tony McCormick and the advisory team is identifying credible sources of background information for the Board and also identifying an expert to be able to provide a briefing and answer questions.

General

The following are noted so that these matters are captured and can be discussed by the Board and/or Board subcommittee as appropriate.

Tom Lambie

Mr Lambie is the Chancellor of Lincoln University and a government appointed ECan commissioner. He has declared a conflict of interest in terms of his dual roles with ECan and OWL and is not taking part in any discussions in relation to this matter.

Andrew Leete as legal counsel will also provide advice to ensure all steps are being taken to ensure this agreed conflict is managed appropriately. Given Tom's role with Lincoln University, it would also be our advice that LU is not used for any future testing, or opinions on remediation etc.

Insurance

Chief Executive Tony McCormick has informed the insurer. It would be our advice that a formal paper is prepared for the Board on the insurance cover or otherwise available in relation to this. If the insurance policy kicks in, then the insurer will want a degree of control over all aspects including testing and legal counsel.

Shareholder agreement

We have had an initial discussion around the need to review the shareholder agreement, constitution, governance policies etc. in light of this situation so the Board understands any impacts in this area depending on the outcome of the next stage of testing. There may also be some requirements around disclosure to shareholders.

Media responses

OWL will continue to be approached by media for updates. There needs to be a balance between showing proactive leadership and management to resolve this issue and then not crossing into areas that are for ECan and others to manage.

It is recommendation that all media engagement should be checked with Chambers and legal counsel and the Board subcommittee before being distributed to ECan for in effect sign off before going out to media.

The below is our recommended interim media statement based on the drafts prepared before the 3D item ran last Sunday.

Opuha Water Limited [OWL] takes seriously all matters related to public safety and water quality management. The company has repeatedly investigated claims from a local group [OCEPS] about buried chemicals. These claims remain unsubstantiated.

ECan is the lead regulatory authority in relation to this matter. The Board and management of OWL will continue to work closely with ECan to support a scientifically sound testing process in relation to these claims.

In the meantime, OWL is increasing its own water quality management testing regime.

For the sake of completeness, please find attached the ECan media releases relating to this matter for further background.

Attachment 3

Action Summary Table

Lake Opuha Sediment Sample Results – Action Table

Topic	Strategy	Status	Current Actions	Who	Comp
Board	<ul style="list-style-type: none"> Active governance Responsive Manage conflicts of interest Anticipate potential for site remediation Support key messages to shareholders Feed back stakeholder sentiment to management Feed back any knowledge of history of claims and original build process 	<ul style="list-style-type: none"> Established Risk Committee Initial legal advice on responsibilities/ requirements of Board/Directors T Lambie excluded from Board communications on this issue (COI) 	Ratify Risk Committee (Aug 4 th)	TP/TM	
			Agree method for regular Board updates		
			Note and minute declared conflicts, potential conflicts and proposed management of those conflict	Board	
			Nicky Hyslop to formally advise Irrigation NZ of potential conflict if that entity is approached by media for comment and/or other stakeholders	NH	
Legal	<ul style="list-style-type: none"> Close-coupled legal advice for all activities Understand legal position under possible outcome scenarios Maintain confidentiality/legal privilege as much possible Mitigate legal risk where possible Anticipate possibility of site remedial Collate relevant historical information 	<ul style="list-style-type: none"> Tavendale + Partners (TP) engaged and fully briefed. Draft legal report letter received. Existing OWL database of historical information with TP 	Review existing OWL historical records <ul style="list-style-type: none"> Assess original design and build contracts and scope of works and legal entities associated with each Map out the merger and integration of different commercial companies associated with original design and build of the scheme Map out the corporate structure changes that resulted in establishment of current OWL entity 	TP	
			Prepare OIA for ECan, Timaru District Council, Medical Officer of Health [SCDHB]	TP	
			Prepare protocols for internal and external exchanges of information and comment	TP/TM/TC	
			Prepare overview of any pending or the next resource consent processes for OWL or extension of consents	TP	
			Provide advice on legal status and historic key decisions in relation to use and banning of DDT and Dieldrin etc	TP	

Topic	Strategy	Status	Current Actions	Who	Comp
Communications	<ul style="list-style-type: none"> ECan is lead Authority OWL engaged with ECan OWL shareholders are our primary audience Open and transparent with key stakeholders – ECan, Arowhenua and OCEPS Objective is to retain faith and confidence of external stakeholders and shareholders Responsive 	<ul style="list-style-type: none"> Engaged external Issues Management and Strategic Communications advisor – Chambers Established contact and lines of communication with ECan Communicated with shareholders Communicated with Arowhenua Established stakeholder database and currently developing comms approach for each grouping Established Board Sub-committee CEO is primary spokesperson for OWL 	Complete stakeholder database and communications strategy for each [Note this is significant piece of work and a primary focus over coming days/weeks for continual communication, sourcing of information, and keeping matter under control]	All, TC	
			Newsletter to shareholders – 7 th Aug	TM	
			Confirm media protocols and processes with ECan and in particular on ability to have input into statements	TM/TC	
			Prepare reactive key messages and statements	TC	
			Prepare ‘top line’ key messages for Board use in community	TC	
			Monitor social media and set up media monitoring service	TC/TM	
			Draft top line key messages for each of the 5 scenarios to input into the overall summary for each [progressive work]	TC	
Knowledge/ Science	Engage independent experts on key subject matter: <ul style="list-style-type: none"> Agriculture organochlorides (DDT, Dieldrin) Multi-party sampling protocols Sampling methods (underwater) Independent review? 	Initial discussions with: <ul style="list-style-type: none"> Dr Sally Gaw (UoC) –Environmental Chemist Dr Grant Northcott – independent researcher Gerard Bird – Environmental Group Manager, Tonkin & Taylor 	Follow up with Dr Sally Gaw	TM	
			Follow up with Gerard Bird, T&T	TM	
			Proactive engagement with Timaru Medical Officer of Health	TM	
			Follow up with Grant Northcott		
Evidence: Sampling Locations	<ul style="list-style-type: none"> Obtain accurate GPS data ex OCEPS Obtain GPS data Understand historical activities in the lake bed area See references above to knowledge/science and legal	<ul style="list-style-type: none"> ECan have final GPS data from OCEPS which will be shared with OWL Engaged with individuals local to lake prior and during construction See references above to knowledge/science and legal	Investigate sampling locations based on knowledge of original/ historical land use activities	TM/ NH	

Topic	Strategy	Status	Current Actions	Who	Comp
Evidence: Protocols for sampling and testing	<ul style="list-style-type: none"> Protocol established BEFORE sampling is undertaken with agreement/ understanding from four parties (ECan, OWL, OCEPS and Arowhenua) on the process to be undertaken. 	<ul style="list-style-type: none"> Have discussed informally with ECan – need to engage formally Seeking independent advice on those protocols 	Request for discussion on protocols to be formally made to ECan See reference above to independent advisors	TP/TM/TC	
Insurance	<ul style="list-style-type: none"> Engage with insurers Do not compromise policy through action/ inaction 	<ul style="list-style-type: none"> Willis (brokers) have been briefed and have informed liability insurers. Initial response received from Willis Awaiting response from insurers (QBE) 	Follow up for feedback from insurers (QBE)	TM	
Financial	OWL Board and management need to understand potential cost implications of additional internal and external costs: <ul style="list-style-type: none"> External resources/ advisors the pending sampling and testing programme through ECAN longer term potential costs associated with each of the possible scenarios 	<ul style="list-style-type: none"> No internal budget yet established ANZ have been advised 	Estimates due from Chambers and TP this week once action list is signed off	TC/TP	
			Internal resource requirements to be discussed at 4 August Board meeting	TM	
			Update bankers on current situation	TM	
Water quality management	<ul style="list-style-type: none"> OWL wants to reassure itself on a weekly basis as to water quality and to be able to provide this testing and results to key stakeholders – ECan. Medical Officer of Health and Timaru District Council Note ECan, TDC are NOT doing this 	<ul style="list-style-type: none"> Prepare plan for increased water quality management and additional costs associated with this 	Discussions with independent entity to undertake weekly testing	TM	
Staff	<ul style="list-style-type: none"> Ensure staff are fully informed but also clear that all enquiries are referred back to CEO and that they should also feed back any sentiment from community. OWL wants to ensure consistency of message and mechanisms for feedback back into the company 	<ul style="list-style-type: none"> Staff are updated daily 	Brief and update staff on this issue and advise how to respond to questions from shareholders and others in the community	TM/TC	
			Prepare written brief, messages and protocols		

Attachment 4

Draft resolution – establish Risk Committee

OPUHA WATER LIMITED

(the *Company*)

Written resolutions of the directors of the Company

Date: 4 August 2015

Background

- A The Directors wish to establish a Risk Management Committee (the *Committee*) in relation to allegations of chemical contamination in the bed of Lake Opuha and all matters related to it.
- B The Directors wish to adopt the terms of reference in the form circulated with these resolutions setting out the basis on which the Committee will operate (*Terms of Reference*).

Resolutions

The Board resolves:

- 1 That the Committee is established comprising:
 - 1.1 Nicky Hyslop;
 - 1.2 Nigel Gormack; and
 - 1.3 Jeremy Boys.

The Board anticipates that the Committee would work closely with the Company's Chief Executive, Tony McCormick and the Company's advisers (including Chambers PR and Tavendale and Partners) in fulfilling its functions. However, the Chief Executive and any such advisers will not be members of the Committee.

- 2 That the Terms of Reference are adopted.
- 3 Subject to the Terms, that the Committee may regulate its proceedings in any manner the Committee sees fit.

These resolutions may be executed in counterparts and all the counterparts when taken together will constitute one document. The parties acknowledge that the resolutions may be executed by an exchange of facsimile and/or scanned and emailed PDF copies or similar means of communication and execution of these resolutions by that means is valid and sufficient execution.

Signed by the directors:

J W Boys

N J Gormack

M Horne

N A O Hyslop

T C Lambie

W D O'Sullivan

A J Reid

Attachment 5

Draft Terms of Reference for Risk Committee

RISK MANAGEMENT COMMITTEE TERMS OF REFERENCE

BACKGROUND

These Terms of Reference (*Terms*) set out the governance framework of the Risk Management Committee (the *Committee*) of Opuha Water Limited (the *Company*) including its composition, roles and responsibilities.

TERMS OF REFERENCE

1 Purpose of the Committee

- 1.1 The purpose of the Committee is to oversee and manage the Company's interests and position in respect of allegations of chemical contamination in the bed of Lake Opuha and all matters related to or incidental to it.

2 Composition and procedures

- 2.1 The Committee must have a minimum of three Directors and initially shall comprise:

- (a) Nicky Hyslop;
- (b) Nigel Gormack; and
- (c) Jeremy Boys.

The Board anticipates that the Committee would work closely with the Company's Chief Executive, Tony McCormick and the Company's advisers (including Chambers PR and Tavendale and Partners) in fulfilling its purpose. However, the Chief Executive and any such advisers will not be members of the Committee.

- 2.2 Any member of the Committee may be removed or replaced at any time by the Board and shall cease to be a member upon ceasing to be a Director of the Company.
- 2.3 The members present at any meeting of the Committee shall appoint one of the members to act as Chairperson of the Committee, provided that the Chairperson of the Committee shall not be the Chairperson of the Board.
- 2.4 The quorum for meetings of the Committee shall be two Directors.
- 2.5 The Committee shall hold such number of meetings as may be required to meet its responsibilities and those meetings may take any form that the Directors consider appropriate from time to time including by way of teleconference.
- 2.6 Each Director has one vote. A resolution of the Committee is agreed to if at least two Directors are in favour of it.
- 2.7 The Committee shall report back to the Board, and seek such approvals from the Board, as determined from time to time by the Chairperson of the Board.
- 2.8 Except to the extent it is inconsistent with these Terms, the Committee may regulate its proceedings and carry out its duties and responsibilities in any manner the Committee sees fit.
- 2.9 The Committee may engage on behalf of the Company any advisers it considers necessary from time to time.

3 Duties and responsibilities

3.1 Subject to the powers and duties of the Board, the Board hereby delegates to the Committee the following powers and duties to be performed by the Committee on behalf of the Board:

- (a) to oversee and manage the Company's interests and position in respect of allegations of chemical contamination in the bed of Lake Opuha and all matters related to or incidental to it;
- (b) without limiting (a):
 - (i) to respond in a timely manner to all matters arising in respect of the allegations of chemical contamination in the bed of Lake Opuha and all matters related to or incidental to it;
 - (ii) to always have regard to the need to maintain faith and confidence in the Company's assets, business and reputation;
- (c) to take any action which the Committee may consider necessary or desirable for the purpose of, or in connection with, or incidental to, the matters described in (a) above;
- (d) such other powers and duties as reasonably required in order to fulfil the purpose of the Committee as set out above.

4 Review of the Committee and changes to Terms

4.1 The Board may at any time disestablish the Committee, change its composition or review the Terms.

4 August 2015