The CWMS vision “to enable present and future generations to gain the greatest social, economic, recreational and cultural benefits from our water resources within an environmentally sustainable framework” has the potential to revitalise debates that were had in the 1990s over the interpretation of section 5 of the RMA. It is also focused on a regional scale. Whether “outstanding” is to be considered in a national or a Canterbury sense will also be debated, and may result in a number of applications for CWCO for water bodies that might not have been considered nationally outstanding, but are outstanding in a regional sense.

Moratoria

Provisions have existed for the Minister of Conservation to put moratoria in place for the coastal marine areas since the RMA was first enacted, but not for any other area or allowed to any other authority. The ECan Act provides ECan with the ability to impose a moratorium on “specified applications” for water permits or discharge permits (to land or water; discharges to air are not included). This is a power that ECan has sought since the early 2000s; it is interesting that it has now been provided, but only in Canterbury, and only after the removal of the elected regional councillors and their replacement with appointed commissioners. Notification of a moratorium must include its expiry date, which can be no later than the day after the day on which the next councillors are elected.

The moratorium can only be put in place with the prior permission of the Minister for the Environment. The process of putting in place a moratorium requires ECan to “have regard to” the vision and principles of the CWMS; the extent to which the freshwater of the area covered by the moratorium is subject to high or increasing demand or to diminishing quality; the extent to which the freshwater of that area is fully allocated, nearing full allocation, or over-allocated; and any other relevant matter.

There are two points of interest here: the wide discretion given to impose a moratorium, and the spatial component. Notably, ECan is not required to demonstrate that any of these criteria are met, but only to have regard to them when reaching its conclusion that it wishes to impose a moratorium. It has discretion over whether to impose a moratorium, fettered only by the Minister’s prior approval. There are no criteria set out on which the Minister is required to grant that approval. It will be interesting to see if the Minister waits for ECan to request his approval of a proposal for a moratorium. Presumably, the Minister giving assent to a moratorium is sufficient for ECan to decide to impose one, whether or not it had intended to request one.
The ECan Act also specifies that the moratorium be imposed “on specified applications in relation to 1 or more areas of the Canterbury region” (section 34(1)). This will require ECan to carefully and unambiguously describe the area(s) to which it applies. It will be interesting to see if and how this will be applied to unconfined aquifers. The provisions also do not have to apply to complete catchments or river systems and when applied presumably the boundaries will have to be advised to the Minister to ensure that he has given prior approval to the area that is intended. A simple statement such as the Minister giving approval to the imposition of a moratorium on “the Hurunui River” will not be sufficient to cover the rivers and streams running into it or the areas of land that comprise the Hurunui River’s entire catchment, especially given the definitions of the Hurunui River in Schedule 2 of the Act. Any prior approvals will therefore need to be carefully worded and considered. Notification of an area which has not previously been approved as specified by the Minister would be challengeable.

The new provisions create a separate process for considering applications for any of the specified activities covered by the moratorium (see figures 1 & 2).

Reference


![Figure 1. The effect of ECan Act moratoria on resource consent applications to which a moratorium applies or has applied in the last 6 months (All references to sections are to the ECan Act unless otherwise specified)](image)

![Figure 2. The effect of ECan Act moratoria on resource consents applied for before a moratorium was put in place in the area and for the activity that the moratorium addresses. (All references to sections are to the ECan Act unless otherwise specified)](image)