

Waimakariri Irrigation Limited – Cost Recovery Policy



Version 1 – August 2019

Summary

This policy sets out further consequences that may be invoked by WIL following any breach by a shareholder (or a shareholder's agent(s)) of any Resource Consent, Regulatory Requirement or WIL Policy.

This includes shareholders being potentially liable for all costs incurred by WIL in relation to any such breach.

Background

- 1 Waimakariri Irrigation Limited (*WIL*) holds resource consents entitling it to take, convey, store, discharge and use water from the Waimakariri River and to construct, maintain and operate infrastructure for those purposes (*Resource Consents*).
- 2 Shareholders are supplied water subject to a Water Supply Agreement that requires Shareholders not do or omit any act, matter or thing that may cause or contribute to any non-observance of any (as defined in the Water Supply Agreement):
 - 2.1 Resource Consent;
 - 2.2 Regulatory Requirement (noting this includes requirements that apply to WIL and requirements that apply individually to a shareholder); and
 - 2.3 WIL Policy.
- 3 Together these are referred to as shareholder obligations for the purposes of this Policy (*Shareholder Obligations*). Further detail on the nature of Shareholder Obligations is set out in the separate *Waimakariri Irrigation Limited – Notification of non-compliances policy*.
- 4 This Policy (in accordance with clause 16.2(e)) of the Water Supply Agreement) sets out the further consequences that may be invoked by WIL following any breach of any Shareholder Obligations (i.e. without limiting the existing consequences that are expressly identified in the Water Supply Agreement or available to WIL).
- 5 This includes a requirement that each Shareholder reimburse WIL for all costs WIL incurs arising from or in relation to a breach of such obligations by a Shareholder (or a Shareholder's agent(s)).

Actual or potential breach by Shareholder

- 6 Where in the opinion of WIL (in its sole and absolute discretion) there has been or may be a breach of any Shareholder Obligation by a Shareholder (or a Shareholder's agent(s)), then WIL may:

- 6.1 investigate (including undertaking monitoring, testing and observations);
- 6.2 undertake avoidance, mitigation or remediation, including (but not limited to):
 - (a) the 'clean-up' of any actual or potential effects;
 - (b) putting in measures to cease the supply of water to part or all the Scheme);
 - (c) undertaking any works (including earthworks; engineering works and all associated technical assessments and consenting processes) as may be required to correct any impacts and prevent future occurrences of any effects;
 - (d) implementing alternative water supply(s) for Shareholders and Scheme users (including persons that take water from the Scheme for stock water purposes) who may be affected by the breach or potential breach;
- 6.3 determine or be required to participate in any investigation or compliance process that may be initiated by a Regulatory Authority or other legal person; and
- 6.4 be subject to compliance action by a Regulatory Authority or other legal person.

Costs Recovery

- 7 If, WIL has incurred costs arising from or in relation to any action described in paragraphs 7.1 to 7.4 and in the opinion of WIL (in its sole and absolute discretion) those costs are related to or consequential to the actions or inactions of a Shareholder (or a Shareholder's agent(s)) amounting to a breach of the Shareholder Obligations, then the Shareholder will on demand by WIL reimburse WIL forthwith for all or any of those costs as WIL requires (in WIL's sole and absolute discretion).

Application

- 8 This policy will apply whether or not is determined that WIL also has an obligation or liability in respect of any breach or potential breach. Nothing in this Policy:
 - 8.1 is to be taken as an admission of liability or an acknowledgement of any legal or other obligation by WIL; or
 - 8.2 will affect or limit the liability of a Shareholder under any other provision of the Water Supply Agreement or any other legal requirement (including but not limited to the Waimakariri District Council Stock Water Race Bylaw 2019 and the Resource Management Act 1991).
- 9 All Shareholders are required to comply with all sections of this Policy (in accordance with their Water Supply Agreement).