

**BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA**

UNDER the Resource Management 1991
IN THE MATTER of appeals under Clause 14 of the First Schedule of the Act

BETWEEN **TRANSPower NEW ZEALAND LIMITED**
(ENV-2018-CHC-26)

FONterra CO-OPERATIVE GROUP
(ENV-2018-CHC-27)

HORTICULTURE NEW ZEALAND
(ENV-2018-CHC-28)

ARATIATIA LIVESTOCK LIMITED
(ENV-2018-CHC-29)

WILKINS FARMING CO
(ENV-2018-CHC-30)

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**SECOND STATEMENT OF EVIDENCE OF CLAIRE JORDAN ON
BEHALF OF ARATIATIA LIVESTOCK LIMITED**

22 March 2019

Judicial Officer: Judge Borthwick and Judge Hassan

**GORE DISTRICT COUNCIL, SOUTHLAND DISTRICT
COUNCIL & INVERCARGILL DISTRICT COUNCIL**
(ENV-2018-CHC-31)

DAIRYNZ LIMITED
(ENV-2018-CHC-32)

H W RICHARDSON GROUP
(ENV-2018-CHC-33)

BEEF + LAMB NEW ZEALAND
(ENV-2018-CHC-34 & 35)

DIRECTOR-GENERAL OF CONSERVATION
(ENV-2018-CHC-36)

SOUTHLAND FISH AND GAME COUNCIL
(ENV-2018-CHC-37)

MERIDIAN ENERGY LIMITED Act 1991
(ENV-2018-CHC-38)

ALLIANCE GROUP LIMITED
(ENV-2018-CHC-39)

FEDERATED FARMERS OF NEW ZEALAND
(ENV-2018-CHC-40)

HERITAGE NEW ZEALAND POUHERE TAONGA
(ENV-2018-CHC-41)

STONEY CREEK STATION LIMITED
(ENV-2018-CHC-42)

THE TERRACES LIMITED
(ENV-2018-CHC-43)

CAMPBELL'S BLOCK LIMITED
(ENV-2018-CHC-44)

ROBERT GRANT
(ENV-2018-CHC-45)

**SOUTHWOOD EXPORT LIMITED, SOUTHLAND
PLANTATION FOREST COMPANY OF NZ,
SOUTHWOOD EXPORT LIMITED**
(ENV-2018-CHC-46)

**TE RUNANGA O NGAI TAHU, HOKONUI RUNAKA,
WAIHOPAI RUNAKA, TE RUNANGA O AWARUA & TE
RUNANGA O ORAKA APARIMA**
(ENV-2018-CHC-47)

PETER CHARTRES
(ENV-2018-CHC-48)

RAYONIER NEW ZEALAND LIMITED
(ENV-2018-CHC-49)

**ROYAL FOREST AND BIRD PROTECTION SOCIETY OF
NEW ZEALAND**
(ENV-2018-CHC-50)

Appellants

AND

SOUTHLAND REGIONAL COUNCIL

Respondent

Introduction

- 1 My full name is Claire Louise Marshall Jordan. This is the second statement of evidence that I have prepared in these proceedings. My first statement of evidence, dated 15 February 2019 (**First Statement**), was in support of the relief sought by Aratiatia Livestock Limited (**Aratiatia**) regarding Objective 10 in the proposed Southland Water and Land Plan (**pSWLP**). This statement addresses the proposed amendments to Objective 10 sought by Meridian Energy Limited (**Meridian**) against which Aratiatia lodged s274 notices in opposition. It also briefly mentions Meridian's proposed Objective X.
- 2 My relationship to Aratiatia and my qualifications and experience are set out in my First Statement.
- 3 I have prepared evidence for these proceedings on behalf of Aratiatia and am authorised to give evidence on Aratiatia's behalf.
- 4 My evidence is not presented as expert evidence, as I acknowledge that my connection to Aratiatia renders me too close to the matter to be considered independent in this instance. However, I do have some expertise in planning and the development of the pSWLP, which has informed the preparation of my evidence.

Scope

- 10 This evidence addresses the proposed amendments to Objective 10 sought by Meridian against which Aratiatia lodged s274 notices in opposition. It also briefly mentions Meridian's proposed Objective X.
- 11 In preparing this evidence, I have read and considered the following documents:
 - (a) The pSWLP (notification and decisions versions);
 - (b) Section 32 Report;
 - (c) Section 42A Hearing Report and Reply Report;
 - (d) The Council's Decision Report;
 - (e) Revised Southland Progressive Implementation Programme, 31.10.2018;
 - (f) Aratiatia's Appeal;

- (g) Meridian's Appeal;
- (h) The Initial Planning Statement;
- (i) The evidence prepared for the Council by Mr McCallum-Clark, Mr Hodson, Mr Ward, Dr Snelder, Ms Robertson, Mr Rodway and Dr Lloyd;
- (j) The evidence prepared for Aratiatia by Paul Marshall;
- (k) The evidence prepared for Ngā Rūnanga (Waihopai Rūnaka, Te Rūnanga o Awarua, Te Rūnanga o Ōraka Aparima, and Hokonui Rūnaka) and Te Rūnanga o Ngāi Tahu by Mr Skerrett, Dr Kitson, Ms Cain and Ms Davidson;
- (l) The evidence prepared for Meridian by Ms Whyte, Mr Feierabend, Mr Waipara, and Dr Purdie;
- (m) The National Policy Statement for Freshwater Management 2014 (as amended 2017) (**NPSFM**);
- (n) The National Policy Statement for Renewable Energy Generation 2011 (**NPSREG**);
- (o) The Southland Regional Policy Statement 2017 (**RPS**).

Background

- 12 Aratiatia was a submitter on the notified version of the proposed Water and Land Plan (**Notified Version**). Aratiatia lodged further submissions on the submissions of Meridian and the Southland Fish and Game Council.
- 13 Aratiatia lodged an appeal to the Environment Court on the decisions version of the proposed Water and Land Plan (**Decisions Version**). Of the provisions appealed, only Objective 10 is part of Topic A.
- 14 Objective 10 concerns the Manapouri Power Scheme (**MPS**). Aratiatia did not oppose the notified wording of Objective 10 but does oppose the revised version introduced in the Decisions Version. My First Statement outlines my concerns with the Decisions Version of Objective 10.

- 15 Aratiatia also opposes the relief sought by Meridian in relation to Objective 10 in its appeal via a s274 notice. Aratiatia opposes that relief on the basis that incorporating the Manapouri Power Scheme in its entirety as part of the existing environment would perpetuate the environmental effects not only of the structures, as does the Decisions Version, but also the water take itself. Further, Aratiatia is concerned that Meridian's request for enhancement of the scheme to be recognised and provided for if effects are appropriately managed will result in further degradation of the River.
- 16 Ms Margaret J Whyte, in her first statement of evidence for Meridian, dated 15 February 2019 (**Ms Whyte's First Statement**), suggested that Meridian would be comfortable with alternative relief, which removes any reference to the existing environment. The removal of any reference to the existing environment in Objective 10 would be welcomed by Aratiatia.
- 17 Ms Whyte also suggested that Objective 9B adequately provides for the national importance of renewable energy generation, which removes the necessity for Meridian's proposed Objective X. The removal of Objective X would be welcomed by Aratiatia.

Wording of Objective 10

- 18 Objective 10 in the Notified Version read:

The national importance of the existing Manapōuri Power Scheme in the Waiau catchment is provided for, and recognised in any resulting flow and level regime.

- 19 The Reporting Officers recommended that Objective 10 be retained as notified.¹ Aratiatia did not oppose that version of Objective 10.

- 20 Objective 10 in the Decisions Version reads:

The national importance of existing hydro-electric generation schemes, including the Manapōuri hydro-electric generation scheme in the Waiau catchment, is provided for, recognised in any resulting flow and level regime, and their structures are considered as part of the existing environment.

- 21 In its appeal, Aratiatia seeks the reinstatement of the notified version of Objective 10.

¹pSWLP s42A report paragraphs 5.125-5.128.

- 22 My views on why the Notified Version of Objective 10 is appropriate and my concerns with the Decisions Version are outlined in my First Statement.
- 23 Aratiatia lodged a s274 notice in opposition to the relief sought by Meridian in relation to Objective 10 in its appeal.
- 24 Meridian's appeal document requests that Objective 10 be amended as follows:

Objective 10

The national importance of ~~the existing hydro-electric generation schemes, including the~~ Manapōuri hydro-electric generation scheme in the Waiau catchment, is provided for, ~~recognised in any resulting flow and level regime, and their structures are considered as part of the existing environment and~~

1. *is recognised in any resulting flow and level regime, and*
2. *the Scheme and its components and activities is considered as part of the existing environment, including that water takes, use, diversions and discharges are an integral part of the scheme; and*
3. *allows for enhancement of the scheme where the effects of these can be appropriately managed.*

- 25 Aratiatia opposes that relief for two key reasons:
- (a) Incorporating the Manapouri Power Scheme in its entirety as part of the existing environment may perpetuate the environmental effects not only of the structures, as does the Decisions Version, but also the water take itself. Effectively, it incentivises retaining the status quo.
 - (b) Aratiatia is concerned Meridian's request for enhancement of the scheme to be recognised and provided for if effects are appropriately managed will result in further degradation of the River.
- 26 In relation to point (a) Ms Margaret J Whyte, in her First Statement, suggested two additional alternative wordings for Objective 10 in Appendix 1, the first of which Ms Whyte identifies as her preference². Both

² Ms Whyte's First Statement paragraph 60.

remove any reference to the existing environment. The alternative wordings are:

Objective 10

The national importance of existing hydro-electric generation schemes, including the Manapōuri hydro-electric generation scheme in the Waiau catchment, is provided for, recognised in any resulting flow and level regime, ~~and their structures are considered as part of the existing environment.~~ and opportunities for enhancement of the Manapōuri Power Scheme is provided for where the effects can be appropriately managed.

Or:

Objective 10

The national importance of existing hydro-electric generation schemes, including the Manapōuri hydro-electric generation scheme in the Waiau catchment, is provided for, recognised in any resulting flow and level regime, ~~and their structures are considered as part of the existing environment.~~ and opportunities for enhancement of the Manapōuri Power Scheme is provided for where the effects can be appropriately managed. The existing scheme is a combination of:

- a) the physical elements of the scheme*
- b) The authorisations for and regulatory requirements of the scheme including the Manapōuri and Te Anau Development Act 1963 and the Lake Operating guidelines for levels of Lakes Manapōuri and Te Anau.*
- c) the generation of electricity occurring through a combination of takes, use, damming and diversion of water*
- d) the management of effects.*

- 27 Additionally, Ms Whyte suggested at paragraph 41 of her evidence that she would be comfortable with Objective 10 containing an explicit reference to avoiding overallocation. Ms Whyte provided the following possible wording:

...and allows for enhancement of the scheme where the effects can be appropriately managed and overallocation does not result.

- 28 There are four points in relation to Meridian's appeal on Objective 10 and Ms. Whyte's evidence that I wish to cover:
- (a) The existing environment
 - (b) Definition of the Manapouri Power Scheme
 - (c) The meaning of 'provide for' in the context of Objective 10
 - (d) Enhancement and overallocation

The existing environment

- 29 I agree with Ms Whyte's suggestion to remove all reference to the existing environment from Objective 10, for the reasons outlined in my First Statement. Regardless of Meridian's intentions³ in requesting that the existing environment include the MPS in Objective 10, in my opinion, reference to it within Objective 10 is unnecessary. Further, it risks perpetuating the status quo upon consenting through reducing the consideration of environmental effects.

Definition of the Manapouri Power Scheme

- 30 I do not see it as necessary or helpful to include a definition of the constituent parts of the 'existing scheme' in Objective 10. In my view, a definition should provide clarity without which there is the potential for multiple conflicting interpretations of how a provision should be applied in practice. I don't consider this to be the case in relation to Objective 10.

'Provided for' as used in Objective 10

- 31 I disagree with Ms Whyte's view that the MPS is 'provided for' in Objective 10, and that consequently, Objective 10 provides clarity that the anticipated future is one that contains the MPS⁴.
- 32 Firstly, it is not the MPS itself that Objective 10 recognises and provides for, but its national importance. I consider this an important distinction. The national importance of existing hydro-generation schemes has an intangible quality quite different from the MPS itself, which Ms Whyte defines as including (among other things) the existing concrete structures and water take. In my view, Objective 10 aims to give effect to the NPSREG. The NPSREG seeks to ensure the national importance of

³ Discussed at paragraphs 54 and 55 of Ms Whyte's First Statement.

⁴ Paragraph 57 of Ms Whyte's evidence dated 15 February 2019.

renewable energy generation is given due and explicit consideration through relevant consent processes and it is this sentiment that is echoed in Objective 10. In my opinion, this is quite different from Objective 10 implying any prediction about the future of the MPS. For example, the national importance of the renewable generation of electricity enabled by the MPS could be recognised and provided for through an improved or more efficient MPS, such as one which leaves more water in the river but generates or transmits energy more efficiently.

33 Secondly, it is my understanding that the words 'provide for' have a long-established meaning in the context of the RMA as requiring action on the part of the decision maker. The pSWLP's 'action' in response to the words 'provided for' in Objective 10 is contained within the subordinate Policies and Rules.

34 For completeness, I note that the wording of Objective 10 is different from the wording of what might appear to be the corresponding objective in the RPS. Objective WQUAN.2 of the RPS recognises and provides for the MPS explicitly (as opposed to its national importance) as follows:

Issue WQUAN.2 *There is increasing demand for the finite water resources of Southland and there are conflicts and effects from allocation of water between competing uses, including people's social, economic and cultural needs and the need to protect aquatic and riverine ecosystems and values.*

Objective WQUAN.2 – The efficient allocation and use of water

The allocation and use of Southland's water resources:

(a) is efficient;

(b) recognises and makes provision for the Monowai and nationally significant Manapōuri hydroelectric generation schemes in the Waiau catchment and the resultant modified flows and levels.

Explanation/Principal Reasons *Objective WQUAN.2 guides the use of the region's water resources. Using any available water efficiently (i.e. not wastefully) will enable as wide a section of the regional community as possible to use water. Efficiency can include considerations of technical, dynamic (adjusting the use of*

water over time), allocative and economic efficiency. In the Waiau catchment allocation is dominated by the use of water for hydro-electric generation and the effects of this on the ability of other water users to access water needs to be recognised. The objective has been adopted to address Issue WQUAN.2.

I see Objective WQUAN.2 and Objective 10 as addressing different issues. Objective WQUAN.2 is in relation to water allocation, and appears to address the NPSFM, specifically:

Objective B3 - To improve and maximise the efficient allocation and efficient use of water.

It is my understanding that Environment Southland intends to address issues of water allocation and prioritisation through its limit setting process, rather than through the pSWLP⁵. In my opinion, unlike Objective 10, WQUAN.2 does not address the NPSREG, as the preamble of NPSREG explicitly states that it does not apply to water allocation and prioritisation. Additionally, when read together with the explanation, and in light of Issue WQUAN.2, it seems to me that Objective WQUAN.2 is more about acknowledging the impacts of the MPS water take on the rest of the community in the Waiau Catchment. Arguably, it also points to the inefficiency of the water use associated with the MPS. Arguably if the MPS was clearly the most efficient use of water it would not require specific provision in WQUAN.2(b). Mr Marshall's evidence in chief provides some support for this view⁶.

Enhancement and overallocation

35 Ms. Whyte suggests that Objective 10 be amended to provide for enhancement of the Manapouri Power Scheme⁷.

36 It seems to me from reading Ms. Whyte First Statement that she has identified two interpretations of 'enhancement', put simply:

- (a) Increase of the MPS water take
- (b) Better or more efficient use of the current MPS water take.

⁵ Revised Southland Progressive Implementation Programme, 31.10.2018, and paragraph 131 of Mr McCallum-Clark's evidence in chief.

⁶ Paragraphs 39-42 of Mr. Marshall's evidence in chief.

⁷ Paragraph 39 of Ms. Whyte's First Statement.

I address each of these types of enhancement in detail below, but in summary:

- (a) I do not consider it appropriate to provide for an increase in the MPS water take through Objective 10. Given the Waiau River is at least fully-allocated, and in my opinion over-allocated, in my view using the term “enhancement” in Objective 10 or elsewhere to support an increase in water take is contrary to the NPSFM.
- (b) I consider it unnecessary to explicitly provide for enhancement which would result in better or more efficient use of the current water take. Contingent on any associated environmental effects, consent for such an improvement, if needed, should be easily attained.

Increasing the MPS water take

37 Rule 52A(b) provides for the MPS water take as a non-complying activity if any of the following conditions in Rule 52A(a) cannot be met:

(1) the application is for the replacement of an expiring resource consent pursuant to section 124 of the Act; and

(2) where the replacement consent is for the taking or use of water, the rate of take and volume is not increasing, and the use of water is not changing; and

(3) where the replacement consent is for the taking or use of water, the rate of take and volume complies with any relevant flow and level regimes set out in this Plan.

38 Ms. Whyte notes that any consent involving an additional water take would be challenging to achieve, considering the non-complying status in Rule 52A(b) and the objectives and policies addressing over-allocation of water. I agree that this is likely to be the case under the Decisions Version of the pSWLP, and I consider that this is appropriate.

39 It seems that Ms. Whyte considers that it is appropriate to provide for an increase in the MPS water take under the umbrella of ‘enhancement’ in Objective 10, in part on the basis of Policy WQUAN.3 of the RPS:

Policy WQUAN.3 – Regional plans

Recognise the finite nature of water resources and catchments and identify management regimes in accordance with the National

Policy Statement for Freshwater Management 2014 that:

...

(h) recognise the need for availability of water to enable the Monowai and nationally significant Manapouri hydro-electricity power generation activities in the Waiau catchment to continue, and be enhanced where over-allocation will not occur;

- 40 I note the following in relation to Policy WQUAN.3 of the RPS:
- (a) Neither 'enhanced' nor 'enhancement' is defined in the RPS, so it is unclear whether an increase in the water take was envisaged.
 - (b) In my view Policy WQUAN.3 requires the management regime (in this instance the pSWLP) to acknowledge that the MPS needs water, a lesser requirement than 'provided for'.
 - (c) The chapeau of Policy WQUAN.3 explicitly requires that Policy WQUAN.3 be implemented in accordance with the NPSFM. I consider that suggests reference back to the NPSFM is required when designing management regimes under Policy WQUAN.3, such as the pSWLP.

- 41 In this instance, I consider the key provisions of the NPSFM are Objective B2 and Policies B5 and B6, which relate to over-allocation, as follows:

Objective B2

To avoid any further over-allocation of fresh water and phase out existing over-allocation.

Policy B5

By every regional council ensuring that no decision will likely result in future over-allocation – including managing fresh water so that the aggregate of all amounts of fresh water in a freshwater management unit that are authorised to be taken, used, dammed or diverted does not over-allocate the water in the freshwater management unit.

Policy B6

By every regional council setting a defined timeframe and methods in regional plans by which overallocation must be phased out, including by reviewing water permits and consents to help ensure the total amount of water allocated in the freshwater management unit is reduced to the level set to give effect to Policy B1.

- 42 In applying these provisions to the Waiau River, including drafting Objective 10, it is useful to understand whether the Waiau is over-allocated or fully-allocated. I am not aware of any suggestion that the Waiau currently has allocation remaining.
- 43 Ms. Whyte asserts that the Waiau is fully-allocated⁸. However, it is my understanding that there is uncertainty as to whether the Waiau Catchment is fully-allocated or over-allocated. The Hearing Panel notes in its decision document⁹ that it was advised that no waterbody in Southland is currently over-allocated, and that the Waiau is fully-allocated. Further, the preamble of the pSWLP (page 16) states that the Waiau Catchment is fully-allocated as a result of the MPS, and one of the supporting documents for the s32 Report¹⁰ identifies the Waiau as fully-allocated but doesn't elaborate further. However, the S42A Author states that the Waiau Catchment¹¹ is over-allocated. Further, Objective WQUAN.2 of the RPS suggests that there is at least the possibility of existing over-allocation, and arguably suggests that the Waiau Catchment is an example of this:

Policy WQUAN.2 – Overallocation

Avoid over-allocation of surface water and groundwater, and resolve any historical instances of overallocation, while recognising the special provisions made for the Waiau catchment.

- 44 Further, I understand from Mr Marshall's evidence in chief that he made a request under the Local Government Official Information and Meetings Act 1987 in an attempt to understand whether the Waiau is over-allocated or fully-allocated. I understand that Environment Southland was unable to provide any substantive advice or analysis to support either position.
- 45 Over-allocation is defined under the NPSFM as:

“Over-allocation” is the situation where the resource:

a) has been allocated to users beyond a limit; or

⁸ Paragraph 29 of Ms. Whyte's First Statement.

⁹ Report and Recommendations of the Hearing Panel on the proposed Southland Water and Land Plan.

¹⁰ A memorandum entitled Water Allocation in Southland, dated 11.2.2016.

¹¹ Paragraph 8.287 of the S42A report.

b) is being used to a point where a freshwater objective is no longer being met.

- 46 Given that Environment Southland has not yet set limits or developed regional freshwater objectives, the relevant freshwater objectives are the compulsory freshwater objectives outlined in Appendix 1 of the NPSFM, being:

Ecosystem health – *The freshwater management unit supports a healthy ecosystem appropriate to that freshwater body type (river, lake, wetland, or aquifer). In a healthy freshwater ecosystem ecological processes are maintained, there is a range and diversity of indigenous flora and fauna, and there is resilience to change.*

Matters to take into account for a healthy freshwater ecosystem include the management of adverse effects on flora and fauna of contaminants, changes in freshwater chemistry, excessive nutrients, algal blooms, high sediment levels, high temperatures, low oxygen, invasive species, and changes in flow regime. Other matters to take into account include the essential habitat needs of flora and fauna and the connections between water bodies.

Human health for recreation – *In a healthy waterbody, people are able to connect with the water through a range of activities such as swimming, waka, boating, fishing, mahinga kai and water-skiing, in a range of different flows. Matters to take into account for a healthy waterbody for human use include pathogens, clarity, deposited sediment, plant growth (from macrophytes to periphyton to phytoplankton), cyanobacteria and other toxicants.*

- 47 Environment Southland’s ongoing Recreational Water Quality Monitoring is relevant to the second of these compulsory objectives. This summer the programme found toxic cyanobacteria in the Waiau River at Tuatapere and warned people and animals to avoid contact with the Waiau River¹². As a result, I choose not to take my 2-year-old and small dog swimming in the Waiau River this summer. I find it difficult to reconcile the presence of cyanobacteria with anything other than over-allocation. More broadly,

¹² Environment Southland News and Notices: <https://www.es.govt.nz/council/news-and-notice/Pages/default.aspx?newsItem=id:24dgsnt0g17q9sn9ueos> accessed 7 March 2019.

in my opinion the changes in the river's flows and ecology that are described by Mr Skerrett¹³, Dr Kitson¹⁴, Ms Cain¹⁵ and Mr Marshall¹⁶ and that have occurred since the MPS was implemented are of a scale and nature that in my opinion demonstrate that the water has been over-allocated.

48 However, it appears that, at an official level more work is required to determine whether the Waiau River is fully- or over-allocated. I understand from Mr. Marshall's evidence in chief that Environment Southland is developing a programme to understand whether the Waiau River meets the compulsory objectives under the NPSFM, particularly in relation to hydrology and ecology¹⁷. As this programme is in its infancy, clarity about whether the Waiau is fully- or over-allocated may not be available to inform these proceedings.

49 With the current uncertainty in mind, the guidance from the Ministry for the Environment on implementing the NPSFM¹⁸, while non-statutory, may provide some useful advice. The guidance suggests that, the words 'will likely result' in Policy B5 of the NPSFM imply a precautionary approach should be taken to allocation decisions, including plan provisions¹⁹.

50 In light of the uncertainty as to whether the Waiau is fully- or over-allocated, Objective B2 and Policies B5 and B6 of the NPSFM, and the accepted meaning of avoid being to prohibit²⁰ in my opinion it is inappropriate to explicitly provide for an increase in the MPS water take through Objective 10.

Better or more efficient use of the current MPS water take

51 It appears that Ms. Whyte considers that Objective 10 should refer to enhancement of the MPS to provide what she describes as the 'opportunity to make better or more efficient use of the water currently

¹³ Paragraph 80 of Mr Skerrett's evidence dated 15 February 2019.

¹⁴ Paragraphs 141 to 144 of Dr Kitson's evidence dated 15 February 2019.

¹⁵ Paragraph 69 of Ms Cain's evidence dated 15 February 2019.

¹⁶ Addressed throughout Mr Marshall's evidence dated 15 February 2019, but particularly paragraphs 25 to 47.

¹⁷ Paragraph 24 of Mr. Marshall's evidence in chief.

¹⁸ A Guide to the National Policy Statement for Freshwater Management 2014 (as amended 2017).

¹⁹ Page 58 and 59 of A Guide to the National Policy Statement for Freshwater Management 2014 (as amended 2017).

²⁰ Environmental Defence Society Inc v New Zealand King Salmon Co Ltd [2014] NZSC 38, [2014] 1 NZLR 593.

available to Meridian Energy under its resource consents for generation purposes’.

52 Ms. Whyte considers that Objective 9B adequately addresses the national importance of renewable energy generation activities. I agree and consider that Objective 9B also adequately addresses enhancement of the MPS and other infrastructure, as it enables both development and upgrading. Objective 9B reads:

Objective 9B

The effective development, operation, maintenance and upgrading of Southland’s regionally significant, nationally significant and critical infrastructure is enabled.

53 Additionally, it seems to me that a ‘better or more efficient’ use of the current MPS water take should also be able to demonstrate consistency with Objective 7 of the pSWLP, which reads:

Objective 7

Any further over-allocation of freshwater (water quality and quantity) is avoided and any existing over-allocation is phased out in accordance with freshwater objectives, freshwater quality limits and timeframes established under Freshwater Management Unit processes.

54 I consider that Objective 9B and Objective 7 adequately provide for an instance where a ‘better or more efficient’ use of the current MPS water take requires resource consent. Depending on the effects of such an enhancement, attaining consent should be a straightforward exercise. As such, I do not consider it necessary to provide for enhancement explicitly within Objective 10.

DATED this 22nd day of March 2019

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Claire Jordan