

10 September 2018

Refer Riki Donnelly / Georgia Woodward

The Registrar
Environment Court
CHRISTCHURCH

FOR: Christine McKee

**ARATIATIA LIVESTOCK LIMITED & OTHERS v SOUTHLAND REGIONAL COUNCIL
OUR REFERENCE: 170461/1**

1. Please find **enclosed** for filing in respect of the above matter.
 - 1.1 Submissions in response; and
 - 1.2 Second Affidavit of Paul Marshall
2. If you have any queries please do not hesitate to contact the writer.

Yours faithfully
PRESTON RUSSELL LAW



Riki Donnelly / Georgia Woodward
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**IN THE ENVIRONMENT COURT
AT INVERCARGILL**

I MUA I TE KOOTI TAIAO O AOTEAROA

IN THE MATTER Of the Resource Management Act
1991

AND of appeals under clause 14 of the
First Schedule of the Act

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

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

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

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

**MEMORANDUM OF COUNSEL SEEKING FURTHER
DIRECTIONS**

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INVERCARGILL**

BETWEEN

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

Appellants

AND

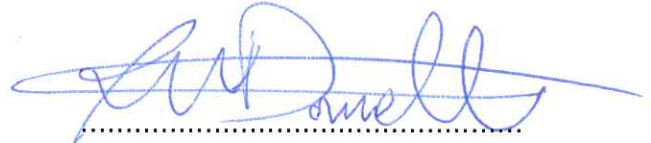
**SOUTHLAND REGIONAL
COUNCIL**

Respondent

MAY IT PLEASE YOUR HONOUR:

1. In accordance with [3](e) of Judge Hassan's Minute dated 20 August 2018 the Waiau River Care Group seeks leave:
 - 1.1 to file submissions in response to those of Meridian Energy Limited dated 7 September 2018; and
 - 1.2 file a second affidavit from Paul David Marshall, clarifying matters in response to the submissions of Meridian Energy Limited.
- 2 Filed herein is a confirmed, but unsworn, copy of the proposed second affidavit of Paul David Marshall. Also filed herein are the proposed Waiau Rivercare Group submissions in response.
- 3 If leave is granted by the Court to file the two documents the affidavit of Mr Marshall will be sworn and filed. Once this is done, the Waiau Rivercare Group does not seek a hearing of the matter, and respectfully asks the Court for a determination on the papers.

DATED at Invercargill this 10th day of September 2018



Riki Donnelly
Counsel for the Waiau Rivercare Group

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

SECOND AFFIDAVIT OF PAUL DAVID MARSHALL

Sworn this day of 2018

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BETWEEN

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

Appellants

AND

SOUTHLAND REGIONAL COUNCIL

Respondent

I, **PAUL DAVID MARSHALL** of Tuatapere, Farmer, swear:

Membership of Waiau Rivercare Group (“WRG”).

1. The WRG comprises a committee, who were elected at the group’s inaugural meeting, and a broader membership of 47 people who receive correspondence and notice of meetings from the WRG Committee. The WRG Committee comprises of:
 - 1.1. Paul Marshall – Farmer & Co – Chair.
 - 1.2. Peter Horrell – Farmer & Co – Chair.
 - 1.3. Glenys Steele – Tuatapere resident and white baiter. Ms Steele and her husband, Kerry Steele, are the authors of one of the support letters that accompanied the WRG’s s 274 notices.
 - 1.4. Nessa Legg – farmer and environment consultant.
 - 1.5. Stephen Crack – Tuatapere Ward Community Board representative and local business owner.
 - 1.6. Tassilo Abbott – youth representative and lifestyle resident at the mouth of the Waiau River.
 - 1.7. Claire Jordan – co-opted at a committee meeting to replace Tanya Copland (who moved away from the district). Ms Jordan is a planner.

Aratiatia Livestock Limited

2. Contrary to the factual assertion made in the submissions for Meridian Energy Limited, I am not a 100 percent owner of Aratiatia Lifestyle Limited. I personally only hold less than 1

percent of the company's shares, although I accept I am a trustee of the Marshall Family Trust which is the majority shareholder.

- 3. Aratiatia Livestock Limited is not a member of the WRG.

The particular interest in a stretch of the lower Waiau River

- 4. The WRG does not have a particular interest in the entire length of the lower Waiau River from Lake Manapouri to the sea. The stretch of particular interest to the WRG commences at the Manapouri Lake Control Structure, which is approximately 10 kilometres downstream of the point at which the lower Waiau River leaves Lake Manapouri (immediately downstream of the lower Waiau River confluents with the Mararoa River).

SWORN at Invercargill by the said)
PAUL DAVID MARSHALL)
This day of 2018 before)
me:) _____

.....
[]
**A Solicitor of the High Court of New Zealand/Registrar/
Deputy Registrar**

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(ENV-2018-CHC-47)

**WAI AU RIVER CARE GROUP SECTION 274
SUBMISSIONS IN RESPONSE**

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BETWEEN

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AND

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COUNCIL**

REGIONAL

Respondent

MAY IT PLEASE YOUR HONOUR:

The Waiau Rivercare Group's Particular Interest

1. As set out in the proposed second affidavit of Paul David Marshall, the particular interest of the Waiau Rivercare Group ("WRG") is not the entire length of the lower Waiau River.
2. The particular area of interest is a stretch of the lower Waiau River commencing at the Manapouri Lake Control Structure ("MLC"), which is some 10 kilometres downstream of the point at which the lower Waiau River leaves Lake Manapouri. Whilst this stretch of the river is large, it is nonetheless a particular stretch of the river.

The Composition of the WRG

3. The composition of the WRG is set out in the proposed second affidavit of Paul Marshall.

An Interest greater than the General Public

4. In counsel's submission there is a difference between the public generally and the community referred to by Mr Marshall. The affected community, referred to by Mr Marshall, are those people residing in the vicinity of the lower Waiau River, downstream of the MLC. Although the community are not all members of the WRG that does not mean the effects on the community are felt by the public generally.
5. An aspiring section 274 party must have an interest greater than the general public, but need not have a unique interest. The effects listed in the 31 August 2018 affidavit of Mr Marshall relate to the operation of the Manapouri Power Scheme ("MPS"), as they are felt downstream of the MLC, and are inextricably linked to the proceedings. In counsel's submission the WRG, as a representative of its members located in the vicinity of this stretch of the lower Waiau River, must have a specific interest in the proceedings.
6. There is a distinction, in counsel's submission, between availability of information and an awareness of it. As set out in Mr Marshall's affidavit dated 31 August 2018, there is a distinction between public awareness of the management and effects of the MPS on the Lakes (Manapouri and Te Anau), and public awareness of the impacts of the MPS downstream of the MLC structure. With the exception of the Waiau Working Party, whose work is not widely known, the examples listed by Meridian are not specific to the effects of the MPS downstream of the MLC structure.

WRG's interest not Aratiatia's Livestock Limited's Interest

7. As set out in the proposed second affidavit of Mr Marshall he is not, as asserted by Meridian Energy Limited ("MEL"), the 100 percent owner of Aratiatia Livestock Limited ("ALL") with his wife. While, counsel accepts Mr Marshall's involvement in ALL, this has no bearing on whether the WRG, as a whole, has an interest greater than the public generally.¹

Relationship between Paul Marshall's disadvantage and WRG's interest

8. The proposed Southland Water and Land Plan ("pSWLP"), at page 16 states:

"The Waiau catchment is fully allocated as a result of the Manapouri hydro-electric generation scheme."

9. The consumptive nature of the MPS water take means that Rule 52A is allocative. As the MPS water take is responsible for the fully allocated status of the Waiau Catchment, Rule 52A represents a significant disadvantage to potential users of water in the Waiau catchment.
10. In the WRG's letter to the Southland Regional Council dated 9 October 2017, the WRG outlined its primary focus as improving the health of the lower Waiau River, and its concern about the impacts of the MPS on the environment, including the community, downstream of the MLC. As such, in counsel's submission, the disadvantage outlined in Mr Marshall's 31 August 2018 affidavit, about the ability to access and manage water in this stretch of river, as a result of the proceedings is within the specific interests of the WRG.

Disadvantage to the WRG - Rule 52A

11. Counsel submits that the requirement for public notification in Rule 52A does not provide an opportunity for meaningful participation by the WRG. The discretion of the decision maker is too constrained by Rule 52A to meaningfully address the concerns of the WRG. The controlled activity status of Rule 52A undermines the ability of the decision maker to address the effects of the MPS water take below the MLC structure through conditions.² Consequently, Rule 52A does not provide the WRG meaningful involvement in a consent application. This gives rise

¹ See *Lindsay v Dunedin City Council* [2013] NZEnvC 8.

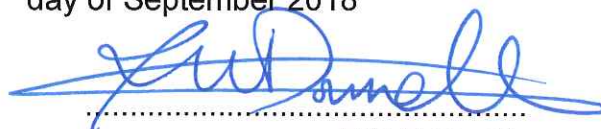
² See Officer's Reply Report on the Decision on the proposed Southland Water and Land Plan at paragraphs 4.303 and 4.304.

to a disadvantage, as a result of the proceedings, which is not too remote.

Disadvantage to the WRG - Objective 10 & Future Limit Setting Processes

12. If Objective 10 remains as notified, the decision maker on consent applications under Rule 52A would be required to consider the existing environment as including the hydro-generation infrastructure.
13. If, however, Objective 10 is amended as sought by MEL, the decision maker will be required to consider the existing environment as including both the hydro-generation infrastructure and MPS water take. Section 104(1)(a) of the Resource Management Act 1991 requires the assessment of the effects of an activity on the existing environment. If the existing environment includes the hydro-generation infrastructure (and potentially the water take) the downstream effects of this will primarily be results from the existing environment itself, and therefore excluded from consideration in assessing an application.
14. Given the WRG has an interest in, and is affected by, the impact of the MPS downstream of the MLC, both the current definition of the existing environment contained in Objective 10, and that proposed by MEL, represent a disadvantage to the WRG as a result of the proceedings.
15. Finally, counsel submits that the general ability for any party to submit on future Schedule 1 processes does not remove the disadvantage felt by the WRG as a result of the current proceedings.

DATED at Invercargill this 10th day of September 2018



Riki Donnelly
Counsel for the Waiau Rivercare Group