

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

UNDER the Resource Management Act
1991

IN THE MATTER 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)

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**STATEMENT OF EVIDENCE OF
PETER JAMES HORRELL FOR THE WAIAU
RIVERCARE GROUP INCORPORATED
19 August 2022**

Judicial Officer: Judge Borthwick

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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)

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

Appellants

AND

**SOUTHLAND
COUNCIL**

REGIONAL

Respondent

Introduction

1. My full name is Peter James Horrell.

My Lived Experience and Declaration of Interest

2. This evidence is not expert evidence. However, I have spent over 50 years living in the Waiau Catchment and consequently have a significant connection to the Waiau River, the catchment, and the community who calls it home. This experience informs my evidence.
3. The Horrell family arrived in Clifden in 1895 and family members have farmed properties in the Tuatapere district since then. My wife and I first farmed on our own account on a sheep farm at Te Wae Wae (south of Tuatapere). From 1995 until 14 March 2019, we farmed sheep on a property at Clifden situated on the west bank of the Waiau River.
4. I was a founding member of the Waiau River Liaison Committee (**WRLC**) in 1998. The WRLC was created by the 1996 consent process for Electricity Corporation of New Zealand (**ECNZ**). I stood down as Chairman at the WRLC's 2019 AGM.
5. I have been the WRLC's representative on the Waiau Working Party (**WWP**) for many years and continue today on the WWP as a representative for the Waiau Rivercare Group Inc. (**WRG**). I am a committee member of the WRG, and co-chaired the WRG from 2017 to 2021.

The Waiau Rivercare Group

6. The WRG was established in 2017 and incorporated in 2019. It is an environmental group focused on enhancing the hauora (wellbeing) of the Waiau River and the communities it sustains. The WRG is a s 274 party to these proceedings.
7. The WRG has 420 members who either live within the Waiau catchment, or have a strong connection to the Waiau River.

Scope of evidence

8. My evidence addresses:

- a. Rule 52A of the proposed Southland Water and Land Plan (**the Plan**);
 - b. The impact of the MPS on the Tuatapere community; and
 - c. The Southland Regional Council's (**SRC**) consent compliance regime.
9. In my Topic A evidence to the Court, dated 22 March 2019, I outlined many of the effects the MPS has had on the environment, including in and around our community. Further, Paul Marshall addresses the effects of the MPS in his evidence dated 29 July 2022. I am in agreement with Mr Marshall's evidence which details in depth the same concerns shared by the WRG.

Concerns with the Waiau Provisions

10. Rule 52A as drafted in the decision version of the Plan appears to restrict the SRC's ability to mitigate both current and future challenges to the Waiau River's ecosystem health.
11. It also appears to restrict the ability of the community to voice its aspirations for the Waiau River in the future consenting process of the MPS.
12. My view is that the form of Rule 52A eventually adopted must be sufficiently flexible to enable the recommendations of the Regional Forum to be realised. To do otherwise would prevent the values and objectives for freshwater management of the Waiau Community from being realised.

Oral History Project

13. When the WRG was permitted to join the appeals by Judge Hassan, his Honour said:¹

[34] I am satisfied that farmer members of the WRG have a sufficiently direct interest in the proceedings the WRG seeks to join. Related to that, I am also satisfied that the WRG is an appropriately representative body of those members' interests. ... there is a close correlation between the stated aspirations of the WRG of improving the health of the

¹ *Aratiatia Livestock Ltd v Southland Regional Council* [2018] NZEnvC 218. The emphasis added is mine.

Lower Waiau River and the fact that farmer members depend upon the river resource's health for the success of their farming businesses...

14. The WRG is not just a group of farmer members. It is a representative body of those who live in the community surrounding the Lower Waiau River (and supporters of that community). And as a representative body, the WRG has looked at ways we can best present the views of our community to the Court. This has led to the Oral History Project (**OHP**). This forms part of the evidence I wish to present to the Court in relation to the three provisions in Tranche 3 which relate specifically to the operation of the MPS and the Lower Waiau. These are Policy 26, Rule 52A, and Appendix E (**the Waiau Provisions**).
15. The interviews filmed were recorded in November 2018 and all those speaking have been contacted by phone and have given their approval for the WRG to present this footage to the Court. As Roger Sutton has passed away, his son Mark approved the portion of the film relating to him.
16. Over the last four years, more old local film has been digitised and some other clips have been used and added to the film.
17. I seek to produce this film to the Court to express what was, what has been lost, and of our hopes for the future.

Produce exhibit – Oral History Project Film

18. Also as part of my evidence, I would like to briefly outline some of the consequences of the operation of the MPS, as detailed in the film. These include:
 - a. The lowering of the gates of the Mararoa Weir in 1972, with no minimum flow at all for fish and eel migration, and the devastation of the sudden beheading of this mighty river. The despondency felt by those who watched the death of everything directly below the Mararoa Weir (until the point where the tributaries began to flow into the River);
 - b. The disappointment at the unforeseen loss of traditional food gathering sources at

- Bluecliff beach, Te Wae Wae Bay, as well as the Waiau River itself (including its backwashes and lagoons), and the cultural significance of the Waiau River and the history behind the Takitimu mountains;
- c. The loss of the sand and the Toheroa at Bluecliff Beach is a disappointment for many in the wider community. It was entirely unexpected and is linked to the loss of the flow and the blocking of the Waiau mouth (with additional consequences for those who were flooded as a result of this);
 - d. The lack of planning for water for Tuatapere and the farms around the main stem of the Waiau River, both for drinking water and stock water, as the water table dropped and the bores ran dry; and
 - e. The requirement for 130 km of riverside fence when the river retreated.
19. This is a history of change for the community who were left to deal with the unplanned consequences of the gates being closed at the Mararoa Weir in 1972, and their journey to have their grievances heard. Other key points that are discussed include:
- a. After 24 years of operation, the MPS was consented in 1996 and a minimum flow finally put in place. This was primarily based on the requirements of fish passage and the eel transfer program;
 - b. The rationale around the diversion of heavily sedimented water from the Mararoa away from the lake and into the Waiau, and the lack of alpine lake water to cool and flush the system;
 - c. The construction of the second tailrace tunnel from 1998 to 2002, and the extra discharge into Doubtful Sound in 2010, means the MPS is now different from when it was consented in 1996. There is a need to understand the cumulative effects of all the changes since 1996, with up-to-date science to support reviewed minimum flow requirements and a revised flow regime;
 - d. The development of the voluntary supplementary flushing flow regime between the WWP and Meridian Energy, and the need to make this mandatory;

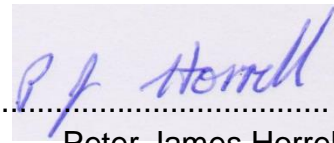
- e. The bio-security border breach further degrading our already fragile river with didymo, and the loss of our amenity values of swimming and fishing; and
- f. The unforeseen consequences of long periods in minimum flow during droughts (and the resultant algae blooms) leading to the community's loss of the aesthetic value of their river has been the catalyst to advocate for providing the SRC with the regulatory flexibility to effectively manage the effects of the MPS through re consenting.

Conclusion

- 20. The Waiau was once the second largest river in New Zealand, and the swiftest. It was steep and wild, characterised by whirlpools and the sound of rocks being rolled along the riverbed.
- 21. The sheer volume averaged around 450 cumecs. However, the voice of the river was silenced by the diversion.
- 22. The WRG and its members have undertaken huge efforts and expended vast time and resources to ensure there is due consideration of the health of the river and its broader environment, including the community, in regulatory processes such as consents, compliance, and limit setting. Of particular concern to the WRG is the change to a controlled activity status in Rule 52A for re consenting the MPS. This appears to restrict both the community's involvement and SRC's ability to manage the adverse effects of the MPS.
- 23. Since 1996, a number of things have occurred, unforeseen by our community, including:
 - a. ECNZ has been partially privatised into Meridian Energy;
 - b. A second tailrace tunnel was constructed;
 - c. An increased discharge into Doubtful Sound;
 - d. The arrival of the invasive algae didymo has compromised the Waiau River's ecological health, and amenity values of swimability and fishing;
 - e. The stark reality of climate change, including two droughts back-to-back, without flushing flows,

seeing our already stressed ecosystem suffer;
and

- f. An accelerated loss of the sand on Bluecliffs beach.
24. Our community did not anticipate these things in the lead up to the 1996 resource consent, and yet all have happened under a much more stringent regulatory regime than the proposed Southland Water and Land Plan.
25. The Plan provisions should not restrict the ability to better understand and manage the ecological status of the waters of the Waiau Catchment, and the permanent and ongoing effects of the loss of water to the Lower Waiau River.
26. Maximum planning flexibility is required and can only be achieved if the future resource consent process associated with the MPS takes place under a discretionary status.
27. The voice of the Waiau River must be heard.



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Peter James Horrell
19 August 2022