

Before the Board of Inquiry

under: the Resource Management Act 1991

in the matter of: a submission to the Board of Inquiry concerning the
Proposed National Policy Statement for Freshwater
Management

between: **Meridian Energy Limited**
(Submitter number 108 and Further Submitter number
19)
Submitter

Statement of evidence in reply of Sarah Margaret Dawson

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STATEMENT OF EVIDENCE IN REPLY OF SARAH MARGARET DAWSON

INTRODUCTION

- 1 My full name is Sarah Margaret Dawson and I have the qualifications and experience described in my Evidence in Chief (*EIC*), dated 3 June 2009. I repeat the confirmation given in that statement that I have read and agree to comply with the Code of Conduct for Expert Witnesses.
- 2 In this statement of evidence I respond to the expert evidence of other submitters on the Proposed National Policy Statement for Freshwater Management (*Proposed NPS*).
- 3 The fact that this statement in reply does not respond to every matter raised in the statements of other experts within my area of expertise, or every expert witness raising those matters, should not be taken as acceptance of the matters raised. Rather, I rely on my EIC and this reply statement to set out my opinion on what I consider are the key issues for the Board in considering the provisions of the Proposed NPS.

SCOPE OF EVIDENCE

- 4 My evidence will consider the following statements of evidence:
 - 4.1 Chris Hansen, who appears for Hurunui Water Project Limited;
 - 4.2 Elizabeth Alexandra Coleridge Pearson, who appears for Christchurch City Council;
 - 4.3 Mark Bulpitt Chrisp, who appears for Contact Energy Limited;
 - 4.4 Bridgette Maree Malcon, who appears for TrustPower Limited;
 - 4.5 Maree Jocelyn Drury, who appears for Solid Energy New Zealand Limited; and
 - 4.6 Wayne John Russell, who appears for Newmont Waihi Gold Limited.

CHRIS HANSEN

- 5 In paragraph 9 of Mr Hansen's evidence, he states that "*the Proposed NPS requires clearer direction on the status of Freshwater*

Resources that have values of national priority; the criteria and process of identifying these values; clearer guidance on priorities for freshwater enhancement and management; and guidance on water quality indicators.” In paragraph 11, he goes on to say that *“Additional guidance should also be provided on the setting of environmental flows, allocation limits and priorities in the allocation regime. ... additional Central Government guidance is appropriate to ensure a consistent approach”*. Mr Hansen develops these themes through his evidence.

- 6 Mr Hansen is not specific as to the amendments he considers should be made to the Proposed NPS to give effect to his comments regarding additional national guidance. It is, therefore, difficult to understand from his evidence exactly what relief is being sought. However, this proposed approach is contrary to the submission and evidence from Meridian Energy Limited (*Meridian*) which consider that key and important values of freshwater resources should be identified at a catchment or sub-regional level.

- 7 In paragraph 22 of my EIC, I set out my opinion and justification as to why catchment-specific allocations and preferences between competing freshwater uses should be developed at a catchment or sub-regional level, with the Proposed NPS providing guidance as to the key uses that are to be specifically recognised and provided for. In paragraph 31, I refer to the need for policy statements and plans to establish at a regional level the outcomes and direction for freshwater management relating to both environmental flows and the level of water for allocation and use. I support the inclusion in Objective 6 of a detailed specification of the matters Councils are to have regard to when undertaking their own catchment-specific freshwater management planning. In paragraph 36 of my EIC, I also set out my support for the Proposed NPS specifying the freshwater values regional councils should identify, and requiring regional and district councils to set standards, including those matters councils should address in doing so. I elaborate on the need for catchment-specific approaches to freshwater management in paragraphs 41 to 45 of my EIC.

- 8 Meridian has sought alternative relief to that sought by Mr Hansen. Meridian’s submission seeks to strengthen the Proposed NPS in directing regional and district councils to carry out their functions and make the necessary judgements in preparing their policy statements and plans. As discussed in my EIC, I consider the amendments sought by Meridian are appropriate. I consider the specification of national outcomes sought by Mr Hansen to be

inappropriate and incompatible with the detailed judgements I consider need to be made at catchment or sub-regional level in order to achieve sustainable management of freshwater resources.

- 9 In paragraph 17 of his evidence, Mr Hansen notes that the lack of clear definition of key terms within the Proposed NPS would cause confusion and dispute over interpretation and implementation of its objectives. He then goes on to support submissions that seek better definitions of key terms, including "*Outstanding Freshwater Resources*" and "*Notable Values*".
- 10 As set out in paragraphs 15.4 and 39 to 40 of my EIC, I agree that the Proposed NPS includes some new, complex terms and definitions, which are related to, but different from, terms employed in the Resource Management Act 1991 (*RMA or Act*). I agree with Mr Hansen that this is likely to lead to confusion and require case law to define, with resultant costs, inefficiencies and delays in implementation. However, unlike Mr Hansen, I do not consider that further definition of these confusing terms would assist. In order to avoid the need for the introduction and interpretation of a plethora of new terms through the Proposed NPS, I support the amendments sought by Meridian to Policies 1, 4, 5 and the definitions of certain terms. These seek, instead, to direct policy statements and plans to recognise and provide for the values of freshwater resources set out in section 6 and 7 of the Act, the meanings of which have already been determined through case law.

ELIZABETH PEARSON

- 11 In paragraphs 9(b) and 66 of Ms Pearson's evidence, she suggests that the Proposed NPS should include "*a precautionary approach to consumptive use of freshwater, particularly where decisions are made based on uncertain information*". She does not elaborate on the reasons for this, other than to say that such an approach is contained in the proposed New Zealand Coastal Policy Statement and she considers a similar approach is warranted in relation to freshwater. Nor does she articulate specific relief to give effect to her recommendations.
- 12 I disagree with Ms Pearson that such a policy is required in the Proposed NPS. The Proposed NPS is focussed on directing Councils to undertake detailed evaluation of the values of freshwater resources, to develop suites of objectives, policies, rules and standards for their management, and to carefully apply these when considering resource consents, designations and review of

conditions. In my opinion, the Proposed NPS sets a direction for Councils that would require them to obtain information about freshwater resources, and then to establish a planning framework for their regions and districts that should reflect the level of certainty about the resources, their values and the effects of their allocation and use. Such a planning framework is to include Water Quality Standards, Environmental Flows and Levels, and, if Meridian's submission is accepted, Water Allocation Levels.

- 13 Having required each Council to establish a specific planning policy and consenting framework for freshwater management, I consider it is unnecessary for the Proposed NPS to also include an over-riding directive to be precautionary. Furthermore, the Act already includes mechanisms to enable decision making in circumstances where there is a lack of, or uncertain, information. In this respect, decision makers can grant consents for short durations, require baseline and effects monitoring as part of consent conditions, require staggered implementation of activities and undertake consent reviews under section 128 of the Act to address unforeseen environmental effects. In my opinion, a policy in the Proposed NPS would provide limited, and unnecessary, additional direction on these matters.
- 14 In paragraph 63 of her evidence, Ms Pearson states that the Proposed NPS contains no direction on managing cumulative effects and that the inclusion of a policy on cumulative effects would support local Councils efforts in avoiding the impact of cumulative effects on water quality. In paragraph 64 of my EIC, I have discussed the requests of some submitters to include provisions regarding the management of cumulative effects in the Proposed NPS. As I state in that paragraph, I consider the Proposed NPS already includes provisions which would require cumulative effects to be addressed (such as the setting of Freshwater Quality Standards and Environmental Flows and Levels). I consider the provisions already contained in the Proposed NPS will allow these issues to be considered. As I have explained in paragraph 64 of my EIC, I do not consider it is appropriate for a direction about the level at which cumulative effects are to be managed, to be set out in the Proposed NPS for all freshwater resources.
- 15 Ms Pearson, at paragraph 83 of her evidence, outlines the preference of Christchurch City Council that priority be accorded to *"the reasonably foreseeable community water supply needs over competing demands"*. In paragraph 65 of my EIC, I give my opinion in relation to several of the submissions from council organisations

that make such a request. I conclude by saying that I consider decisions as to the specific preferences for water allocation to different types of water use are catchment and sub-region specific, and I do not consider this level of specificity should be directed at a national level through a National Policy Statement.

MARK CHRISP

- 16 Mr Chrisp considers that the Proposed NPS should provide direct guidance to Councils as to the values or outcomes that should be given weight in freshwater management from a national perspective. In paragraph 9 of his evidence, he states that *"The Proposed NPS should be a high level policy document providing guidance to decision makers as to the outcomes which are important from a national perspective, rather than being a prescriptive formula for each regional council to address freshwater management issues on a region by region basis"*. In paragraph 15, he states that the Proposed NPS should *"provide some leadership on how resources should be managed in an unequivocal manner in accordance with a national set of priorities"*.
- 17 Mr Chrisp elaborates on this matter further in his evidence, however, again, it is difficult to understand from his evidence exactly what relief is being sought. Whilst I agree that the role of the Proposed NPS is to provide national level guidance, Mr Chrisp's request for specific priorities to be set at a national level is contrary to the submission and evidence from Meridian. I support the Proposed NPS including direction to Councils as to the range of water-use activities which should be considered when developing policy statements and plans (such as Meridian's requested additions to Objective 1). I also support the inclusion in the Proposed NPS of direction regarding key preferences that must be considered by Councils, such as those contained in proposed Policy 4 (including Meridian's requested amendments to that policy) and Meridian's requested additions to Objective 5. However, as I discussed in relation to the evidence of Mr Hansen, I consider that key and important values of freshwater resources need to be identified at a catchment or sub-regional level.
- 18 As I have stated above, I consider the specification of national outcomes to be incompatible with the particular and detailed judgements that I consider need to be made at catchment or sub-regional level in order to achieve the sustainable management of freshwater resources.

- 19 Mr Chrisp also refers to the difficulties with undefined terms in the Proposed NPS. I agree with this, but reiterate my opinion that these terms should be deleted and replaced with clearer, well-established terms directly related to sections 6 and 7 of the Act, rather than further defining these terms.
- 20 In paragraphs 17 – 22 and 23-27 of his evidence, Mr Chrisp gives his opinion that the Proposed NPS provides inadequate recognition of the economic value of freshwater, including for renewable electricity generation. This is supported by Meridian's submission, which seeks amendments to Objectives 1 and 6 (Objective 5 in Meridian's submission) and Policy 4 to specify the range of economic uses and benefits of freshwater that should be recognised in freshwater management planning, including the needs of, and benefits to be derived from, the use and development of freshwater resources for renewable electricity generation.
- 21 Mr Chrisp discusses the effect of the Proposed NPS on existing resource consents in paragraphs 17 – 19 of his evidence. This is also supported by Meridian's submission which seeks a new provision as Objective 5(h) (proposed Objective 6) to reflect the entitlements of existing consent holders and the value of existing consents. Meridian also supports Policy 4(d) which recognises the contribution and entitlements of existing uses of freshwater resources, and the contribution of existing economic investment, to regional and national social, economic and cultural wellbeing.

BRIDGETTE MALCON AND OTHERS

- 22 Ms Malcon is supportive of Objective 1 of the Proposed NPS (her paragraphs 9 and 10). I note that Meridian seeks substantial additions to proposed Objective 1 and I discussed these in paragraphs 20 – 22 of my EIC. Contrary to the opinion of Ms Malcon, I consider that proposed Objective 1 fails to specifically recognise that the allocation, use and development of freshwater resources are legitimate and important objectives for a Proposed NPS which is seeking to address freshwater management issues. I also believe that the objective fails to clearly recognise and articulate the "*enabling*" aspect of the Proposed NPS in achieving the purpose of the Act.
- 23 I consider the additions sought by Meridian to this objective would give additional helpful, direct guidance to Councils in recognising and providing for important uses of freshwater resources, in order to

enable the well-being of people and communities as sought through this objective.

- 24 Proposed Objective 1 is also supported in the evidence of Mr Benedict Curry for Rangitata Diversion Race Management Limited. Naturally, my comments above in relation to Ms Malcon's evidence also apply to his evidence.
- 25 I note that the evidence of Sue Stewart and Anne Candy for Manukau City Council seeks the deletion of Objective 1. As set out in paragraph 21 of my EIC, Objective 1 is the sole objective of the Proposed NPS which potentially addresses the allocation, use and development of freshwater resources in order to enable people and communities to provide for their wellbeing. This is one of the fundamental issues requiring management in the Proposed NPS. I have supported the retention of this objective, but with the additional direction contained in the amendments sought by Meridian.
- 26 In her paragraphs 11 – 15, Ms Malcon supports TrustPower's submission to focus Objective 2 on water quality rather than water quantity. Mr Curry makes a similar submission. I do not support this approach to Objective 2, which is the principal objective focussed on the integrated management of the effects of land-use development and discharges on freshwater. **Ms Moss** has outlined in her EIC some aspects of the failure of local authorities to suitably address the relationship between land use development and water allocation, as well as water quality issues (particularly in the Mackenzie Basin) (see paragraphs 93 and 94 of her evidence). In order to ensure that integrated management of land use and freshwater quantity management is fully and appropriately addressed, I would not support limiting this objective to water quality matters.
- 27 Ms Malcon outlines TrustPower's requested amendments to Objective 3 in paragraph 22 of her evidence. These amendments seek to remove the direction in Objective 3 relating to swimmable standards and replace it with a reference to "*appropriate water quality standards*". As I set out in my EIC, it is preferable that objectives are clearly targeted, positively worded statements of the outcomes to be achieved, which do not require further articulation or explanation in order to be readily understood. I consider that an objective to achieve "*contact recreational*" standards (as Meridian has proposed) is a more specific and a clearer target than the wording sought by Ms Malcon.

- 28 In her paragraph 29, Ms Malcon sets out the amendments sought by TrustPower to Objective 4, which Meridian does not seek to amend through its submission. I note that TrustPower's amendments seek to remove the second part of the proposed objective which refers to protecting the life supporting capacity and ecological values of freshwater resources "*from inappropriate*" activities – with the types of relevant activities then being listed. I consider the proposed amendment to this objective weakens the clarity of direction provided in the objective, as it would just require these ecological values to be "*recognised and provided for*" and not continue on to state what aspects of freshwater use they are to be protected from.
- 29 In addition, the deletion of the second part of Objective 4 in relation to "*inappropriate*" activities would remove the direction to Councils to come to the necessary overall judgements regarding the appropriateness of activities involving freshwater allocation and use, and the associated level of protection to be provided to the ecological values of freshwater resources. As I set out in paragraphs 13.1 and 31 of my EIC, the failure by Councils to establish such fundamental outcomes and direction for freshwater management is a critical aspect to be addressed through the Proposed NPS.
- 30 Meridian has sought a number of additional amendments to proposed Objective 6 that are not identified in the relief sought by TrustPower and set out in Ms Malcon's paragraph 40 (I note that in Meridian's submission this is Objective 5). TrustPower's suggested additions to this objective, relating to existing water users and the level of investment associated with existing use, are consistent with some of the additions sought by Meridian. However, as I discuss in paragraphs 31 and 32 of my EIC, I consider that Objective 6 could much more usefully provide guidance for Councils in addressing matters of water allocation, use and development, rather than its current, more limited focus on managing demand for freshwater.
- 31 In paragraph 63 of her evidence, Ms Malcon states the Policy 1 should establish "*applicable criteria for the various values*" in the new terms contained in the Proposed NPS, such as "*outstanding*" or "*degraded*" freshwater resources. As I have outlined in my comments on this matter in relation to the evidence of Mr Hansen and Mr Chrisp, I agree that these terms are confusing. However, I reiterate my opinion that Meridian's approach of deleting these terms and replacing the references in the policies with clearer, well-established direction consistent with sections 6 and 7 of the Act, is

more appropriate than trying to establish additional criteria in the Proposed NPS.

- 32 In paragraphs 65 and 66 of her evidence, Ms Malcon discusses TrustPower's opposition to the Proposed NPS including requirements for setting water allocation limits or levels. I note that Mr Curry also opposes the setting of water allocation limits or levels in his paragraph 26.
- 33 Such comments are contrary to the approach taken in Meridian's submission which specifically seeks the inclusion of requirements in Policies 1 and 2 for Regional Councils to set Water Allocation Levels alongside Environmental Flows and Levels and Freshwater Quality Standards. I have discussed my reasons for supporting this approach to regional freshwater management planning in several places in my EIC, in particular in my paragraphs 36.3, 41, 42 and 49.
- 34 Although her discussion in paragraph 69 of her evidence is not clear, I gather that Ms Malcon opposes a catchment-wide approach to setting water allocation limits with preferences being expressed for the allocation of water to different types of water uses. She appears to prefer the continuation of a first-in, first-served approach, with no use-preference being expressed in plans. This is also contrary to the approach to catchment-based water allocation planning, as appropriate and necessary, which is supported by Meridian in its submission. In my EIC, I discuss my support for Councils being required to determine (through the regional planning processes) whether it is necessary, or appropriate, to allocate water to different types of uses in each catchment or sub-region, and how much water is to be so allocated, in order to enable the objectives of the Proposed NPS to be achieved. This is discussed in paragraphs 12.9, 13.3, 22 and 41 - 46 of my EIC. I also note that the first-in, first-served approach to the processing of applications would not be over-ridden by a preference-based approach, as within any block of water allocated to a type of water use, the first-in, first-served approach would remain for the processing of applications within the allocation block.

MAREE DRURY

- 35 In her discussion of Objective 3 (her paragraphs 2.14 – 2.16), Ms Drury states that *"in order to enhance the quality of all Freshwater resources (to achieve a swimmable standard) it will be necessary to require extensive changes to land use throughout the country"*.

This is consistent with the discussion in paragraphs 28 – 30 of my EIC, in which I consider the difficulties with proposed Objective 5 and the alternative wording sought by Meridian.

- 36 In terms of Objective 4, Ms Drury discusses her recommendation to replace with word *“inappropriate”* with *“the adverse effects of”* (her paragraphs 2.18 – 2.19). I do not support this amendment and I have set out my comments in relation to these words in proposed Objective 4 in my discussion of Ms Malcon’s evidence above. Ms Drury’s recommendation, that Objective 4 should require all ecological values of freshwater resources to be *“protected from the adverse effects”* of all activities affecting freshwater, seems to me to be going beyond the level of reasonable direction that should be included in a Proposed NPS. This would leave little discretion available to Councils in this regard, when making their overall judgements regarding the appropriateness of activities involving freshwater allocation and use and the associated level of protection to be provided to the ecological values of freshwater resources. The use of the term *“inappropriate”* activities in the context of Objective 4 is consistent with established case law developed in relation to the use of this term in section 6 of the Act. Based on this established understanding, the proposed wording of Objective 4 would, in my opinion, focus Councils on the necessity to come to such overall judgements.
- 37 In paragraphs 4.2 – 4.10 of her evidence, Ms Drury sets out her opinion that the Proposed NPS should make the establishment of Freshwater Quality Standards and Environmental Flows and Levels optional and allow for the use of other mitigation and remediation methods. I do not support this and it is contrary to Meridian’s submission which seeks to also include Water Allocation Level standards for freshwater management. As I set out in paragraph 49 of my EIC, good planning practice requires the specification of interlinking and supporting objectives, policies and rules relating to water quality, environmental flows for rivers and levels for lakes, as well as water allocation, in order to provide an adequate planning framework for clear and consistent freshwater management decisions. I do not consider it would reflect adequate planning practice not to implement such measures through regional plans.

WAYNE RUSSELL AND OTHERS

- 38 A number of experts, including Mr Russell, have suggested that the Proposed NPS should contain different objectives and policies for different types of water bodies or exclude certain water bodies (such

as ground water resources). I do not support such an approach, as in order to achieve the integrated management of all freshwater resources, all such resources should be captured by the provisions of the Proposed NPS. It is not appropriate, in planning terms, to isolate certain groups of resources if overall sustainable management of those resources is to be achieved.

CONCLUSIONS

39 I confirm the conclusions set out in my EIC.



Sarah Dawson
17 June 2009