

**BEFORE THE CANTERBURY REGIONAL COUNCIL**

**IN THE MATTER OF**

the Resource Management Act  
1991

**AND**

**IN THE MATTER OF**

35 applications (21 applicants) to  
take and use groundwater from  
the **Waitaki River Catchment**

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**Statement in Reply**

**MATHEW FRASER ROSS**

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1. My name is Matthew Fraser Ross. I have appeared and given evidence in respect of the North Bank Tunnel Concept, the Hunter Downs Irrigation application and applications within the MRNAG group of applicants. I set out my background, relevant qualifications and experience in that evidence.
2. I am Chairman of the Maraewhenua District Water Resource Company, an applicant in this hearing.
3. I am Chairman of the MRNAG and MRI<sup>1</sup> entities. Between them, MRNAG and MRI includes 97% of existing private irrigators in the reach from Waitaki Dam to Black Point.
4. I present my further comments today in my capacity as chairman of the above entities, an existing private irrigator and representative of the wider irrigation community. The irrigation schemes who have submitted to this hearing have read this brief and support the views and concerns I will express in this statement. They are present here today to support the same. My statement is in response to matters raised by MEL at this hearing.
5. Until two weeks ago irrigators had no answer from MEL as to what is to occur in a low in-flow year and the tunnel is not operating (7% of the time). We have that answer now; the HDI flow regime is what MEL believe should occur. Bluntly, MEL says reliability of supply for users downstream of Black Point is "*whatever comes over the dam*". Mr. Eldred quantifies the release to meet the needs of downstream irrigators above Black Point at 6.694 cumecs.<sup>2</sup> The rest is for the environment. This proposal has unacceptable effects on the reliability of supply and access to water by consented users downstream of the Dam. The issues will be further complicated by a review of existing consents to the Plan's minimum flow by ECan.

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<sup>1</sup> Mid Reach Irrigation group of existing consent holders

<sup>2</sup> Nick Eldred, Supplementary Evidence dated 5 August 2008, para 18.

6. All of irrigation, particularly those applicants represented by MRNAG given that they are only eight, have worked hard over the last 18 months to address substantial concerns arising in respect of the NBTC and HDI proposals.
7. What irrigators did not know until it was clarified two weeks ago by Mr. Eldred in response to Commissioner Skelton's questions, was that MEL will not commit to an agreement which requires it to alter its position. MEL maintains this position in conjunction with its applications for a very large hydro proposal (NBTC) and a substantial out-of-catchment irrigation scheme (HDI).
8. Mr. Eldred's stated commitment at this hearing to continuing with negotiation to resolve irrigation's concerns is sophistry. A grant of consent for NBTC in particular will result in substantial change in its operating procedure and MEL says that the effects of this are to be borne by irrigation.
9. I am deeply concerned by the account given by MEL of their dealings with irrigators both above and below Black Point. Given that MEL must continue to have an on-going relationship with all of irrigation, these statements were unhelpful and damaging of that relationship.
10. I have been party to all discussions between irrigators and Meridian Energy Ltd (MEL) since early 2007. I am aware of but was not party to prior discussions which occurred over the preceding four year period as suggested by Mr. Eldred.<sup>3</sup> I have been informed by irrigators present they were of a general nature and addressed the effect of the operative Plan on existing activity in the Lower Waitaki River. MEL among others was in attendance. The content of those discussions did not include impacts on reliability of supply for irrigators downstream of Waitaki Dam, or contemplate irrigators assuming dry year risk.

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<sup>3</sup> Mr Eldred, Brief of Evidence, 28 August 2008, para 10

11. In the weeks immediately preceding the commencement of the NBTC hearing, MEL did send some mid reach consent holders draft proposals setting out measures to address adverse effects on the existing consents. For reasons explained in evidence at that hearing, none of the proposals (that I am aware) resulted in agreement.
12. You have already heard about the failed negotiation between major irrigation schemes and MEL whose respective interests were represented by Goodman Steven Tavendale and Chapman Tripp. The MEL position and their method of negotiation precluded an agreement being reached. Irrigators participated in the negotiations with a genuine belief resolution would be reached.
13. While I do not intend to respond to all parts of the evidence or submissions, in respect of which I take issue there are two matters which I will make specific comment on. First, Mr. Eldred's statement in the context of the MRNAG hearings at paragraph 11 that negotiation ceased in September 2007. This is incorrect; negotiations continued with MRNAG over the balance of the year, including a lengthy formal meeting in November 2007 at which Mr. Eldred, MEL legal counsel and its experts were in attendance.
14. Communication as between MEL and MRNAG's representatives culminated in a substantive proposal being made on behalf of MRNAG on 20 March 2008. Mr. Eldred quotes from this proposal at paragraph 5 in his Evidence dated 5 August 2008.
15. Through its legal counsel MEL responded to that proposal in two parts; by letters dated 14th May (NBTC) and 19th May 2008 (HDI). Written communications about matters in general continued up until the commencement of this hearing.
16. While HDI and NBTC are separate applications and each must be considered on its own merits, irrigators have regarded the proposals as linked. Ms Appleyard opened

HDI on the basis that the conditions were tabled as an alternative management approach to that under Rule 2, Table 3. Ms Appleyard said:

*“...an opportunity for a different regime to be crafted through decisions on the resource consent applications currently in progress that could apply until at least 2025.”<sup>4</sup>*

17. It is fundamental to irrigation’s assessment of supply reliability and access risks that the relationship between the two proposals be fully disclosed and understood. HDI is a proposal for a flow regime that was different to the Plan’s regime. This is particularly important in the context where the Regional Council has also initiated discussions with the irrigation schemes in relation to imposing annual allocations. This is despite no outcome on the HDI alternate flow regime at this hearing.
18. Secondly, I want to correct any impression the Commissioners may have that MRNAG may have caught Meridian by surprise as suggested by Ms Appleyard and Mr. Eldred, when it tabled its alternate flow regime<sup>5</sup>. It was at the request of Chapman Tripp, MRNAG and later all of irrigation met with the HDI joint applicant, South Canterbury Irrigation Trust. When proposing the meeting Ms Appleyard said:

*“The purpose of the meeting would be for representatives of SCIT to seek to more properly understand your clients’ issues and to see whether there is common ground or methods of resolution”.<sup>1</sup>*

Irrigators, (including SCIT, MRNAG, WDI and INO) have since met on three occasions and agreed that resolution to the issues lies with a flow regime that is acceptable to all abstractors. (Existing and new)

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<sup>4</sup> Ms Appleyard Opening Submission, HDI, para 66

<sup>5</sup> Chapman Tripp letter dated 19 May 2008

19. It cannot be said that Chapman Tripp was unaware of these meetings with its client or the potential outcome, when it instigated the same. Mr Eldred and Mr Elwood confirmed to me that an early draft proposal was received by Meridian from one of the participants of those meetings.
20. Mr Eldred has given evidence about the 'without prejudice' meeting on 28 July where Nick Davidson QC and I met Mr. Eldred and MrElwood to present the the alternate flow regime. The proposal was presented and discussed in subsequent open letters between myself and Mr Elwood.
21. Irrigators have participated in all discussions in good faith and with integrity. This has been at a substantial cost, not only in time and money. That common ground was reached between users is a huge achievement given that irrigation interests do not always converge. That agreement was the alternate flow regime tabled at the commencement of the hearing.
22. Given the MEL position on the most recent irrigator proposal and a failure to reach agreement at any stage in the past 18 months, irrigators are finding it difficult to accept that MEL is a genuine participator in this process. To put it bluntly MEL does not seem prepared to have any regard for a proposed solution if it is not of their instigation or if as a consequence of any agreement they may have to consider an alternate method of operation.
23. Given the above it is now common ground that those persons represented by MRNAG are firm in their submission that the NBTC and HDI applications be declined. This position has the full support of the wider irrigation community.
24. MEL must deal with the adverse effects of these applications in a manner befitting their obligations as a State Owned Enterprise. It must be remembered that those obligations extend beyond the commercial strategy of Meridian.
25. In addition to its obligations as an SOE I believe it is essential that its operations have due regard to the policies and objectives of the now operative Plan. To use the

hearing process to “craft” more desirable management practices for their operations within the catchment, especially when that alternative operation is contrary to the intent of the Plan, is not acceptable or fair.

26. If MEL take exception to the Plan and believe it impacts upon their future strategy or operations they should pursue the Plan change process to address the same. Evidence similar to what has been presented during these hearings was presented to the board. It would therefore be reasonable to assume with the resulting decisions and Allocation Plan that the Board did not intend hydro (MEL) to have complete control of the lower catchment from the dam to the sea.

Matt Ross

22 September 2008