



meridian

22 July 2009

Gillian Ensor
Environment Canterbury
PO Box 345
Christchurch

Dear Gillian

Application by Otamatapaio Station (1993) Limited

- 1 We write to you to outline the basis of Meridian Energy Limited (*Meridian*) providing its derogation approval of the application numbered CRC01 2047 by Otamatapaio Station (1993) Limited (*Otamatapaio*). We refer to the letter to ECan from Chapman Tripp dated the 26th of June 2008 setting out Meridian's position on derogation approvals generally.
- 2 Meridian has read and considered the application CRC01 2047 by Otamatapaio and provides derogation approval on the following basis:
 - 2.1 Otamatapaio shall only be entitled to take and use water from the Otamatapaio River (at location H40: 774-195) at a maximum rate of 200 litres per second for the irrigation of 200 hectares and provision of stockwater identified in the application;
 - 2.2 the annual volume shall not exceed 2,442,840 cubic metres per annum (of which 946,000 cubic metres per annum is stockwater) and this shall be allocated as an agricultural and horticultural activity upstream of Waitaki Dam but not upstream of the outlets of the glacial lakes under Rule 6, Table 5 of the Waitaki Catchment Water Allocation Regional Plan;
- 3 Any amendment or modification to the above will require further written derogation approval from Meridian. On the same basis any subsequent variation, transfer or replacement application that is relevant to the volume or location of the take may also require further approval.
- 4 This letter is not an affected party approval to the consent application under section 94 of the Resource Management Act. Meridian may choose to submit in support or oppose the application on grounds which do not relate to the derogation of its rights, or not to submit at all.
- 5 This letter does however record (subject to the above) that Meridian will not oppose the granting of the Otamatapaio application on the ground that it will reduce the quantity of water available under Meridian's existing consents.

- 6 Please advise if any basis for Meridian's approval outlined in paragraph 2 will not be met by the resource consent.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Richard Turner', written over a horizontal line.

Richard Turner
Planning Manager – Natural Resources

119 Armagh Street, PO Box 2510, Christchurch 8140, New Zealand.

Tel +64 3 353 4130. Fax +64 3 365 4587. DX WP21035.

Offices also in Auckland & Wellington. www.chapmantripp.com

PARTNERS, PRINCIPALS AND CONSULTANTS

D S Alderslade	C M Eillife	L Jones	J L Parker*	C J Street*
K Anderson*	P J England	A J Keenan*	R I Parker	W J Strowger
M G Anderson	J M Floyd*	B R Kidd*	L J Partridge*	M C Sumpter*
N A Anderson	S H Foote	J A Knight	C M V Plunket	P C Sumpter*
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F K Bennett*	S C Hale*	N W Lough*	V J Rive	R F Wallis
P W Bennett	M J Harper	S B Lowe	A S Ross	J M Walters*
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P Brosnahan*	V L Helne*	R B McClintock	S H J Rowe*	T G R Williams
B J Brown	J E Hodder	A G McDonald	W A Sandston	R J Wilson*
R A Bycroft	S A Hodge	J A McKay	ES Scorgie*	H W Woodbury
M J Carroll	J L Holland	F D McLaughlin	B A Scott	A N C Woods
G T Carter*	G A Hughes*	P A McLeod*	J G M Shirtcliffe	N E Yarnell
D J Cochrane	B H W Hutchinson*	H C McQueen*	C J Sinnott*	A W Young
M K Corse-Scott*	E R Jack*	A J Nicholls	C J Somerville*	
G W David	P R Jagose	M R Nicholson*	J G Sproat	
B A Davies*	S M Janissen	D J Parker	V H Stace*	

*Principals and Consultants do not share Partners' liabilities for the firm.
* Principals • Consultants*

Our ref: Jo Appleyard / Ben Williams
Direct dial: +64 3 353 0022
Email: jo.appleyard@chapmantripp.com
by email

26 June 2008

Bianca Sullivan and Gillian Ensor
Environment Canterbury
PO Box 345
Christchurch Mail Centre
Christchurch 8140

DEROGATION APPROVALS FOR THE UPPER WAITAKI CATCHMENT

- 1 We act for Meridian Energy Limited (*Meridian*).
- 2 We write as a part of the approvals process of Meridian for applications for resource consent to take water from the upper Waitaki catchment. This letter accordingly sets out:
 - 2.1 a brief background to the derogation process; and
 - 2.2 the intended approach Meridian will take in regard to current applications and ongoing consented operations in the upper Waitaki catchment.

Background

- 3 As you are aware in 2004 the Full Bench of the High Court in *Aoraki Water Trust v Meridian Energy Ltd & Ors* ([2005] 2 NZLR 268) (*Aoraki*) confirmed that by virtue of Meridian's existing consents, Environment Canterbury was not authorised to grant any other party a water permit to take water from Lake Tekapo if the grant would have the effect of reducing the amount or nature of water available to Meridian.

4 Subsequently, the decision of the Waitaki Catchment Water Allocation Board and the resulting Waitaki Catchment Water Allocation Regional Plan (WRP) have both recognised that the principles of *Aoraki* applied by analogy to all of the Waitaki Catchment above Waitaki Dam.

5 This was also confirmed in the appeal to the High Court by Meridian and Mackenzie Irrigation Group where the High Court directed the insertion of an additional footnote to the Plan that noted that "*while the consents to operate the Waitaki Power Scheme remain in force the Upper Catchment is already allocated to a holder of those consents and other existing consent holders*" (see discussion at page 14 of the section 32 report).

6 The effect of the above is that Environment Canterbury is unable to grant any consents for the taking of water in the Upper Catchment unless Meridian agrees to the consent being granted, i.e. Meridian needs to explicitly agree to a derogation of its existing rights.

Meridian's approach to derogation

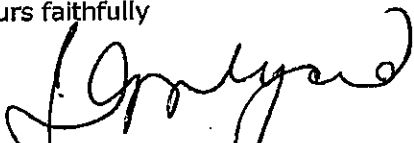
7 Meridian will provide separate letters in respect of all applications that it will be providing derogation approval to.

8 Each letter will set out the relevant particulars of the application and the parameters of the approval. Any amendment or modification to a proposal will require further written approval from Meridian. On the same basis any subsequent variation, transfer or replacement application that is relevant to the volume or location of the take may also require further approval.

9 We also note that no approval (or this letter) should be construed as an affected party approval of an entire application under section 94 of the Resource Management Act. Meridian reserves its rights to either support or oppose any application on grounds which do not relate to the derogation of its rights.

10 Derogation approvals will in all circumstances reference and be based on the background set out in this letter. We therefore request a copy be included in each relevant file.

Yours faithfully



Jo Appleyard / Ben Williams
Partner / Solicitor