

IN THE MATTER

of the Resource Management Act 1991

AND

IN THE MATTER

applications for resource consents to take and use
water in the Waitaki River Catchments

JOINT MEMORANDUM OF COUNSEL ON BEHALF OF APPLICANTS

6 NOVEMBER 2009

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MAY IT PLEASE THE COMMISSIONERS:

1. Counsel refer to the 7th Minute of Commissioners dated 2 November 2009 asking the applicants to advise whether they agree to the commissioning of a report from Dr Spigel in relation to the modelling undertaken for Lake Benmore ("**Report**").
2. This memorandum is on behalf of all applicants involved in the hearing represented by Christian Whata, Ewan Chapman and Kelvin Reid ("**Applicants**"). Mr Chapman will be filing an additional supplementary memorandum on behalf of the UWAG applicants.
3. While the Applicants generally support the commissioning of the Report to enable the Commissioners to better understand the Applicant's proposals, we wish to record that:
 - (a) that there needs to be a clear understanding of the scope of the Report;
 - (b) that the Report is commissioned in a timely manner; and
 - (c) that we endorse the comments of the Council that such a review is appropriately independent. In this regard, we note that the production of the NIWA report was initially requested by the Council as an independent report through a non-statutory process and not for the purpose of the hearings. However it transpires that one of the key authors of the report was also retained by Meridian Energy to provide evidence in opposition to the applications. The Applicant's therefore seek assurance that Dr Spigel's independence will be maintained and that he is under no separate retainer to advise any party to these hearings.
4. Accordingly, the Applicants agree to the commissioning of the Report on the following basis:
 - (a) the scope of the Report is agreed between all the parties;
 - (b) a timetable is agreed between the parties for the production of this report so as not to unnecessarily prolong the hearing;

- (c) an estimate of costs is provided, and is reasonable, for the production of the Report (we have today received a copy of this);
- (d) Dr Spigel caucuses with the experts (either in person or via teleconference) in advance of the finalisation of the report; and
- (e) outside of the caucusing process, no separate retainer with any party should be entered in to in order to ensure that the Report is independent.

Dated 6 November 2009

Christian Whata

Counsel for Mackenzie Water Research Limited, Southdown Holdings Limited, Five Rivers Limited and Killermont Station Limited

Kelvin Reid

Counsel for Simons Pass Limited, Pukaki Irrigation Limited and Simons Hill Limited

Ewan Chapman

Counsel for Upper Waitaki Applicant's Group