

## BEFORE THE ENVIRONMENT COURT

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*Under* the Resource Management Act 1991 ("Act")

*In the matter of* appeals under clause 14 of the First Schedule to the Act concerning the Proposed One Plan for the Manawatu-Wanganui Region and the topic of Biological Diversity

*between* **FEDERATED FARMERS OF NEW ZEALAND**  
ENV-2010-WLG-000148

*and* **MERIDIAN ENERGY LTD**  
ENV-2010-WLG-000149

*and* **MINISTER OF CONSERVATION**  
ENV-2010-WLG-000151

*and* **PROPERTY RIGHTS IN NEW ZEALAND**  
ENV-2010-WLG-000152

*and* **HORTICULTURE NEW ZEALAND**  
ENV-2010-WLG-000155

*and* **WELLINGTON FISH & GAME COUNCIL**  
ENV-2010-WLG-000157

*and* **MANAWATU-WANGANUI REGIONAL COUNCIL**  
Respondent

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Statement of Rebuttal Evidence of  
**SPENCER JOHN CLUBB**  
on behalf of the Minister of Conservation

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Dated: 14 March 2012

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## **REBUTTAL EVIDENCE OF SPENCER JOHN CLUBB**

1. My full name is Spencer John Clubb. I have prepared evidence on behalf of the Minister of Conservation in this matter. In this rebuttal evidence I rebut matters raised in the evidence of Mr Matiu Park and make comments on the Record of Planning Conferencing<sup>1</sup>.

### **Evidence of Mr Park**

#### ***The mitigation hierarchy***

2. I refer to paragraph 5.2 of Mr Park's Statement of Evidence. Mr Park says that the changes sought by the Department of Conservation and Fish and Game "*effectively puts aside the tested application of biodiversity offsets within the 'avoid, remedy and mitigate' framework and inappropriately replaces these terms with what I consider to be restrictive and untested biodiversity offset provisions with no proven scientific basis or support.*" He also says that in his opinion, Council's decision version was consistent with the recognised application by ecologists of biodiversity offsets as a type of mitigation (rather than being a separate type of action).
3. I consider that the changes sought by the Minister of Conservation and Fish and Game are consistent with international best practice relating to the definition, principles and application of biodiversity offsetting.
4. By definition, biodiversity offsetting seeks to address "residual adverse effects arising from project development after appropriate prevention and mitigation measures have been taken"<sup>2</sup>. The definition and principles of offsetting as a final step in the mitigation hierarchy (and often referred to by BBOP as a 'last resort'<sup>3</sup>) have been agreed by international consensus including from prominent members of the ecological community in New Zealand and overseas.

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<sup>1</sup> Record of Planning Conferencing on the Topic of Biodiversity dated 6 March 2012.

<sup>2</sup> Refer my Evidence in Chief paragraph 14 where I set out the BBOP definition of offsets.

<sup>3</sup> See, for example, page 5 of the BBOP Biodiversity Offset Design Handbook: "The role of biodiversity offsets is effectively as a 'last resort', after all reasonable measures have been taken first to avoid and minimise the impact of a development project and then to restore biodiversity on-site".

5. As I set out in paragraph 46 of my Evidence in Chief, regardless of terminology, conceptually, I consider that there is a clear distinction, and a clear hierarchy, that places biodiversity offsetting as a separate activity, designed to address residual adverse effects only after avoiding, remedying and minimisation has taken place.

***Application of biodiversity offsetting principles***

6. I refer to paragraphs 5.7 to 5.11 of Mr Park's Statement of Evidence. In paragraphs 5.7 to 5.9 he describes a number of difficulties and challenges associated with biodiversity offsetting, referring to the Department of Conservation's Biodiversity Offsets Programme, the outputs of which have yet to be finalised. In paragraph 5.11 he concludes by saying that *"...until such time as this national guidance is finalised, trialled and tested for practical (and legal) application under the RMA, less prescriptive policies such as those provided by the decision versions of Policies 7-2A and 12-5 [of the One Plan] will provide more appropriate guidance to local authorities on the application of biodiversity offsets"*.
7. The definition and principles of biodiversity offsetting are well established and agreed. Although I am not a planner, it is my opinion that the changes sought by the Minister of Conservation and Fish and Game do not seek to impose additional constraints or requirements over and above those already set out in the BBOP definition and principles and that the proposed changes reflect better these principles than the Council's decision version. I cannot therefore see any reason to wait until further work is done before including the principles whenever the concept of biodiversity offsetting is being considered or referred to in a planning document.
8. While I do not disagree with Mr Park's assessment that biodiversity offsetting is a developing field with a number of challenges, there is broad agreement that the BBOP definition and principles will underpin work internationally and in New Zealand to further refine, test and implement biodiversity offsetting. Language that reflects the definition and principles of biodiversity offsetting will therefore remain relevant and appropriate as methodologies develop.
9. I note that the challenges and difficulties highlighted by Mr Park are relevant to any mitigation/compensation proposal that attempts to address adverse

effects by exchanging biodiversity loss in one place with biodiversity gain elsewhere. However, biodiversity offsetting is the only approach that attempts to face up to these difficulties by attempting to quantify and equate biodiversity losses and gains.

10. In my opinion, uncertainty associated with achieving biodiversity gains through offsetting is one reason why it is considered to be further down the mitigation hierarchy than avoidance and minimisation, which have more certain outcomes for biodiversity. Mitigation/compensation that is not required to meet the principles of biodiversity offsetting is even less certain to deliver desired biodiversity outcomes.

### **Record of Planning Conferencing**

11. The record of Planning Conferencing states that:

*“The Planners for TrustPower/Meridian, Transpower/Powerco, and Federated Farmers agreed that offset mitigation outside the affected area should be an option (not a last resort) for an applicant to propose and a decision-maker to consider, if it achieves a net indigenous biodiversity gain. The planners for MWRC and MoC/WFCG consider that wording that requires the consideration of onsite mitigation before offsite mitigation or offsetting is more appropriate.”*

12. I have addressed the need for the mitigation hierarchy in my Evidence in Chief and in my comments above, including reiterating that the BBOP framework is predicated on biodiversity offsetting being a last resort. I would, however, like to stress that the existence of the mitigation hierarchy does not have to unreasonably constrain biodiversity offsetting as a means of achieving good biodiversity outcomes. As stated in paragraph 41(b) of my Evidence in Chief, under Principle 3 of the BBOP, the requirement to ‘minimise’ effects within the area affected should be followed “as far as is practically feasible”.
13. While it is clear that all feasible efforts must be undertaken to mitigate within the site, this does not preclude good biodiversity outcomes from being achieved through an offset where this will be a better approach than impractical or unfeasible on-site mitigation.

14. The record of Planning Conferencing also notes that agreement was not reached on whether policy 12-5(d) should include the following wording (refer underlining):

*"An offset assessed in accordance with (b)(iii) or (c)(iv) must...[sic] the appropriateness of establishing infrastructure^ and other physical resources of regional or national importance as identified in Policy 3-1."*

15. I do not see any basis for including this sentence. The type of development that is being proposed is not relevant to the BBOP principles and has no bearing on the essential requirements for offsets that Policy 12-5(d) sets out.

