IN THE ENVIRONMENT COURT
AT CHRISTCHURCH
I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHI

IN THE MATTER of the Resource Management Act 1991 (the **Act**)

A N D

IN THE MATTER of appeals pursuant to clause 14 of the First Schedule to the Act in respect of the Proposed Southland Water and Land Plan

BETWEEN **SOUTHLAND FISH AND GAME COUNCIL**
(ENV-2016-CHC-37)

ROYAL FOREST AND BIRD PROTECTION SOCIETY OF NEW ZEALAND INCORPORATED
(ENV-2016-CHC-50)

Appellants

A N D **SOUTHLAND REGIONAL COUNCIL**

Respondent

STATEMENT OF EVIDENCE OF SUSAN CLARE RUSTON ON BEHALF OF BALLANCE AGRI-NUTRIENTS LIMITED (s 274 PARTY)

PLANNING (TOPIC B)

4 FEBRUARY 2022

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A. EXECUTIVE SUMMARY

1. This planning evidence addresses matters within Ballance Agri-Nutrients Limited's (**Ballance**) notices to become a party to proceedings (pursuant to section 274 of the Resource Management Act 1991 (**the Act**)) of appeals filed by the Southland Fish and Game Council (**Fish and Game**) and the Royal Forest and Bird Protection Society of New Zealand Incorporated (**Forest and Bird**). The appeals relate to the decisions of the Southland Regional Council (**the Council**) on the Proposed Southland Water and Land Plan (**pSWLP**).

2. The provisions of the pSWLP that this evidence addresses are Policies 13, 15A, 15B, 15C and 16; Rules 14 and 20; and Appendix N. I recommend adopting the provisions attached to the Joint Witness Statement – Planning that was signed on 10 December 2021 (**JWS-Planning**)[1], with two exceptions. The exceptions I recommend are including the JWS-Planning recommended definition of "*minimise*" in the Glossary of the pSWLP; and deleting the term, "*ephemeral flow path*" from the definition of "*critical source area*".

3. Relevant to the preceding provisions, this evidence also addresses three matters that, despite the agreements reached in the JWS-Planning, appear to remain in dispute by Fish and Game and Forest and Bird. These include references to ephemeral rivers (and similar terms); use of the term "degraded" when referring to waterbodies that need improving; and the addition of a new and substantial set of objectives to Appendix N for which farmers must describe how such objectives will be met. Mr Farrell (planning witness for Fish and Game and Forest and Bird), in his evidence of 20 December 2021, sets out his concerns regarding these matters and his recommended changes to the agreements reached in the JWS-Planning. I have considered Mr Farrell's evidence, and the evidence that he relies on in making his recommendations, and I conclude that I do not support the changes proposed by Mr Farrell.

4. My complete set of recommended provisions is provided in Attachment 1 to this evidence.

[1] This document was issued by the Mediation Case Manager on the 13th of December 2021 and titled "2021-12-10 Planning JWS".

B. INTRODUCTION

5. My full name is Susan Clare Ruston.

6. I am a Director of PPM Consulting Limited, a consultancy specialising in the design and implementation of resource management policy and planning provisions, mediation, and environmental risk management. I have practised as a resource management specialist for approximately 30 years, serving both the public and private sectors.

7. I hold a Bachelor of Forestry Science (Hons) degree from the University of Canterbury (1989); and an Executive Masters in Public Administration from Victoria University of Wellington (2011). I have also completed studies in Law and Mediation, Planning Law, Business Law, and Legal Method at Massey University and the University of Waikato. I am a member of the Resource Management Law Association, the New Zealand Planning Institute, and the Resolution Institute.

8. I have acted for a range of sectors, for example agriculture, forestry, horticulture, energy generation, aggregate extraction, waste management, hazardous substances, irrigation, roading, tourism, property development, and central and local government (with PPM Consulting Ltd 2020-2022, Enspire Consulting Ltd 2017-2020, Pure Savvy Ltd 2008-2009, Meritec Limited 1998-2002, and PF Olsen and Company Ltd 1994-1997). I have led policy development in the areas of resource management reform, environmental risk, hazardous substances, and new organisms at the Ministry for the Environment (during the periods 2002-2005 and 2009-2012); and I have provided resource management policy and risk management expertise to large private sector organisations such as Fonterra Co-operative Group Ltd (as Environmental Policy Manager 2013-2017).

9. Core areas of my expertise include policy development and design of regulatory frameworks, evaluation of planning documents, preparation and evaluation of resource consent applications, and the preparation of expert planning evidence for council and Environment Court hearings.

C. BACKGROUND

Code of conduct

10. I have read the Code of Conduct for Expert Witnesses contained in the Environment Court's Practice Note 2014, and I agree to comply with it. My qualifications as an expert are set out above. I confirm that the matters addressed in this brief of evidence are within my area of expertise, except where I state that I am relying on the evidence of another person. I have not omitted to consider material facts known to me that might alter or detract from my opinions expressed in this brief of evidence. I have specified where my opinion is based on limited or partial information and I have identified any assumptions I have made in forming my opinions.

Scope of evidence

11. I have been asked to prepare this planning evidence for Ballance. This evidence addresses the following Topic B Tranche 1 hearing matters that are the subject of Ballance's notices to become a party to proceedings (pursuant to section 274 of the Act) of appeals filed by Fish and Game and Forest and Bird on the Council's decisions on the pSWLP.

a) Policy 13 - Management of land use activities and discharges (Topic B2);

b) Policy 15A - Maintain water quality where standards are met (Topic B2);

c) Policy 15B - Improve water quality where standards are not met (Topic B2);

d) Policy 15C - Maintaining and improving water quality after FMU processes (Topic B2);

e) Policy 16 – Farming activities that affect water quality (Topic B5);

f) Rule 14 – Discharge of Fertiliser (Topic B2);

g) Rule 20 – Farming (Topic B5); and

h) Appendix N – Farm Environmental Management Plan (**FEMP**) Requirements (Topic B5).[2]

12. Each of these provisions (amongst others) were addressed in the expert planning conferencing that led to the JWS-Planning, and I participated in the conferencing on these provisions. I agreed with the amendments to these provisions as set out in the JWS-Planning (see Attachment 1 of this evidence); and I remain in agreement with these amendments, while also recommending some further minor changes that are referred to in later sections of this evidence. On this basis, this brief of evidence replaces my Will Say Statement filed before conferencing.

13. Some common amendments to the pSWLP provisions that are referred to in the JWS-Planning relate to use of the term "*minimise*", "*Schedule X*", *"degraded",* "*ephemeral rivers*" and "*critical source areas*"". In this evidence, I address these common terms first, and then address each of the provisions listed in Paragraph 11 of this evidence in turn.

14. In preparing my evidence, I have considered the following documents:

a) The Act and relevant higher order planning documents which include the National Policy Statement for Freshwater Management 2020 (**NPSFM 2020**), the New Zealand Coastal Policy Statement 2010 (**NZCPS**), the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (**NES-F**), and the Southland Regional Policy Statement 2017 (**SRPS**). I have also considered the Operative provisions of the Southland Water and Land Regional Plan;

b) The four Interim Decisions of the Court with respect to Topic A provisions of the pSWLP (dated 20 December 2019, 29 June 2020, 23 July 2020 and 6 November 2020);

c) The pSWLP Decisions Version Operative in Part 1 March 2021 (**part operative pSWLP**);

[2] For completeness, Ballance has signed consent documentation regarding Policies 13 (Management of land use activities and discharges), 15A (Maintain water quality where standards are met) and 15B (Improve water quality where standards are not met). These agreed amendments are consistent with the JWS Planning.

d) The Notice of Appeal by Forest and Bird, dated 22 May 2018;

e) The Notice of Appeal of Fish and Game, dated 17 May 2018;

f) The Statement of Evidence of Ailsa Cain dated 15 February 2019;

g) The Memorandum of Counsel for Southland Regional Council Reporting on Mediation and Requesting Unresolved Issues be Set Down for Hearing dated 24 September 2021;

h) The Statements of Evidence of Mr Matthew McCallum-Clark dated 22 and 28 October 2021 (Topic B Overview and Supplementary Statement of Evidence respectively) (Council);

i) The Statements of Evidence in Chief for the appellants, particularly those of Ben Farrell and Kathryn McArthur both dated 20 December 2021 (Forest and Bird and Fish and Game), Craig Depree and Gerard Willis both dated 20 December 2021 (Fonterra Cooperative Group Ltd and DairyNZ Ltd), Linda Kirk dated 20 December 2021 (Director-General of Conservation), Peter Gordon Wilson and Bernadette Ellen Hunt both dated 20 December 2021 (Federated Farmers of New Zealand Incorporated), and Treena Davidson dated 20 December 2021 (Ngā Rūnanga).

j) The Will Say Statements, and associated tracked change provisions, particularly those of Mr McCallum-Clark dated 11 November 2021 (the Council), Mr Farrell and Ms McArthur both dated 5 November 2021 (Forest and Bird and Fish and Game), Mr Willis and Mr Cain Duncan dated 29 October 2021 (Fonterra Cooperative Group Ltd and DairyNZ Ltd), Ms Carmen Taylor dated 20 October 2021 (Ravensdown Limited), Mr Wilson dated 4 November 2021 (Federated Farmers of New Zealand Incorporated).

k) The Joint Witness Statement #1 of Planning Experts, signed by the experts on 18 November 2021 (**JWS-Planning #1**);

l) The Joint Witness Statement #2 of Planning Experts, signed by the experts on 19 November 2021 (**JWS-Planning #2**);

m) The Joint Witness Statement #3 of Planning Experts, signed by the experts on 19 November 2021 (**JWS-Planning #3**);

n) The Joint Witness Statement of Planning Experts that was signed on 10 December 2021 (**JWS-Planning**);

o) The Joint Witness Statement of Land Management / Farm Systems Experts, signed by the experts on 22 November 2021 (**JWS-Farm Systems November 2021**);

p) The Joint Witness Statement of Science / Water Quality Experts, signed by the experts on 26 November 2021 (**JWS-Science/Water Quality**);

q) The Joint Witness Statement of Ecology Experts, signed by the experts on 1 December 2021 (**JWS-Ecology**);

r) The Joint Witness Statement of Land Management / Farm Systems Experts, signed by the experts on 6 December 2021 (**JWS-Farm Systems December 2021**).

D. RELEVANT PLANNING INSTRUMENTS

15. The planning instruments that I understand are relevant to the matters addressed in this evidence are identified in Attachment 2 of this evidence. I have considered each of these instruments in preparation of this evidence, and in particular the provisions within the NPSFM 2020, the SRPS and the part operative pSWLP. I have not repeated all of the provisions of these instruments in Attachment 2, rather I have set out those provisions that I consider are particularly relevant to the matters that I address in this evidence.

16. As required by section 66(1)(b) of the Act, the Council must prepare its plan in accordance with Part 2 of the Act. I consider that matters within Part 2 have been reflected in the planning instruments identified in Attachment 2 and therefore I do not address Part 2 matters directly in this evidence. At the same time, I note that the Court has previously indicated that it has a particular need for planning evidence on matters within section 8 of the Act.[3] Section 8 requires that all persons exercising functions and powers under the Act take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi). I understand that

[3] Second interim decision of the Environment Court, paragraph 18.

there is no single authoritative set of Treaty principles and therefore I refer to the document He Tirohanga o Kawa ki te Tiriti o Waitangi 2001, which is provided by Te Puni Kökiri, as a commonly relied upon (particularly in public policy making) guide to the principles of the Treaty as expressed by the Courts and the Waitangi Tribunal. In brief, He Tirohanga o Kawa ki te Tiriti o Waitangi 2001 identifies the principles of the Treaty to be partnership; a duty to act, reasonably, honourably and in good faith; reciprocity; mutual benefit; a duty to make informed decisions; active protection; and redress. While none of these principles can be overlooked in resource management decision making, in my experience the principles of particular relevance are partnership; a duty to act, reasonably, honourably and in good faith; a duty to make informed decisions; and active protection. On this basis, my evidence and the recommendations within it have been informed by the package of expert joint witness statements, and expert and planner evidence, that is identified in Section C of this evidence. My evidence focuses on matters within the scope of the appeals and how these can be resolved in a manner that ensures that the objectives of the part operative pSWLP, and the higher order planning instruments, can be better achieved. With this comes a need to ensure that the provisions of the plan are both an effective means to achieve the objectives and an efficient means. On this basis, I understand that my recommendations within this evidence are not inconsistent with the principles of the Treaty, and in forming these recommendations I have taken into account the principles of the Treaty.

17. The concept of Te Mana o te Wai is also given particular focus in the planning instruments. The NPSFM 2020 identifies Te Mana o te Wai as a "*fundamental concept*" that refers to "*the fundamental importance of water and recognises that protecting the health of freshwater protects the health and well-being of the wider environment. It protects the mauri of the wai. Te Mana o te Wai is about restoring and preserving the balance between the water, the wider environment, and the community*". The Te Mana o te Wai framework for managing freshwater in the NPSFM 2020 includes 6 principles that inform interpretation and implementation of the NPSFM 2020, and these include Mana whakahaere; Kaitiakitanga; Manaakitanga; Governance; Stewardship; and Care and respect. The framework also includes a hierarchy of obligations which prioritises first the health and well-being of water bodies and freshwater ecosystems; second the health needs of people (such as drinking water); and third the ability of people and communities to provide for their social, economic, and cultural well-being,

now and in the future. The sole objective of the NPSFM 2020 is achievement of these obligations. To these obligations, the NPSFM 2020 requires regional councils to engage with communities and tangata whenua to determine how Te Mana o te Wai applies to water bodies and freshwater ecosystems at a local level, and to identify long-term visions, environmental outcomes, and other elements of the framework (referred to as the National Objectives Framework). I understand (from the evidence of Mr McCallum-Clark of 22 October 2021, paragraph 38) that the Council has commenced (in 2018) a significant program of work (referred to as Plan Change Tuatahi) to implement the National Objectives Framework, including engagement with communities and tangata whenua, and that this is running in parallel to the pSWLP process.

18. With respect to the pSWLP, the Court has inserted an Interpretation Statement into the pSWLP that states that all persons exercising functions and powers under the pSWLP must recognise that the plan "*embodies ki uta ki tai and upholds Te Mana o Te Wai and they are at the forefront of all discussions and decisions about water and land*". In my opinion, none of the amendments I recommend in this evidence are in conflict with the hierarchy of obligations or the principles of Te Mana o te Wai set out in the NPSFM 2020; nor would they be in conflict with the concept of *ki uta ki tai* which I understand from the evidence of Ms Ailsa Cain[4] reflects the mātauranga that all environmental elements are connected and must be managed as such. Rather, a key basis for the amendments recommended in this evidence is to advance within the pSWLP application of the principles of Te Mana o Te Wai and the concept of ki uta ki tai, within the bounds of the regulatory framework set by the relevant planning instruments.

E. DEFINITION OF "MINIMISE"

19. The JWS-Planning inserts the term "*minimise*", and variations of this term, in a number of provisions that it addresses.

20. With respect to Policy 16, the JWS-Planning inserts, below the policy, a definition for "*minimise*" which reads "*Minimise means to reduce to the smallest amount reasonably practicable*." In my opinion, this is a helpful definition as it sets a clear expectation of achieving the "*smallest amount*" of, for example, a

[4] Statement of Evidence of Ailsa Cain (15 February 2019) at [18].

discharge or an adverse environmental effect, while also recognising that a test of "*reasonably practicable*" needs to be applied. In my opinion, both parts of the definition are needed to ensure that land and water are managed so as to achieve Objectives 1, 2, 4, 6, 7, 8, 9/9A, 14, 15 and 17 (which together improve te hauora o te taiao, te hauora o te wai and te haura o te tangata), and Objective 3 (particularly in terms of economic and social wellbeing), of the part operative pSWLP. Minimising does not involve achieving zero effect, discharge or other outcome, rather it directs that the smallest amount that is reasonably practical is achieved.

21. I have considered the application of this definition to other references to minimise (or variations of this word) in the part operative pSWLP, the JWS-Planning, and the provisions agreed in consent documentation filed with the Court that Ballance is a party to, and I consider that the definition equally applies to such references. On this basis, I recommend that the definition of "*minimise*" be placed in the Glossary of the pSWLP, rather than being attached to Policy 16 only. If it was to be left attached to Policy 16 only, it could be questioned why the use of the term in Policy 16 would differ from its use elsewhere in the pSWLP. I consider this would detract from efficient and effective implementation of the part operative pSWLP.

F. SCHEDULE X AND THE TERM 'DEGRADED'

22. As noted in the JWS-Planning, "*The planners agreed that mapping of all areas where water quality is degraded should occur. The planners agreed that a single map that identified where water quality is degraded by any one or more of nitrogen, phosphorus, sediment or microbial contaminants or cultural health would be helpful. The planners agreed that reference to "degraded waterbodies" could be worded more positively as "waterbodies where improvement is required*"." This map is, in the JWS-Planning, referred to as Schedule X. The term "*waterbodies where improvement is required*" and reference to Schedule X is then used in the agreed JWS-Planning amendments in Policy 16 (Farming activities that affect water quality), Rules 20 (Management of water resources) and 20A (Intensive winter grazing), and in Appendix N (Farm Environmental Management Plan Requirements).

23. After agreeing to the JWS-Planning, Mr Farrell recommends inserting "*degraded*" before use of the term "*waterbodies that require improvement*". Mr

Farrell considers that this change "*more accurately engages with the language of Objective 6 and that used in the JWS Science*".[5] I do not support Mr Farrell's recommendation for the following reasons.

24. The term "*degraded*" is defined in the NPSFM 2020 with respect to Freshwater Management Units (**FMU**), or parts thereof. The definition refers to sites in the FMU to which a target attribute state applies and the site is below a national bottom line or not achieving (or not likely to achieve) a target attribute state. It also refers to an FMU (or part thereof) not achieving an environmental flow or level set for it, or being less able to provide for a value identified for it under the National Objectives Framework. In the interim period, before target attribute states or flows are identified for FMUs in Southland, I recommend that use of the term "*degraded*" in the policies and rules of the pSWLP should be avoided, as its use now will, in my opinion, likely be misleading once target attribute states or flows have been set. The alternative term of "*waterbody that requires improvement*", that was agreed in the JWS-Planning, is not referred to in the NPSFM 2020 and therefore avoids confusion during Southland's transition to the National Objectives Framework. From my experience, I also understand that a reference to "*waterbody that requires improvement*" is more respectful to the mana of the waterbody than referring to it as being degraded.

25. For the preceding reasons, I consider that Mr Farrell's recommendation would detract from the efficiency and effectiveness of the provisions set out in the JWS-Planning.

G. EPHERMAL RIVERS AND CRITICAL SOURCE AREAS

26. The part operative pSWLP defines ephemeral rivers as "*Rivers which only contain flowing or standing water following rainfall events or extended periods of above average rainfall*". This term is then generally used in the decisions version of the pSWLP to exclude such waterbodies when the term 'river' is otherwise used in the plan provisions.

27. The appeals of Forest and Bird and Fish and Game sought to delete the 'exclusion of ephemeral rivers' from (amongst other provisions) the 'setbacks' from rivers provided for in Rules 14 (Discharge of Fertiliser), 20 (Farming) and

[5] Paragraph 92 of Mr Farrell's evidence of 20 December 2021.

25 (Cultivation). The outcome of such a deletion would be that the setbacks would apply to ephemeral rivers and farming activities in areas identified as ephemeral rivers would be significantly constrained, even when no water was present for considerable periods of time.

28. Mr McCallum-Clark, in his statement of evidence dated 22 October 2021, notes that "*the pSWLP currently generally excludes ephemeral rivers from any setbacks, stock exclusion, cultivation and intensive winter grazing controls. There are appeals seeking deletion of this exclusion, and significant questions arise as to whether deletion is appropriate, and if so, whether other provisions will need adjusting to provide clarity and reduce any unintended consequences*."

29. These matters were considered by the expert planners during the conferencing in November and December 2021. To inform their considerations, the planners sought information from the Farm Systems Experts on critical source areas, amongst other matters[6]. At the conclusion of the conferencing, and after considering the JWS-Farm Systems, amongst the other JWSs, the planners agreed "*that the term "ephemeral rivers" is unclear, in that these landscape features are not waterbodies and the use of the word "river" is not how members of the community see them. Therefore, these flow paths could be addressed in other ways and the term "ephemeral rivers" not be used within the pSWLP and references to this term could be deleted. This is on the basis that ephemeral flow paths are addressed by the pSWLP's definition of "Critical Source Areas" (and the associated provisions for managing CSAs). To avoid doubt, it is included in that definition*" (paragraph 24 of the JWS-Planning). At the same time, the expert planners agreed the following amendments to the pSWLP:

a) Deleting the definition of ephemeral rivers;

b) Amending the definition of critical source area to be clear that such areas include ephemeral flow paths, and include non-landscape features that can contribute to contaminant loses to water such as silage pits, fertiliser storage areas, stock camps and laneways;

c) Strengthening the provisions for identification and management of critical source areas so as to avoid where practicable, and otherwise minimise,

[6] Questions 8 to 11 inclusive and question 13 in Attachment 1 of the JWS-Planning #1.

contaminant losses to water (see for example, the JWS-Planning amendments to Policies 16(1)(d), 16(1)(e), 18(2), Rules 20A(a)(iv), 25(a)(v), 35(a)(iii)(5), 40(a)(v)(4), and Appendix N); and

d) Removing the 'exclusion of ephemeral rivers' from the provisions in Policy 18, and Rules 14, 20, 25, 35A, 40, and 70.

30. After agreeing to the JWS-Planning, Mr Farrell (in his evidence dated 20t of December 2021) has advised the Court that he has revised his position and he now recommends retaining the definition of "*ephemeral rivers*" but renaming them "*ephemeral waterbodies*"; and amending the definition of *"critical source area" by r*eplacing the reference to *"ephemeral flow path" with "ephemeral waterbody"*".

31. Mr Farrell considers that the consequences of these amendments will be*:*

> *"(a) Negligible in respect of costs or impacts on farming activities.*
>
> *(b) More appropriate in respect of acknowledging that ephemeral waterbodies should be managed as a waterbody, not land.*
>
> *(c) More accurate in respect of statutory interpretation" (paragraph 56 of Mr Farrell's evidence)".*[7]

32. I do not support Mr Farrell's recommendations for the following reasons.

33. Mr Farrell advises that his change in position has been informed by the evidence of Ms Kathryn McArthur (dated the 20th of December 2021, at paragraphs 64 to 70 inclusive). However, Ms McArthur does not use the terms 'ephemeral river', 'ephemeral waterbody' or 'ephemeral flow path' in her evidence; nor does she comment on the merits of their use over the term 'river', or whether any of these terms should reside in the definition of 'critical source area'. Rather, Ms McArthur refers to "*small waterways (including headwater, intermittent and ephemeral streams)",* "*Small, headwater streams",* "*headwater streams",* "*Headwater streams (including ephemeral streams with isolated pools and intermittent streams)", "perennial streams*", and "*Intermittent and ephemeral headwater habitats"* (paragraphs 63, 64 and 65 of her 20th of December 2021 evidence). On this basis, Mr Farrell's rationale for his

[7] Paragraph 56 of Mr Farrell's evidence dated 20 December 2021.

recommended changes to the agreed JWS-Planning are unclear to me, and I consider that the resulting lack of clarity in the plan provisions would detract from the efficiency and effectiveness of the water quality provisions in the part operative pSWLP and the JWS-Planning.

34. Regarding Mr Farrell's recommended use of the terms "*ephemeral river*" and "*ephemeral waterbody*", the Act currently defines a river (which includes streams) as "*a continually or intermittently flowing body of fresh water…"* [emphasis added], and Ms McArthur (at her paragraph 66) advises that "*There is no clear ecological definition of an ephemeral stream vs an intermittent stream*, *ecologically they occur on a hydrological continuum…*". On this basis, Mr Farrell's rationale for relabelling something that is already defined in the Act is unclear to me and I consider that such an amendment to the pSWLP would lead to unnecessary questions of interpretation and therefore detract from the efficiency of the plan provisions.

35. I do not support Mr Farrell's recommendation to retain the definition of "*ephemeral river*" and rename it "*ephemeral waterbody*". The definition referred to by Mr Farrell reads "*Rivers which only contain flowing or standing water following rainfall events or extended periods of above average rainfall*" and therefore the term "*ephemeral waterbody*" would only apply to a river despite the Act's definition of a waterbody which also includes "*fresh water or geothermal water in a…lake, pond, wetland, or aquifer*…". In addition, as the Act also defines a waterbody as "*fresh water or geothermal water in a river, lake, stream, pond, wetland, or aquifer*…" [emphasis added], it can be argued that it is the water itself that is the waterbody and not the feature within which it is held. On this basis, an "*ephemeral waterbody*" only exists when water is present, meaning any rules referring to such a waterbody could only be applied when water was present. This may not be how Mr Farrell intends his recommended adoption of "*ephemeral waterbody*" to be applied.

36. I do not support Mr Farrell's recommendation to amend the definition of "*critical source area*" by replacing its reference to "*ephemeral flow path*" with "*ephemeral waterbody*" since Mr Farrell's recommendation to retain the definition of "*ephemeral river*" and rename it "*ephemeral waterbody*" means that the an "*ephemeral waterbody*" is a 'river'. This differs from a critical source area which includes 'landscape features' that are not of the same form as a river (such as a gully, swale or a depression). Adopting Mr Farrell's recommendation

would result in the definition of critical source area also including rivers, and consequently contradictory provisions in the pSWLP applying to rivers.

37. Based on the evidence provided by the Farm Systems experts, and for the reasons previously set out in this section of this evidence, I do not agree with Mr Farrell's statement that the consequences of his recommendations will be "*Negligible in respect to costs or impacts on farming activities*", or that they are "*more accurate in respect to statutory interpretation*". Rather, in my opinion they will result in confusion for those implementing the plan along with unnecessary duplication of restrictions and additional costs for landowners, particularly if large tracts of productive farmland are lost from production, even when they are dry for extended periods of time.

38. I continue to support the agreed provisions in the JWS-Planning as they clearly distinguish between:

    a) a river (including intermittent rivers and streams) that when flowing has the potential to contribute flow and contaminants to another waterbody or receiving environment, and has a defined bed or banks that are either exposed (sand, gravel, boulders, or similar material) or contain aquatic vegetation; and

    b) a critical source area that is a landscape feature (like a gully, swale or a depression, without a formed bed and can be in productive pasture) or a constructed farming feature (like fertiliser storage areas) that during rainfall events accumulate runoff (including contaminants) from adjacent flats and slopes, and deliver it and associated contaminants to a waterbody or receiving environment.

39. I consider that the preceding breakdown of surface features that transport contaminants to associated waterbodies or receiving environments are readily recognisable on the ground, helpfully distinguish the scale of risk posed to the environment, and are able to be clearly distinguished and provided for in planning provisions. On this basis, their application will in my opinion be more effective and efficient than the features and definitions recommended by Mr Farrell.

40. At the same time, and contrary to the agreed JWS-Planning, I recommend that the term "*ephemeral flow path*" not be included in the definition of critical source

areas. Following completion of the conferencing, I have recognised that inclusion of this term is not necessary since swales, gullies or depressions in the landscape (which make up ephemeral flow paths) are already included in the definition of critical source area. On this basis I consider that the definition would be more efficient for interpretation and implementation purposes without the term ephemeral flow paths included.

H. POLICY 13 - MANAGEMENT OF LAND USE ACTIVITIES AND DISCHARGES

41. Ballance joined the appeal of Fish and Game on Policy 13. Fish and Game sought deletion of the reference to primary production. Ballance opposed this relief on the basis that "*The specific recognition of primary production within the policy provides clarity that the use and development of land and water are necessary for primary production activities. Ballance is of the view that removing the reference to primary production reduces this clarity and therefore reduces the effectiveness of the policy*."

42. Ballance also joined the appeal of Forest and Bird on Policy 13. Forest and Bird sought amendments to Policy 13 to recognise the 'sustainable' use and development of Southland's land and to delete the reference to primary production, proclaiming that there is a conflict between enabling primary production and maintaining and improving water quality. Ballance opposed this relief on the basis that "*a policy providing for primary production does not, in of itself, result in the degradation of water quality*."

43. Ballance has signed consent documentation filed with the Court to delete the words "*including for primary production*" from Policy 13. This same amendment is reflected in the JWS-Planning. In my opinion, the practical effect of this change on decisions made under the pSWLP will be negligible since 'enabling people and communities to provide for their social and economic wellbeing' remains within the policy. On this basis, and for completeness, I continue to agree with the JWS-Planning with respect to Policy 13.

I. POLICY 15A - MAINTAIN WATER QUALITY WHERE STANDARDS ARE MET

44. Ballance joined the appeal of Forest and Bird on Policy 15, 15A, 15B and 15C. The decisions version of pSWLP deleted Policy 15 and replaced it with Policies 15A, 15B and 15C. Proposed Policy 15 sought that water quality be maintained and improved. In its appeal, Forest and Bird requested the reinstatement of Policy 15 as notified, together with amendments to delete reference to adverse effects being able to be avoided, remedied or mitigated. Ballance opposed the relief sought on the basis that "*the amendments requested by Forest and Bird will serve to make the provision more restrictive than that originally notified*". With respect to Policy 15A, Forest and Bird proposed that it be amended to ensure that it provides for the maintenance of water quality and deletion of references to 'remedy or mitigate'. Ballance opposed the relief sought on the basis that "*the amendments proposed by Forest and Bird are contrary to the purpose of the Act and could result in an unsuitably restrictive regulatory framework*".

45. Ballance has signed consent documentation filed with the Court to make amendments that require in the first instance, avoiding where reasonably practical adverse effects of discharges, and where this is not possible then remedying or mitigating adverse effects. In my opinion, the amendments provide a clear directive that the primary expectation is avoidance of the adverse effects of discharges, and only when it can be shown that such action is not reasonably practical can remedies or mitigations be considered. I consider that these changes advance support for achievement of Objectives 1, 2, 6, 7, 8, 14, 15 and 18, and Policy 44 of the part operative pSWLP while not unreasonably detracting from Objective 3.

46. For completeness, these changes are included in the JWS-Planning and I continue to support the JWS-Planning in this regard.

J. POLICY 15B - IMPROVE WATER QUALITY WHERE STANDARDS ARE NOT MET

47. Forest and Bird sought that Policy 15B(1) be amended to require new discharges to contribute to the enhancement of water quality and amendments to Policy 15B(2) to provide guidance to consent authorities to distinguish

between minor and major improvements and timeframes. Forest and Bird also sought the deletion of references to 'remedy or mitigate'. Ballance opposed the relief sought on the basis that "*the amendments requested by Forest and Bird go beyond what is intended within the purpose of the Act, particularly through the removal of the ability to remedy or mitigate effects*".

48. Ballance has signed consent documentation filed with the Court to make amendments that lead to:

    a) For new point source discharges to surface water that would exacerbate the exceedance of the Appendix E Water Quality Standards or the Appendix C ANZECC sediment guidelines (beyond the zone of reasonable mixing), the adverse effects are to be avoided; and

    b) for other new discharges (that is ones that are not point source discharges) that would exacerbate the exceedance of the same standards and guidelines, in the first instance the avoidance where reasonably practical of adverse effects, and where this is not possible the remedying or mitigating the adverse effects.

49. In my opinion, the amendments provide a clear directive that new point sources to surface water cannot exacerbate the exceedance of the identified standards and guidelines, and that for other new discharges the primary expectation is avoidance of the adverse effects of discharges, and only when it can be shown that such action is not reasonably practical can remedies or mitigations be considered. I consider that these changes advance support for achievement of Objectives 1, 2, 6, 7, 8, 15 and 18, and Policy 44 of the part operative pSWLP while not unreasonably detracting from achievement of Objective 3.

50. For completeness, these changes are included in the JWS-Planning and I continue to support the JWS-Planning in this regard.

K. POLICY 15C - MAINTAINING AND IMPROVING WATER QUALITY AFTER FMU PROCESSES

51. Forest and Bird sought that Policy 15C be amended to delete reference to non-regulatory methods, to refer to degraded water quality where it has been allocated beyond a limit, and to maintaining and improving water quality. Ballance opposed the relief by Forest and Bird.

52. In the JWS-Planning, all planners agreed to the deletion of Policy 15C. In my opinion, including direction on the National Objectives Framework and FMUs in the pSWLP is unnecessary as the direction is already required by the NPSFM 2020. On this basis, I recommend adoption of the JWS-Planning's deletion of Policy 15C.

L. POLICY 16 – FARMING ACTIVITIES THAT AFFECT WATER QUALITY

53. Ballance, joined the appeal of Fish and Game on Policy 16. Fish and Game sought amendments so that adverse effects on water quality are avoided and other adverse environmental effects are avoided, remedied or mitigated; along with requiring changes to practices, in a number of instances to make them more restrictive; and the use of the best practicable option. Ballance opposed the relief sought on the basis that "*the proposed approach may result in over complication and uncertainty*".

54. Ballance also joined the appeal of Forest and Bird on Policy 16. Forest and Bird sought amendments so that adverse effects on water quality are avoided and other adverse environmental effects are avoided, remedied or mitigated; discouraging' is changed to 'avoiding' in 16(1)(a); and 'generally' and 'or mitigated' are deleted in 16(1)(b) and 16(1)(c). Ballance opposed the relief sought on the basis that the changes sought will "*prohibit the establishment of farming activities in some situations, without the ability to consider the effects of such an activity, or the mitigation methods available to address potential effects. Such an approach is inconsistent with the purpose of the Act and therefore inappropriate*".

55. I consider that the key changes to Policy 16 agreed in the JWS-Planning are:

a) clarifying that adverse environmental effects from farming activities are to, in the first instance, be avoided where practicable or otherwise be minimised;

b) specifically referring to the contaminant discharges that are to be minimised, with these being nitrogen, phosphorus, sediment and microbial contaminants;

c) requiring existing farming activities to reduce adverse effects on water quality in catchments identified as requiring improvements;

d) requiring new dairy farms or further intensification of dairy farms to not increase contaminant discharges, to minimise any such discharges, and to reduce such discharges in catchments identified as requiring improvements;

e) avoiding new dairy farms or further intensification of dairy farms in close proximity to Regionally Significant Wetlands and Sensitive Water bodies; and

f) strengthening the content requirements of the FEMPs in terms of identifying environmental risks and how they are to be addressed.

56. These are substantial changes to Policy 16, and in my opinion, they better support achievement of Objectives 1, 2, 6, 7, 8, 15 and 18, and Policy 44 of the part operative pSWLP while not unreasonably detracting from achievement of Objective 3.

57. Since signing the JWS-Planning, Mr Farrell has recommended changes to Policy 16 on the basis that his "*amendments provide clarification/reinforcement of the intent of the provisions agreed in the JWS Planning (the matters are largely plan drafting relating with no material changes to the intent of the provisions as I understood them) while better addressing the matters raised in the JWS Science*" (paragraph 91 of Mr Farrell's evidence of 20 December 2021).

58. As discussed in Section F of this evidence, Mr Farrell recommends insertion of "*degraded*" before use of the term "*waterbodies that require improvement*" throughout Policy 16, Rule 20, Rule 20A and Appendix N, and wherever Schedule X is referred to. For the reasons set out in Section F of this evidence I do not support Mr Farrell's recommendation.

59. Ms Kirk has, in her evidence of 20 December 2021, supported the JWS-Planning recommended changes to Policy 16. Ms Kirk states that the JWS-Planning "*more clearly manages the higher risk activities and aligns with the water quality and safeguarding the life-supporting capacity of ecosystem objectives and policies in the Plan.*" However, at the same time she refers to the need to "*give better effect to the NPSFM 2020*" by "*the inclusion of the identification of habitat of other threatened species in Policy 16*". Ms Kirk has not provided recommended editing to support this statement. I note that such

an amendment may be better placed in Appendix N, and at the same time I note that the JWS-Planning amendments to Appendix N include the need to map "*the presence of taonga species listed in Appendix M within water bodies on the farm (if known)*". If the habitat of other threatened species are to be mapped, in my opinion a further appendix identifying such species and their habitat would be needed. On this basis, I do not support Ms Kirk's comments on this matter.

60. Based on the preceding assessment, I recommend adoption of the JWS-Planning version of Policy 16.

M. RULE 14 – DISCHARGE OF FERTILISER

61. Ballance, joined the appeal of Fish and Game on Rule 14. Fish and Game sought that the rule be amended to specifically exclude the application of fertiliser to ephemeral or intermittent rivers. Ballance considered that "*Whilst such an approach may be appropriate in some situations, it does not consider the site-specific characteristics, good management practice fertiliser application or the type and frequency of fertiliser application. As a result, Ballance consider that such an amendment and the resulting activity status (non-complying activity) are inappropriate*." Ballance also joined the appeal of Forest and Bird on the same rule. Forest and Bird sought a 10-metre setback to a significant indigenous biodiversity site, lake, river, artificial watercourse, modified watercourse or wetland associated with the application of fertiliser, including to ephemeral waterways. Ballance considered that "*a restriction of 10 metres is arbitrary, and does not reflect recognised good management practice, site specific conditions, the type of fertiliser being applied or the method of application. As a result, such a significant setback, and the consequential non-complying activity status for not meeting it, is considered overly restrictive*."

62. The changes to Rule 14, agreed in the JWS-Planning are limited to deleting the references to "*excluding ephemeral rivers*". No changes were made to the setback distances from waterbodies for fertiliser applications. For the reasons set out in Section G of this evidence, I recommend adopting the changes that delete references to "*excluding ephemeral rivers*" in the JWS-Planning.

N. RULE 20 - FARMING

63. Ballance, joined the appeal of Fish and Game on Rule 20. Fish and Game sought that the rule be amended to delete part (aa)[8], include restrictions relating to ephemeral streams and the slope of land, exclude stock from critical source areas; provide for increased setbacks, and require that farming that does not meet the standards be a non-complying activity. Ballance considered that the changes proposed by Fish and Game "*are overly restrictive and do not enable the adoption of recognised good management practice or site-specific considerations*".

64. I consider that the key changes to Rule 20 agreed in the JWS-Planning are:

a) Deletion of part (aa);

b) The separation of intensive winter grazing from Rule 20 and providing for this activity in new provision "*Rule 20A – Intensive Winter Grazing*";

c) Requiring FEMPs to be certified and audited;

d) Including in matters of discretion of the Council "*whether the farming activity is being undertaken in a degraded catchment of a waterbody that requires improvement identified in Schedule X, and if so, the mitigations actions to be implemented to reduce adverse effects on water quality*"; and

e) Prohibiting dairy platforms at altitudes above 800 metres above mean sea level.

65. In my opinion, requiring FEMP's to be certified and audited significantly advances the robustness of this planning mechanism, and given the substantial role of FEMPs in managing potential adverse effects from farming in the pSWLP, I consider that such changes to Rule 20 and Appendix N are necessary to ensure achievement of the plan's objectives.

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[8] Part (aa) of Rule 20 of the decisions version of the pSWLP reads:
"*Unless stated otherwise by Rules 20, 25, 70 or any other rule in this Plan:*
(i) intensive winter grazing; or
(ii) cultivation; or
(iii) the disturbance by livestock including cattle, deer, pigs or sheep; in, on or over the bed of an ephemeral river is a permitted activity."

66. I support separation of intensive winter grazing into a rule that addresses this activity specifically. I consider that this aids readability of the provisions, and clarifies the additional requirements that apply to this activity.

67. Other changes to Rule 20 in the JWS-Planning remove ambiguity from the provisions, thereby advancing the effectiveness and efficiency of the provisions.

68. On this basis, I recommend adopting the JWS-Planning version of Rule 20.

O. APPENDIX N – FARM ENVIRONMENTAL MANAGEMENT PLAN REQUIREMENTS

69. Ballance, joined the appeal of Fish and Game on Appendix N. Fish and Game sought a number of additions to Appendix N, including an assessment of adverse effects and risks and how they will be managed, the addition of objectives and a requirement to report how they will be met, and a requirement for defined measurable targets (amongst other additions). Ballance opposed the relief sought by Fish and Game on the basis that "*A number of the changes appear counter-intuitive to recognised good management practices, and as a result the provisions in-of-themselves are likely to result in unnecessary changes and increased reporting requirements. In turn, such changes may result in disproportionate additional administrative responsibilities for farmers.*"

70. I consider that the key changes to Appendix N agreed in the JWS-Planning are:

    a) Adding provision for FEMPs to be prepared, implemented and audited in accordance with regulations prepared under Part 9A of the Act where they exist for the Southland region; and where they don't exist then a FEMP is to be prepared and implemented in accordance with the details in Appendix N;

    b) Adding the ability for a FEMP to be based on a management plan and nutrient budget prepared in accordance with a condition of resource consent to discharge industrial wastewater onto land that is also used for farming activity provided certain default content is included;

    c) Adding a requirement to describe the type of farming activities being undertaken on the property;

d) Adding springs and other critical source areas to the waterbodies that are to be mapped;

e) Adding a requirement to map land to be cultivated or intensively winter grazed, or break fed on pasture between 1 June and 31 July, and the slope and intended setbacks from any lake, river, artificial watercourse, modified watercourse or natural wetland and other critical source areas;

f) Adding a requirement to map land within a catchment of a waterbody that requires improvement (such catchments are to be identified in Schedule X which has previously been discussed in this evidence);

g) Adding a requirement to map any heritage site recorded in the relevant district plan, on the New Zealand Heritage List/Rārangi Kōrero or on the New Zealand Archaeological Association website; and to map the presence of taonga species listed in Appendix M of the pSWLP within water bodies on the farm (if known); and any other significant values and uses (if known) on nearby land and waters;

h) Deletion of the requirement to include a nutrient budget calculated using OVERSEER, and replacing this with the requirement to include a nutrient loss risk assessment undertaken using a nutrient loss risk assessment tool approved by the Chief Executive of Southland Regional Council.

i) Adding the requirement to have the nutrient budget or nutrient loss risk assessment prepared by a suitably qualified person that has been approved as such by the Chief Executive of Southland Regional Council.

j) Adding the requirement to describe how a list of objectives addressing irrigation system design and installation, irrigation management, nutrient and soil management, waterways and wetland management, collected agricultural effluent management, and drainage maintenance will be met. With this, adding a requirement that identification of risks and mitigations for achieving the objectives, along with timeframes and record keeping, must be provided.

k) Adding a requirement that, where Intensive Winter Grazing is occurring, the FEMP must include an intensive winter grazing plan that takes into

account and responds to the risk pathways of the relevant physiographic zones.

l) Adding requirements for certification, auditing and reviewing of FEMPs.

71. In my opinion, the agreed changes are a substantial 'overhaul' of the Appendix N provisions. These changes significantly strengthen the requirements to identify and manage environmental risks on farms and I consider that they substantively advance achievement of the outcomes sought in Objectives 1, 2, 6, 8 and 18.

72. After signing the JWS-Planning, Mr Farrell has advised (in his evidence of 20 December 2021) that he considers further changes are needed to Appendix N as he considers that the agreed farming provisions fall short of driving sufficient improvements to freshwater quality. In particular Mr Farrell draws on Table 2 in the JWS-Science/Water Quality to recommend that new objectives be inserted into Appendix N Part B 5 addressing "*Degraded waterbodies*" and "*Ki uta ki tai and hauora*". The latter effectively introduces 15 new objectives that focus on the "*understanding by people farming*" of ecological and cultural health matters, and substantially shifts the FEMP from being a practical on farm plan for managing potential effects on water, to being about assessing a farmer's understanding of (amongst other matters) mauri; te hauora o te taiao, te wai and te tangata; cultural health. Many of the changes recommended by Mr Farrell (after signing the JWS-Planning) are already, and in my opinion more concisely, addressed within existing components of the FEMP.[9] In my opinion the duplication, and new components recommended by Mr Farrell will add implementation costs for little (if any) environmental or cultural benefit, and they risk significantly detracting from effective preparation and implementation of FEMP's and practical on farm changes in environmental management.

73. Further to the preceding paragraph, Mr Farrell, at paragraph 75 of his 20 December 2021 evidence, claims that the planners, during their conferencing, "*appear to have missed some key recommendations / observations by some of*

[9] For example, Appendix N Part B 3(l) requires mapping of taonga species; 5(f) requires a description of how drainage maintenance activities are to be managed to ensure contaminant losses to water bodies and damage to aquatic habitats are avoided where practicable, or otherwise minimised; 6(b) requires, where the farm is located within a catchment of a waterbody that requires improvement identified in Schedule X, a description of the mitigations that will achieve a reduction in the discharge of the contaminants where relevant to the farming activity that trigger the requiring improvement status of the catchment.

the science and farm systems experts, for example the farm systems JWS 22 November identified among other things that the Plan fails to explicitly address nitrogen loss". The example that Mr Farrell provides refers to Table 1 on page 3 of the JWS-Farm Systems. Mr Farrell quotes the agreed position of Ms McArthur and Ms Jane Kitson that "*Measures in the Plan may not change nitrogen leakages as nothing specifically addresses this*". However, he fails to acknowledge that none of the other experts present in the farm systems conferencing agreed with this statement. Rather, four of the other experts present agreed that "*There are measures in place in Appendix N via provisions 5(c) and 6(a) and (b) to specifically deal with nutrient losses and their reduction. This could be strengthened by 5(c) specifically referencing nitrogen as a contaminant where losses need to be avoided or minimised*", and the remaining expert present recorded no opinion on the matter.

74. Counter to Mr Farrell's position, nitrogen (and its management as a contaminant) is explicitly addressed in the JWS-Planning version of Policy 16 and Rule 20; and Appendix N addresses contaminant losses (which when read with Policy 16 and Rule 20 clearly, in my opinion, include nitrogen) through sections 5(b), 5(d), 5(e), 5(f) and 6(b). These Appendix N provisions require that the FEMP describe how "*contaminant losses to waterbodies are avoided where practicable or otherwise minimised*"; how activities will *'avoid where practicable, or otherwise minimise, inputs of nutrients, sediment and faecal contaminants to ground and surface water'*; how activities will "*ensure contaminants derived from collected agricultural effluent do not cause adverse effects on water quality*"; and "*where the farm is located within a catchment of a waterbody that requires improvement identified in Schedule X*", the FEMP must describe "*the mitigations that will achieve a reduction in the discharge of the contaminants where relevant to the farming activity that trigger the requiring improvement status of the catchment*". Appendix N also requires the preparation of a Nutrient Budget/Nutrient Loss Risk Assessment. There is no doubt in my mind that the term 'contaminants', in the context of effects on waterbodies in the pSWLP, is recognised as including nitrogen, phosphorus, sediment and microbial matter (amongst other substances); and that the term 'nutrients' in the same context is recognised as including nitrogen and phosphorus, amongst others. However, I agree that to avoid doubt they could be explicitly listed in the relevant plan provisions, but I consider that this would lead to unnecessarily lengthy provisions.

75. I understand from Mr Farrell's evidence that he is concerned that the scale and pace of change to achieve te hauora o te taiao, te hauora o te wai, and te hauora o te tangata[10] that is provided by the provisions of the pSWLP is not sufficient. While I respect this concern, and agree that urgency should be applied to addressing water quality issues in Southland, I note the significant strengthening of provisions within the JWS-Planning when compared to the decisions version of the pSWLP, the ongoing strengthening of the national framework for freshwater management, and the ongoing programme of work in the Council's Freshwater Planning Process (as set out in paragraphs 56 to 62 of Mr McCallum-Clarke's evidence of 22 October 2021). In my opinion, the pSWLP (inclusive of the changes recommended in the JWS-Planning) is a significant improvement to water management in Southland, and it is part of an ongoing process of change that aims to ensure that the mauri of water provides for te hauora o te taiao, te hauora o te wai, and te hauora o te tangata. Bringing about sizable change often takes sizable time, and the timeframes required to achieve te hauora o te taiao, te hauora o te wai, and te hauora o te tangata will, not unrealistically, span beyond the life of this plan.

76. Based on the preceding assessment, I do not support the amendments recommended by Mr Farrell to Appendix N. Rather, I continue to support and recommend adoption of the JWS-Planning version of Appendix N.

P. CONCLUSION

77. Having participated in the planning conferencing and considered the evidence at hand, I continue to agree with the amendments proposed to the pSWLP in the JWS-Planning (with respect to Policies 13, 15A, 15B, 15C and 16, Rules 14 and 20, and Appendix N) with two exceptions. The exceptions I recommend are including the JWS-Planning recommended definition of "*minimise*" in the Glossary of the pSWLP; and deleting the term, "*ephemeral flow path*" from the JWS-Planning definition of "*critical source area*".

78. I have considered each of these amendments with respect to the relevant planning instruments, and in particular with respect to the principles and hierarchy of obligations set out in the Te Mana o te Wai framework for managing freshwater in the NPSFM 2020. I am satisfied that the amendments I am

[10] Objective 2 of the part operative pSWLP

recommending are consistent with these instruments and frameworks, improve the effectiveness and efficiency of the provisions addressed in this evidence and thereby advance support for achieving the objectives in the part operative pSWLP.

Sue Ruston

4 February 2022

ATTACHMENT 1: COMPLETE SET OF RECOMMENDED AMENDMENTS

This attachment sets out Susan Ruston's recommended amendments to the Topic B Tranche 1 provisions that Ballance is a s274 party to.

Text in red font is the JWS-Planning agreed amendments (relative to the decisions version of the pSWLP), and I continue to recommend these. The text in blue font is Ms Ruston's proposed corrections and minor amendments to the JWS-Planning agreed amendments. Strikethroughs represent recommended deletions and underlined text represent recommended additions.

GLOSSARY

Critical source area

(a) a landscape feature like ~~an ephemeral flow path~~, a gully, swale or a depression ~~(including ephemeral flow paths)~~ that accumulates runoff (sediment and nutrients) from adjacent flats and slopes, and delivers it to surface water bodies (including lakes, rivers, artificial watercourses and modified watercourses) or subsurface drainage systems.~~; and~~

(b) a non-landscape feature that has high levels of contaminant losses, such as, silage pits, fertiliser storage areas, stock camps and laneways.

~~(b) areas which arise through land use activities and management approaches (including cultivation and winter grazing) which result in contaminants being discharged from the activity and being delivered to surface water bodies~~.

~~Ephemeral rivers~~

~~Rivers which only contain flowing or standing water following rainfall events or extended periods of above average rainfall~~

Minimise

Minimise means to reduce to the smallest amount reasonably practicable.

POLICY 13 - MANAGEMENT OF LAND USE ACTIVITIES AND DISCHARGES

1. Recognise that the use and development of Southland's land and water resources~~, including for primary production,~~ enables people and communities to provide for their social, economic and cultural wellbeing.

2. *Manage land use activities and discharges (point source and non-point source) to enable the achievement of Policies 15A, 15B and 15C.*

POLICY 15A - MAINTAIN WATER QUALITY WHERE STANDARDS ARE MET

Where existing water quality meets the Appendix E Water Quality Standards or bed sediments meet the Appendix C ANZECC sediment guidelines, maintain water quality including by~~:~~

~~1.~~ avoiding, where reasonably practicable, or otherwise remedying or mitigating any ~~the~~ adverse effects of ~~new~~ discharges, so that ~~beyond the zone of reasonable mixing,~~ those standards or sediment guidelines will continue to be met (beyond the zone of reasonable mixing for point source discharges)~~; and~~

~~2. Requiring any application for replacement of an expiring discharge permit to demonstrate how the adverse effects of the discharge are avoided, remedied or mitigated, so that beyond the zone of reasonable mixing those standards or sediment guidelines will continue to be met.~~

POLICY 15B - IMPROVE WATER QUALITY WHERE STANDARDS ARE NOT MET

Where existing water quality does not meet the Appendix E Water Quality Standards or bed sediments do not meet the Appendix C ANZECC sediment guidelines, improve water quality including by:

1. *avoiding ~~where practicable and otherwise remedying or mitigating~~ any adverse effects of new point source discharges to surface water on water quality or sediment quality that would exacerbate the exceedance of those standards or sediment guidelines beyond the zone of reasonable mixing; and*

1a. avoiding where reasonably practicable and otherwise remedying or mitigating any adverse effects of other new discharges on water quality or sediment quality that would exacerbate the exceedance of those standards or sediment guidelines; and

2. *requiring any application for replacement of an expiring discharge permit to demonstrate how and by when adverse effects will be avoided where reasonably practicable and otherwise remedied or mitigated, so that ~~beyond the zone of reasonable mixing~~ water quality will be improved to*

assist with meeting those standards or sediment guidelines (beyond the zone of reasonable mixing for point source discharges).

POLICY 15C - MAINTAINING AND IMPROVING WATER QUALITY AFTER FMU PROCESSES

Following the establishment of freshwater objectives and limits under Freshwater Management Unit processes, and including through implementation of non-regulatory methods, improve water quality where it is degraded to the point where freshwater objectives are not being met and otherwise maintain water quality where freshwater objectives are being met.

POLICY 16 - FARMING ACTIVITIES THAT AFFECT WATER QUALITY

1. *Minimising Avoid where practicable, or otherwise minimise any the adverse environmental effects (including on the quality of water in lakes, rivers, artificial watercourses, modified watercourses, wetlands, tidal estuaries and salt marshes, and groundwater) from farming activities by:*
   - *(a) discouraging the establishment of new dairy farming of cows or new intensive winter grazing activities in close proximity to Regionally Significant Wetlands and Sensitive Waterbodies identified in Appendix A; and*
   - *(b) ensuring that, in the interim period prior to the development of freshwater objectives under Freshwater Management Unit processes, applications to establish new, or further intensify existing, dairy farming of cows or intensive winter grazing activities will generally not be granted where:*
     - *(i) the adverse effects, including cumulatively, on the quality of groundwater, or water in lakes, rivers, artificial watercourses, modified watercourses, wetlands, tidal estuaries and salt marshes cannot be avoided or mitigated; or*
     - *(ii) existing water quality is already degraded to the point of being overallocated; or*
     - *(iii) water quality does not meet the Appendix E Water Quality Standards or bed sediments do not meet the Appendix C ANZECC sediment guidelines; and*

~~(c) ensuring that, after the development of freshwater objectives under Freshwater Management Unit processes, applications to establish new, or further intensify existing, dairy farming of cows or intensive winter grazing activities:~~

~~(i) will generally not be granted where freshwater objectives are not being met; and~~

~~(ii) where freshwater objectives are being met, will generally not be granted unless the proposed activity (allowing for any offsetting effects) will maintain the overall quality of groundwater and water in lakes, rivers, artificial watercourses, modified watercourses, wetlands, tidal estuaries and salt marshes.~~

(~~b~~ a) ensuring that for existing farming activities:

(i) nitrogen, phosphorus, sediment or microbial contaminant discharges are minimised; and

(ii) reduce adverse effects on water quality where the farming activity occurs within the catchment of a waterbody that requires improvement identified in Schedule X; and

(iii) demonstrate how (i) and (ii) is being or will be achieved through the implementation of Farm Environment Management Plans prepared in accordance with (c) below and in addition,

(~~ba~~ b) ensuring that for the establishment of new, or further intensification of existing, dairy farming of cows or intensive winter grazing activities:

(i) does not result in an increase in nitrogen, phosphorus, sediment and microbial contaminant discharges; and

(ii) minimises nitrogen, phosphorus, sediment or microbial contaminant discharges; and

(iii) reduces nitrogen, phosphorus, sediment or microbial contaminant discharges where the farming activity occurs within the catchment of a waterbody that requires improvement identified in Schedule X; and

(iv) is avoided in close proximity to Regionally Significant Wetlands and Sensitive Water bodies identified in Appendix A; and

~~2.~~(c) Requiring all farming activities~~, including existing activities,~~ to:

(a) *be undertaken in accordance with ~~implement~~ a Farm Environmental Management Plan which:~~, as set out in Appendix N;~~*

(i) identifies whether the farming activity is occurring, or would occur, in a catchment of a waterbody that requires improvement identified in Schedule X;

(ii) identifies and responds to the contaminant pathways (and variants) for the relevant Physiographic Zones;

(iii) sets out how adverse effects on water quality from the discharge of contaminants from farming activities will be minimised or, where the farming activity is occurring in a catchment of a waterbody that requires improvement identified in Schedule X, reduced;

(iv) is certified as meeting all relevant requirements of this plan and regulation prepared under Part 9A of the RMA; and

(v) is independently audited and reported on;

(d) *~~actively manage~~ avoid where practicable, otherwise minimise, sediment run-off risk from farming and hill country development activities by identifying critical source areas and implementing actions and maintaining practices including setbacks from waterbodies, sediment traps, riparian planting, limits on areas or duration of exposed soils and the prevention of stock entering the beds of surface waterbodies; and*

(e) *~~manage~~ avoid where practicable, otherwise minimise, collected and diffuse run-off and leaching of nutrients, microbial contaminants and sediment through the identification and management of critical source areas and the contaminant pathways identified for the relevant Physiographic Zones (and variants) within individual properties.*

3. *When considering a resource consent application for farming activities, consideration should be given to the following matters:*

(a) *whether multiple farming activities (such as cultivation, riparian setbacks, and winter grazing) can be addressed in a single resource consent; and*

(b) *granting a consent duration of at least 5 years where doing so is consistent with Policy 40.*

Minimise means to reduce to the smallest amount reasonably practicable.

RULE 14 - DISCHARGE OF FERTILISER

(a) *The discharge of fertiliser onto or into land in circumstances where contaminants may enter water is a permitted activity provided the following conditions are met:*

(i) *other than for incidental discharges of windblown fertiliser dust, there is no direct discharge of fertiliser into a lake, river ~~(excluding ephemeral rivers)~~, artificial watercourse, modified watercourse, or natural wetland or into groundwater;*

(ii) *there is no fertiliser discharged when the soil moisture exceeds field capacity; and*

(iii) *there is no fertiliser discharged directly into or within 3 metres of the boundary of any significant indigenous biodiversity site identified in a district plan that includes surface water; and*

(iv) *where a lake, river ~~(excluding ephemeral rivers)~~, artificial watercourse, modified watercourse or wetland:*

(1) *has riparian planting from which stock is excluded, fertiliser may be discharged up to the paddock-side edge of the riparian planting but not onto the riparian planting, except for fertiliser required to establish the planting; or*

(2) *does not have riparian planting from which stock is excluded, fertiliser is not discharged directly into or within 3 metres of the bed or within 3 metres of a wetland.*

(b) *The discharge of fertiliser onto or into land in circumstances where the fertiliser may enter water that does not meet the conditions of Rule 14(a) is a non-complying activity*.

RULE 20 – FARMING

~~*(aa) Unless stated otherwise by Rules 20, 25, 70 or any other rule in this Plan:*~~

~~*(i) intensive winter grazing; or*~~

~~*(ii) cultivation; or*~~

~~*(iii) the disturbance by livestock including cattle, deer, pigs or sheep;*~~

~~*in, on or over the bed of an ephemeral river is a permitted activity.*~~

(a) *The use of land for a farming activity, other than for intensive winter grazing, is a permitted activity provided the following conditions are met:*

(i) *the landholding is less than 20 hectares in area; or*

(ii) *where the farming activity includes a dairy platform on the landholding, the following conditions are met:*

(1) *the dairy platform has a maximum of 20 cows; or*

(2) *the dairy platform had a dairy effluent discharge permit on 3 June 2016 that specified a maximum number of cows; and*

(3) *cow numbers have not increased beyond the maximum number specified in the dairy effluent discharge permit that existed on 3 June 2016; and*

(4) ~~*from 1 May 2019,*~~ *a Farm Environmental Management Plan for the landholding is prepared, certified, ~~and~~ implemented and audited in accordance with Appendix N; and*

~~*(5) the landowner provides to the Southland Regional Council on request:*~~

~~*(A) a written record of the good management practices, including any newly instigated good management practices in the preceding 12 months, occurring on the landholding; and*~~

~~*(B) the Farm Environmental Management Plan prepared in accordance with Appendix N;*~~

(~~*6*~~*5*) *the land area of the dairy platform is no greater than at 3 June 2016; and*

~~*(7) no part of the dairy platform is at an altitude greater than 800 metres above mean sea level; and*~~

~~*(iii) where the farming activity includes intensive winter grazing on the landholding, the following conditions are met:*~~

~~*(1) from 1 May 2019, intensive winter grazing does not occur on more than 15% of the area of the landholding or 100 hectares, whichever is the lesser;*~~

~~*(2) from 1 May 2019, a Farm Environmental Management Plan for the landholding is prepared and implemented in accordance with Appendix N;*~~

~~*(3) from 1 May 2019, all of the following practices are implemented:*~~

~~*(A) if the area to be grazed is located on sloping ground, stock are progressively grazed (break-fed or block-fed) from the top of the slope to the bottom, or a 20 metre 'last-bite' strip is left at the base of the slope;*~~

~~*(B) when the area is being break-fed or block-fed, the stock (excluding sheep and deer) are back fenced to prevent stock entering previously grazed areas;*~~

~~*(C) transportable water trough(s) are provided in or near the area being grazed to prevent stock accessing a lake, river (excluding ephemeral rivers), artificial watercourse, modified watercourse or natural wetland for drinking water;*~~

~~*(D) if supplementary feed (including baleage, straw or hay) is used in the area being grazed it is placed in portable feeders;*~~

~~*(E) if cattle or deer are being grazed the mob size being grazed is no more than 120 cattle or 250 deer; and*~~

~~*(F) critical source areas (including swales) within the area being grazed that accumulate runoff from adjacent flats and slopes are grazed last;*~~

~~*(4) from 1 May 2019, a vegetated strip is maintained in, and stock excluded from, the area between the outer edge of the bed of a lake, river (excluding ephemeral rivers where intensive winter grazing is permitted under Rule 20(aa)), artificial watercourse, modified watercourse or natural wetland for a distance of at least 5 metres;*~~

~~*(5) from 1 May 2019, intensive winter grazing does not occur within 20 metres of the outer edge of the bed of any Regionally Significant Wetland or Sensitive WaterBodies listed in Appendix A, estuary or the coastal marine area; and*~~

~~*(6) no intensive winter grazing occurs at an altitude greater than 800 metres above mean sea level; and*~~

(~~*iv*~~*iii*) *for all other farming activities*~~*, from 1 May 2020*~~ *a Farm Environmental Management Plan is prepared*, *certified,* ~~*and*~~ *implemented and audited in accordance with Appendix N*~~*.*~~*;*

(iv) no part of the dairy platform occurs at an altitude greater than 800 metres above mean sea level.

~~*(b) The use of land for a farming activity that includes intensive winter grazing on the landholding and which meets all conditions of Rule 20(a) other than condition (iii)(3) is a permitted activity, provided that:*~~

~~(i) from 1 May 2019, a vegetated strip is maintained in, and stock excluded from, the area between the outer edge of the bed of a lake, river (excluding ephemeral rivers where intensive winter grazing is permitted under Rule 20(aa)), artificial watercourse, modified watercourse or natural wetland for a distance of at least 20 metres.~~

~~(c) Despite any other rule in this Plan, the use of land for a dairy platform or intensive winter grazing at an altitude greater than 800 metres above mean sea level is a prohibited activity.~~

(~~d~~b) *The use of land for a farming activity, other than for intensive winter grazing, that ~~meets all conditions of Rule 20(a) other than (i), (ii), (iii)(1), (iii)(4) or (iii)(5) or~~ does not meet ~~condition (i) of Rule 20(b)~~ any one of conditions (ii)(1)-(5) or (iii) of Rule 20(a) is a restricted discretionary activity, provided the following conditions are met:*

(i) *a Farm Environmental Management Plan is prepared, certified, ~~and~~ implemented and audited in accordance with Appendix N; and*

(ii) *the application includes the following material, prepared by a suitably qualified person:*

(1) *an assessment that shows that the ~~annual amount~~ risk of nitrogen, phosphorus, sediment and microbiological contaminants being discharged from the landholding will be no greater than ~~that~~ the risk of contaminant discharge which was lawfully discharged ~~annually~~ on average for the five years prior to the application being made; and*

(2) *for any mitigation proposed, a detailed mitigation plan (taking into account contaminant loss pathways) that identifies the mitigation or actions to be undertaken including any physical works to be completed, their timing, operation and their potential effectiveness.*

The Southland Regional Council will restrict its discretion to the following matters:

1. *the quality of and compliance with the Farm Environmental Management Plan for the landholding;*
2. *whether the assessment undertaken under Rule20(~~d~~b)(ii) above takes into account reasonable and appropriate mitigation actions ~~good management practices~~ to minimise the losses of contaminants from the existing farming activity;*

2(a). whether the farming activity is being undertaken in a catchment of a waterbody that requires improvement identified in Schedule X, and if so, the mitigation actions to be implemented to reduce adverse effects on water quality

3. *mitigation actions ~~good management practices~~ to be undertaken, including those to minimise the discharge of nitrogen, phosphorus, sediment and microbiological contaminants to water from the use of land, taking into account contaminant loss pathways;*
4. *the potential benefits of the activity to the applicant, the community and the environment;*
5. *the potential effects of the farming activity on surface and groundwater quality and sources of drinking water; and*
6. *monitoring and reporting undertaken to assess the effectiveness of any mitigation implemented.*

(~~e~~c) The use of land for a farming activity ~~that is not specified as a permitted, restricted discretionary or prohibited activity under~~ which is not a restricted discretionary activity under Rule 20(b) is a ~~discretionary~~ non-complying activity.

(d) The use of land for a farming activity that does not comply with Rule 20(a)(iv) is a prohibited activity.

APPENDIX N - FARM ENVIRONMENTAL MANAGEMENT PLAN REQUIREMENTS

A Farm Environmental Management Plan must be:

(1) A Freshwater Farm Plan prepared, implemented and audited in accordance with regulations prepared under Part 9A of the RMA and which apply within the Southland region, plus any additional information or components required by Parts B (3) and (6)(b) as below; or

(2) if Freshwater Farm Plans, under Part 9A of the RMA, are not yet required in the Southland region, a Farm Environmental Management Plan prepared and implemented in accordance with Parts A to C below.

Part A – Farm Environmental Management Plans

A Farm Environmental Management Plan (FEMP) can be based on either of:

1. *the ~~material~~ default content set out in Part B below; or*

2. *industry prepared FEMP templates and guidance material, with Southland-specific supplementary material added where relevant, so that it includes the default ~~material~~ set out in Part B below~~.~~; or*

3. *A management plan and nutrient budget prepared in accordance with a condition of resource consent to discharge industrial wastewater onto land that is also used for farming activity, provided it includes the material set out in Part B below in relation to each farm receiving industrial wastewater'.*

Part B – Farm Environmental Management Plan Default Content

~~1. A written FEMP that is:~~

~~(a) prepared and retained, identifying the matters set out in clauses 2 to 5 below;~~

~~(b) reviewed at least once every 12 months by the landholding owner or their agent and the outcome of the review documented; and~~

~~(c) provided to the Southland Regional Council upon request.~~

1. *The FEMP contains the following landholding details:*

(a) *physical address;*

(b) *description of the landholding ownership and the owner's contact details;*

(c) *legal description(s) of the landholding; and*

(d) *a list of all resource consents held for the landholding and their expiry dates.; and*

(e) *the type of farming activities being undertaken on the property, such as "dairy" or "sheep and beef with dairy support".*

2. *The FEMP contains a map(s) or aerial photograph(s) of the landholding at a scale that clearly shows the locations of:*

(a) *the boundaries;*

(b) *the physiographic zones (and variants where applicable) and soil types (or Topoclimate South soil maps);*

(c) *all lakes, rivers~~,~~/streams (including intermittent rivers), springs, ponds, artificial watercourses, modified watercourses and natural wetlands;*

(d) *all existing and proposed riparian vegetation and fences (or other stock exclusion methods) adjacent to water bodies;*

(e) *places where stock access or cross water bodies (including bridges, culverts and fords); and*

(f) the location of all known subsurface drainage system(s) and the locations and depths of the drain outlets;

(g) all land that may be cultivated and land to be cultivated over the next 12-month period; and

~~(h) all land that may be intensively winter grazed and the land to be planted for winter grazing for the next period 1 May to 30 September; and~~

(h) all critical source areas not already identified above; and

(i) ~~for~~ land to be cultivated or intensively winter grazed, or break fed on pasture between 1 June and 31 July, and the slope [slope is the average slope over any 20 metre distance] of the land and intended setbacks from any lake, river, artificial watercourse, modified watercourse or natural wetland and any other critical source areas; and

~~(i) critical source areas;~~

~~(ii) intended setbacks from any lake, river (excluding ephemeral rivers), artificial watercourses, modified watercourse or natural wetland; and~~

~~(iii) land with a slope greater than 20 degrees.~~

(j) any areas of the land within a catchment of a waterbody that requires improvement identified in Schedule X; and

(k) any heritage site recorded in the relevant district plan, on the New Zealand Heritage List/Rārangi Kōrero or on the New Zealand Archaeological Association website; and

(l) the presence of taonga species listed in Appendix M within water bodies on the farm (if known); and

(m) other significant values and uses (if known) on nearby land and waters.

4. Nutrient Budget/Nutrient Loss Risk Assessment

For all landholdings over 20ha, the FEMP contains either:

(a) a nutrient budget (which includes nutrient losses to the environment) calculated using a ~~the latest version of the OVERSEER~~ model ~~in accordance with the latest version of the OVERSEER Best Practice Data Input Standards (or an alternative model~~ approved by the Chief Executive of Southland Regional Council); or

(b) a nutrient loss risk assessment undertaken using a nutrient loss risk assessment tool approved by the Chief Executive of Southland Regional Council);

and the nutrient budget or nutrient loss risk assessment is repeated ~~which is repeated~~:

(~~a~~1) where a material change in land use associated with the farming activity occurs (including a change in crop area, crop rotation length, type of crops grown, stocking rate or stock type) at the end of the year in which the change occurs, and also every three years after the change occurs; and

(~~b~~2) each time the nutrient budget or nutrient loss risk assessment is repeated all the input data used to prepare it shall be reviewed by or on behalf of the landholding owner, for the purposes of ensuring the nutrient budget or nutrient loss risk assessment accurately reflects the farming system. A record of the input data review shall be kept by the landholding owner~~.~~; and

(3) the nutrient budget or nutrient loss risk assessment must be prepared by a suitably qualified person that has been approved as such by the Chief Executive of Southland Regional Council.

5. Objectives of Farm Environmental Management Plans

A description of how each of the following objectives will, where relevant, be met:

(a) Irrigation system designs and installation: To ensure that all new irrigation systems and significant upgrades meet Industry best practice standards;

(b) Irrigation management: To ensure efficient on-farm water use that meets crop demands, including through upgrading existing systems to meet Industry best practice standards, and ensuring that water and contaminant losses to waterbodies are avoided where practicable or otherwise minimised;

(c) Nutrient and soil management: To avoid where practicable, or otherwise minimise, nutrient and sediment losses from farming activities to ground and surface water, to maintain or improve water quality;

(d) Waterways and wetland management: To manage activities within waterways, critical source areas, natural wetlands, and their margins, by avoiding stock damage, and avoiding where

practicable, or otherwise minimising, inputs of nutrients, sediment and faecal contaminants to ground and surface water;

(e) Collected agricultural effluent management: To manage collected agricultural effluent in accordance with best industry practice, to ensure contaminants derived from collected agricultural effluent do not cause adverse effects on water quality.

(f) Drainage maintenance: To manage drainage maintenance activities to ensure contaminant losses to water bodies and damage to aquatic habitats are avoided where practicable, or otherwise minimised.

The FEMP must also identify additional objectives relevant to the farming activities and/or to address environmental risks associated with the land holding and the environment within which it is located.

6. The description for (5) above shall include, for each relevant objective in 5 above:

(a) an identification of the adverse environmental effects, and risks associated with the farming activities on the property, including consideration of the risks associated with the relevant physiographic zone/s (and variants) and how the identified effects and risks will be managed and mitigated; and

(b) where the farm is located within a catchment of a waterbody that requires improvement identified in Schedule X, the mitigations that will achieve a reduction in the discharge of the contaminants where relevant to the farming activity that trigger the requiring improvement status of the catchment; and

(c) defined mitigations that clearly set a pathway and timeframe for achievement of the objectives; and

(d) the records to be kept for demonstrating mitigations have been actioned and are achieving the objective; and

(e) identification of any specific mitigations required by a resource consent held for the property.

7. If any Intensive Winter Grazing is occurring on the landholding, the Farm Environmental Management Plan must also include an intensive winter grazing plan that takes into account and responds to the risk pathways for the relevant physiographic zones (and variants).

~~5. Good Management Practices~~

~~*The FEMP contains a good management practices section which identifies:*~~

~~*(a) the good management practices implemented since 3 June 2016; and*~~

~~*(b) the good management practices which will be undertaken over the coming 12-month period. These must include practices for:*~~

~~*(i) the reduction of sediment and nutrient losses from critical source areas, particularly those associated with overland flow;*~~

~~*(ii) cultivation (including practices such as contour ploughing, strip cultivation or direct drilling);*~~

~~*(iii) the use of land for intensive winter grazing (including those practices specified in Rule 20(a)(iii);*~~

~~*(iv) riparian areas (including those from which stock are excluded under Rule 70) and the type of riparian vegetation to be planted, how it will be maintained and how weeds will be controlled;*~~

~~*(v) minimising of the discharge of contaminants to surface water or groundwater, with particular reference to the contaminant pathways identified for the landholding.*~~

~~*Examples of general good management practices are provided on the Southland Regional Council, DairyNZ and Beef and Lamb New Zealand websites and in the document titled "Industry-agreed Good Management Practices relating to water quality, Version 2, 18 September 2015".*~~

Part C – Farm Environmental Management Plan Certification, Auditing, Review and Amendment

1. Farm Environmental Management Plan Certification

(a) The FEMP must be certified, prior to implementation on the farm, by a Suitably Qualified Person (SQP) that has been approved as such by the Chief Executive of Southland Regional Council.

(b) The purpose of FEMP certification is to confirm that the farming activities on the farm will be carried out in a way that will achieve the Objectives in this Appendix and will comply with any resource consent for the property.

(c) The FEMP must be re-certified, prior to implementation, following any amendments to the FEMP carried out in accordance with Part C(3)(a) of this appendix.

(d) Within one month of a FEMP being certified, a copy of the certified FEMP must be provided to the Southland Regional Council.

2. Auditing of the certified Farm Environmental Management Plan

(a) Within 12 months of the landholding's first FEMP being certified, the landholding owner must arrange for an audit of the farming activities' compliance with the certified FEMP. Thereafter, the frequency of auditing will be in accordance with any conditions of consents held for the landholding, or alternatively, where there are no consent or consent conditions requiring auditing, auditing timeframes associated with the audit grade assigned. Note: Southland Regional Council will provide, on its website, a schedule of the auditing frequency required for FEMP's based on the audit grade assigned to each landholding.

(b) The auditor must be a Suitably Qualified Person (SQP) that has been approved as such by the Chief Executive of Southland Regional Council and must not be the same person or from the same organisation that prepared the FEMP.

(c) The auditor must prepare an audit report that:

(i) sets out the auditor's findings;

(ii) stating whether compliance has been achieved and the final compliance grade; and

(iii) any other recommendations from the auditor.

(d) Within one month, of the final audit report being prepared, the audit report must be provided to the Southland Regional Council by the auditor.

3. Review and Amendment of the Farm Environmental Management Plan

The FEMP must be reviewed, by the landholding owner, or their agent, as follows:

(a) when there is a material change to the nature of the farming activities occurring on the landholding, and where that material change is not provided for within the landholding's certified FEMP; and

(b) at least once every 12 months; and

(c) to respond to the outcome of an audit.

The outcome of the review is to be documented and amendments to the FEMP must be made where Part C(3)(a) applies and in circumstances where the annual review identifies that amendments are required.

ATTACHMENT 2: RELEVANT PLANNING INSTRUMENTS

The planning instruments that I understand are relevant to the matters addressed in this evidence are identified below. I have considered each of these instruments in preparation of this evidence. I have not repeated all of the provisions of these instruments below, rather I have set out those provisions that I consider are particularly relevant to the matters that I address in this evidence.

1. INSTRUMENTS TO BE GIVEN EFFECT TO

NPSFM 2020

Objective

(1) The objective of this National Policy Statement is to ensure that natural and physical resources are managed in a way that prioritises:

(a) first, the health and well-being of water bodies and freshwater ecosystems

(b) second, the health needs of people (such as drinking water)

(c) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.

Policies

Policy 1: Freshwater is managed in a way that gives effect to Te Mana o te Wai.

Policy 2: Tangata whenua are actively involved in freshwater management (including decision-making processes), and Māori freshwater values are identified and provided for

Policy 3: Freshwater is managed in an integrated way that considers the effects of the use and development of land on a whole-of-catchment basis, including the effects on receiving environments.

Policy 4: Freshwater is managed as part of New Zealand's integrated response to climate change.

Policy 5: Freshwater is managed through a National Objectives Framework to ensure that the health and well-being of degraded water bodies and freshwater ecosystems is improved, and the health and well-being of all other water bodies and freshwater ecosystems is maintained and (if communities choose) improved.

Policy 6: There is no further loss of extent of natural inland wetlands, their values are protected, and their restoration is promoted.

Policy 7: The loss of river extent and values is avoided to the extent practicable.

Policy 8: The significant values of outstanding water bodies are protected.

Policy 9: The habitats of indigenous freshwater species are protected.

Policy 10: The habitat of trout and salmon is protected, insofar as this is consistent with Policy 9.

Policy 11: Freshwater is allocated and used efficiently, all existing over-allocation is phased out, and future over-allocation is avoided.

Policy 12: The national target (as set out in Appendix 3) for water quality improvement is achieved.

Policy 13: The condition of water bodies and freshwater ecosystems is systematically monitored over time, and action is taken where freshwater is degraded, and to reverse deteriorating trends.

Policy 15: Communities are enabled to provide for their social, economic, and cultural well-being in a way that is consistent with this National Policy Statement.

NZCPS 2010

Objective 1 To safeguard the integrity, form, functioning and resilience of the coastal environment and sustain its ecosystems, including marine and intertidal areas, estuaries, dunes and land, by… maintaining coastal water quality, and enhancing it where it has deteriorated

from what would otherwise be its natural condition, with significant adverse effects on ecology and habitat, because of discharges associated with human activity.

Policy 21 Where the quality of water in the coastal environment has deteriorated so that it is having a significant adverse effect on ecosystems, natural habitats, or water based recreational activities, or is restricting existing uses, such as aquaculture, shellfish gathering, and cultural activities, give priority to improving that quality by:

(a) identifying such areas of coastal water and water bodies and including them in plans;

(b) including provisions in plans to address improving water quality in the areas identified above

(c) where practicable, restoring water quality to at least a state that can support such activities and ecosystems and natural habitats;

(d) requiring that stock are excluded from the coastal marine area, adjoining intertidal areas and other water bodies and riparian margins in the coastal environment, within a prescribed time frame; and

(e) engaging with tangata whenua to identify areas of coastal waters where they have particular interest, for example in cultural sites, wāhi tapu, other taonga, and values such as mauri, and remedying, or, where remediation is not practicable, mitigating adverse effects on these areas and values.

SOUTHLAND REGIONAL POLICY STATEMENT 2017

Objective WQUAL.1 – Water quality goals

Water quality in the region:

(a) safeguards the life-supporting capacity of water and related ecosystems;

(b) safeguards the health of people and communities;

(c) is maintained, or improved in accordance with freshwater objectives formulated under the National Policy Statement for Freshwater Management 2014;

(d) is managed to meet the reasonably foreseeable social, economic and cultural needs of future generations.

Objective WQUAL.2 – Lowland water bodies

Halt the decline, and improve water quality in lowland water bodies and coastal lakes, lagoons, tidal estuaries, salt marshes and coastal wetlands in accordance with freshwater objectives formulated in accordance with the National Policy Statement for Freshwater Management 2014.

Policy WQUAL.1 – Overall management of water quality

(a) Identify values of surface water, groundwater, and water in coastal lakes, lagoons, tidal estuaries, salt marshes and coastal wetlands, and formulate freshwater objectives in accordance with the National Policy Statement for Freshwater Management 2014; and

(b) Manage discharges and land use activities to maintain or improve water quality to ensure freshwater objectives in freshwater management units are met.

Policy WQUAL.2 – All waterbodies

Maintain or improve water quality, having particular regard to the following contaminants:

(a) nitrogen;

(b) phosphorus;

(c) sediment;

(d) microbiological contaminants.

Policy WQUAL.3 – Wetlands and outstanding freshwater bodies

Identify and protect the significant values of wetlands and outstanding freshwater bodies.

Policy WQUAL.4 – Awarua Wetland

Enhance the water quality of the Awarua Wetland by ensuring that discharges of contaminants and land use activities both individually and on a cumulative basis have no more than minor adverse effects on the significant characteristics and water quality of the Awarua Wetland.

Policy WQUAL.5 – Improve catchment water quality

Improve water quality by:

(a) identifying water bodies that are not meeting freshwater objectives, including identifying priority freshwater management units;

(b) specifying targets to improve water quality within those water bodies within defined timeframes;

(c) implementing management frameworks to meet the targets taking into account;

  (i) the values supported by the water body/ies;

  (ii) national or legislative standards and requirements;

  (iii) the benefits and costs associated with achieving improvement in water quality.

Policy WQUAL.6 – Water in natural state

To manage discharges and land use activities to maintain the quality of water and the associated values where it is in its natural state.

Policy WQUAL.7 – Social, economic and cultural benefits

Recognise the social, economic and cultural benefits that may be derived from the use, development or protection of water resources.

Policy WQUAL.12 – Integrated management

Integrate the management of land use, water quality, water quantity, coast and air, and the use, development and protection of resources wherever possible to achieve the freshwater objectives formulated in accordance with Policy WQUAL.1.

OPERATIVE PROVISIONS OF THE PROPOSED SOUTHLAND WATER AND LAND REGIONAL PLAN

Objective 1 Land and water and associated ecosystems are sustainably managed as integrated natural resources, recognising the connectivity between surface water and groundwater, and between freshwater, land and the coast.

Objective 2 The mauri of water provides for te hauora o te taiao (health and mauri of the environment), te hauora o te wai (health and mauri of the waterbody) and te hauora o te tangata (health and mauri of the people).

Objective 3 Water and land are recognised as enablers of the economic, social and cultural wellbeing of the region.

Objective 4 Tangata whenua values and interests are identified and reflected in the management of freshwater and associated ecosystems

Objective 5 Ngāi Tahu have access to and sustainable customary use of, both commercial and non-commercial, mahinga kai resources, nohoanga, mātaitai and taiāpure.

Objective 6 Water quality in each freshwater body, coastal lagoon and estuary will be:

(a) maintained where the water quality is not degraded; and

(b) improved where the water quality is degraded by human activities.

Objective 7 Following the establishment of freshwater objectives, limits, and targets (water quality and quantity) in accordance with the Freshwater Management Unit processes:

(a) where water quality objectives and limits are met, water quality shall be maintained or improved;

(b) any further over-allocation of freshwater is avoided; and

(c) any existing over-allocation is phased out in accordance with freshwater objectives, targets, limits and timeframes.

Objective 8 (a) The quality of groundwater that meets both the Drinking Water Standards for New Zealand 2005 (revised 2008) and any freshwater objectives, including for connected surface water bodies, established under Freshwater Management Unit processes is maintained; and

(b) The quality of groundwater that does not meet Objective 8(a) because of the effects of land use or discharge activities is progressively improved so that:

(1) groundwater (excluding aquifers where the ambient water quality is naturally less than the Drinking Water Standards for New Zealand 2005 (revised 2008)) meets the Drinking Water Standards for New Zealand 2005 (revised 2008); and

(2) groundwater meets any freshwater objectives and freshwater quality limits established under Freshwater Management Unit processes.

Objective 13 Provided that:

(a) the quantity, quality and structure of soil resources are not irreversibly degraded through land use activities or discharges to land; and

(b) the health of people and communities is safeguarded from the adverse effects of discharges of contaminants to land and water; and

(c) ecosystems (including indigenous biological diversity and integrity of habitats), are safeguarded,

then land and soils may be used and developed to enable the economic, social and cultural wellbeing of the region

Objective 14 The range and diversity of indigenous ecosystems and habitats within rivers, estuaries, wetlands and lakes, including their margins, and their life-supporting capacity are maintained or enhanced.

Objective 15 Taonga species, as set out in Appendix M, and related habitats, are recognised and provided for.

Objective 17 Preserve the natural character values of wetlands, rivers and lakes and their margins, including channel and bed form, rapids, seasonably variable flows and natural habitats, and protect them from inappropriate use and development.

Objective 18 All persons implement environmental practices that optimise efficient resource use, safeguard the life supporting capacity of the region's land and soils, and maintain or improve the quality and quantity of the region's water resources.

Policy 44 Te Mana o te Wai is recognised at a regional level by tangata whenua and the local community identifying values held for, and associations with, a particular water body and freshwater management unit.

Particular regard will be given to the following values, alongside any additional regional and local values determined in the Freshwater Management Unit limit setting process:

- Te Hauora o te Wai (the health and mauri of water);

- Te Hauora o te Tangata (the health and mauri of the people);
- Te Hauora o te Taiao (the health and mauri of the environment); • Mahinga kai; • Mahi māra (cultivation);
- Wai Tapu (Sacred Waters);
- Wai Māori (municipal and domestic water supply);
- Āu Putea (economic or commercial value);
- He ara haere (navigation).

2. INSTRUMENTS THAT THE pSWLP MUST BE PREPARED IN ACCORDANCE WITH

The Resource Management (National Environment Standards for Freshwater) Regulations 2020

3. INSTRUMENTS THAT THE pSWLP SHOULD NOT BE INCONSISTENT WITH

The Regional Coastal Plan for Southland 2013

The Southland Regional Air Plan 2016

The Water Conservation Order (Mataura River) 1997

The Water Conservation Order (Ōreti River) 2008

4. INSTRUMENTS TO BE TAKEN INTO ACCOUNT

Te Rūnanga o Ngāi Tahu Freshwater Policy Statement (1999)

Ngāi Tahu ki Murihiku Natural Resource and Environmental Iwi Management Plan 2008

5. INSTRUMENTS TO BE HAD REGARD TO

Southland Sports Fish and Game Management Plan