

**BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTITAI AO O AOTEAROA**

UNDER the Resource Management Act 1991

IN THE MATTER of appeals under Clause 14 of the First Schedule of the Act

BETWEEN **TRANSPower NEW ZEALAND LIMITED**
(ENV-2018-CHC-26)

FONterra CO-OPERATIVE GROUP
(ENV-2018-CHC-27)

HORTICULTURE NEW ZEALAND
(ENV-2018-CHC-28)

ARATIATIA LIVESTOCK LIMITED
(ENV-2018-CHC-29)

WILKINS FARMING CO

(Continued next page)

**STATEMENT OF SUPPLEMENTARY EVIDENCE OF MATTHEW
MCCALLUM-CLARK ON BEHALF OF THE SOUTHLAND REGIONAL
COUNCIL
20 June 2019**

Judicial Officer: Judge Borthwick

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(ENV-2018-CHC-30)

**GORE DISTRICT COUNCIL, SOUTHLAND DISTRICT
COUNCIL & INVERCARGILL DISTRICT COUNCIL**

(ENV-2018-CHC-31)

DAIRYNZ LIMITED

(ENV-2018-CHC-32)

H W RICHARDSON GROUP

(ENV-2018-CHC-33)

BEEF + LAMB NEW ZEALAND

(ENV-2018-CHC-34 & 35)

DIRECTOR-GENERAL OF CONSERVATION

(ENV-2018-CHC-36)

SOUTHLAND FISH AND GAME COUNCIL

(ENV-2018-CHC-37)

MERIDIAN ENERGY LIMITED

(ENV-2018-CHC-38)

ALLIANCE GROUP LIMITED

(ENV-2018-CHC-39)

FEDERATED FARMERS OF NEW ZEALAND

(ENV-2018-CHC-40)

HERITAGE NEW ZEALAND POUHERE TAONGA

(ENV-2018-CHC-41)

STONEY CREEK STATION LIMITED

(ENV-2018-CHC-42)

THE TERRACES LIMITED

(ENV-2018-CHC-43)

CAMPBELL'S BLOCK LIMITED

(ENV-2018-CHC-44)

ROBERT GRANT

(ENV-2018-CHC-45)

**SOUTHWOOD EXPORT LIMITED, KODANSHA
TREEFARM NEW ZEALAND LIMITED, SOUTHLAND
PLANTATION FOREST COMPANY OF NEW ZEALAND**

(ENV-2018-CHC-46)

**TE RUNANGA O NGAI TAHU, HOKONUI RUNAKA,
WAIHOPAI RUNAKA, TE RUNANGA O AWARUA & TE
RUNANGA O ORAKA APARIMA**

(ENV-2018-CHC-47)

PETER CHARTRES
(ENV-2018-CHC-48)

RAYONIER NEW ZEALAND LIMITED
(ENV-2018-CHC-49)

**ROYAL FOREST AND BIRD PROTECTION SOCIETY
OF NEW ZEALAND**
(ENV-2018-CHC-50)

Appellants

AND

SOUTHLAND REGIONAL COUNCIL

Respondent

Introduction

- 1 My full name is Matthew Eaton Arthur McCallum-Clark.
- 2 My qualifications and experience are set out in my Statement of Evidence in Chief dated 14 December 2018 and Statement of Rebuttal Evidence dated 27 May 2019.
- 3 As with my Evidence in Chief and Rebuttal Evidence, I confirm that I have read and am familiar with the Code of Conduct for expert witnesses contained in the Environment Court Practice Note 2014. I agree to comply with that Code. Other than where I state that I am relying on the evidence of another person, my evidence is within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

Scope of Supplementary Evidence

- 4 This supplementary evidence responds to a request from the Court to consider and update my recommended set of Topic A objectives and policies, following consideration of the evidence presented, cross examination and the Court's questions of witnesses.
- 5 This evidence is brief, and addresses primarily the key points at issue. It is accompanied by a further tracked changed version of my recommendations. This has double strikeout and double underline for changes from the version that I introduced on my first appearance at this hearing. This evidence generally does not expand on matters already addressed in my evidence in chief or rebuttal evidence, unless there are residual issues.
- 6 The evidence also does not address the as yet unresolved issues arising late on Thursday afternoon with respect to the primacy of Objectives 1 and 3. In relation to those issues, I am happy to answer any questions, to the best of my ability, that the Court may have.

Objective 2

- 7 I have listened with interest to the questions and answers in relation to Mr Farrell's suggestion of shifting Objective 2, so that Objective 1 and 3 sit together. I am supportive of that change.

Objective 6

- 8 As I have understood it, there are a number of potential issues with Objective 6.
- 9 First, there is the question of whether this Objective continues to apply after the FMU processes are complete. Having considered the content of my final recommended Objectives 6 and 7, I am of the view that the majority of circumstances, in terms of maintaining and improving water quality, will be addressed by Objective 7 when the FMU processes are complete. I have bracketed at the beginning of Objective 6 an option to specifically identify this. However, I am attracted to the simplicity and clarity of the wording of Objective 6 and the clear message that it sends. There is also a possibility that there could be some aspects of water quality or particular contaminants that are not specifically addressed in freshwater objectives, limits and targets. For those aspects of water quality, Objective 6 may remain a useful outcome statement.
- 10 Second, the inclusion of “overall” has caused much debate. Provided the more holistic view of water quality is accepted, on balance I consider that use of the word “overall” introduces more risk of interpretation of the Objective as supporting an “unders and overs” approach or creates confusion through further uncertainty as to what it means.
- 11 Thirdly, the spatial scale for assessing water quality is important. As I understand it, there is concern, which I share, that regionwide or FMU-scale assessment could introduce an unhelpful element of generalisation. I am also of the opinion that “waterbodies” introduces other unhelpful elements and spatial scale, through the definition of “waterbodies” in the RMA. This definition includes water in aquifers, wetlands and a spatial scale that includes “streams” and any part of a waterbody. In my opinion, this will lead to too much uncertainty as to where and whether this Objective is being met. On this basis, I have recommended the simple terminology of rivers, lakes, estuaries and coastal lagoons.
- 12 Fourthly, is the Objective about maintaining or improving? Having considered the evidence and cross examination, and particularly the questions put to me from the Court, I am of the view that simplification of the beginning of Objective 6, to remove the inference that the Objective is only requiring no further reduction, is an important change to make.

13 Finally, there has been considerable questioning and evidence about the need to include reference to the two compulsory national values in the National Policy Statement for Freshwater Management (NPSFM) either in Objective 6 or 7 or Policy 45 or 47. I maintain my view, as set out in my rebuttal evidence, that interim thresholds will be a useful addition and clarification in the pSWLP. In my opinion, these thresholds should be incorporated through policies and changes to Appendix E. That will have the effect of describing, with certainty, what is degraded in terms of Objective 6. Those policies can also answer the very difficult questions that result, in terms of what is actually to be done to resolve that degradation, by whom, and over what timeframe.

Objective 7

14 A number of changes are recommended to Objective 7. However, the majority of these changes are in the nature of clarification that it applies after FMU processes are complete.

15 There have been some brief questions about the order of the two elements of the Objective, which I have now separated for clarity. I am of the opinion that the order is relatively important, so that reference to “any further over-allocation” cannot be interpreted as only being in the context of existing over-allocation.

16 I have also considered whether there is a gap between this objective and others with respect to water quantity thresholds presently in the pSWLP. These primarily relate to groundwater abstraction thresholds and some provisions in relation to surface water abstraction thresholds. As I understand it, these are not limits in terms of the NPSFM. However, they are very important to ensure the sustainable management of those resources. I am confident that the relevant policies and more stringent activity status in the rules in relation to those thresholds will appropriately address the interim timeframe until the FMU processes are complete and those limits and targets are revised.

Objective 9B

17 I maintain my position that changing “enabled” to “recognise and provided for” is the most appropriate wording for objective 9B. I accept that use of “recognised and provided for” maybe too much of an economy of words in the Objective, and a more fulsome objective may convey the outcome more clearly. The words, in the context of this

Objective, in my opinion, mean that the benefits of the infrastructure will be recognised by providing for that infrastructure in an appropriate policy and rule framework that also gives effect to the other objectives of the pSWLP. For the avoidance of doubt, I am of the opinion that such an objective could lead to a rule cascade with appropriate performance standards and a resultant non-complying activity status if the performance standards were not met.

Objective 10

18 Having considered the evidence and questions in relation to the Manapōuri power scheme, I do not recommend any further amendments to Objective 10. I have closely considered the issue of enhancement, and whether it ought to be incorporated into this Objective, or a standalone objective. While I agree with the concept of efficiency, in terms of achieving more with the same or lesser use of resource, I am uncertain whether the enhancement being suggested is within the same resource use, and if not, what the effects of that may be. Therefore, I am hesitant to try and set an outcome for enhancement of a particular activity in a particular waterbody in the regionwide objectives while uncertainty remains. In my opinion, that is precisely the kind of issue that ought to be addressed, in a much greater degree of detail through the FMU process.

Objective 13

19 In my opinion, the primary outstanding matter with respect to Objective 13 is the wording of part (b). Having heard the evidence and answers of various witnesses I remain of the view that the version advanced in my rebuttal evidence is appropriate and understood by most witnesses. I also remain of the view that a relatively high bar ought to be set with respect to human health effects from discharges. In the attached tracked changes recommendations, I have included an alternative wording as an amalgamation of versions from several different witnesses, that utilises the “safeguarding” concept. This is included as an alternative for the Court’s consideration and is not my preference.

Objective 18

20 As I understand it there are two remaining issues with respect to Objective 18.

- 21 Firstly, whether the Objective should refer to some form of “good management practice”. In my opinion, as originally intended, the Objective set a level of expectation for all activities. However, as has been identified, the term “good management practices” likely causes more confusion than anything else and, on reflection, I agree that it can be deleted without detracting from the Objective. However, I recommend that the Objective clearly articulate the need for behaviour change.
- 22 Secondly, there remains an issue, both with respect to this Objective and the physiographic zone policies, in relation to best practicable option. I do not support the inclusion of best practicable option in either this Objective or the physiographic zone policies. I am of the view that best practicable option could be included at a policy level, and through rules, if this is considered appropriate at that stage. I am concerned by the emphasis of some parties on securing best practicable option as the method of choice for point source discharges, and potentially even to the extent that it may be seen as means by which some additional flexibility with respect to limits, targets and timeframes may be able to be achieved.
- 23 In my opinion, there are two flaws with respect to including best practicable option at an objective level. Firstly, in my opinion, being identified as the primary approach for point source discharges, especially direct discharges to waterbodies, does not sit well with Te Mana o te Wai. Further, s70(2) of the RMA and Policy A3 of the NPSFM are clear that best practicable option is not a preferred option, and both would appear to suggest that the setting and achieving of clear thresholds and limits is possibly a more important element.

Physiographic Zone Policies

- 24 In the attached tracked changes version, a single physiographic zone (Policy 5) is included with recommended further changes, as an example. These changes could apply to all of the physiographic zone policies, if the Court was of a mind to make these changes.
- 25 In my opinion, applying these policies clearly to farming activities reflects the reality of the situation. The vast majority of applications for discharges to land in the rural area will be farming activities. There may be some industrial or community discharges to land, which would generally be discretionary activities, to which physiographic information

could usefully apply. In my opinion, there is nothing in the pSWLP that would prevent this, and indeed it may be a useful addition to the policies on point source discharges to be considered as a part of Topic B.

26 I have recommended adjustments to add some clarity, which may lead to further changes to Topic B definitions, to confirm that the “good management practices” aspects applies to farming.

27 In terms of the third clause, I largely maintain my earlier recommended wording, but on the firm basis that this sits within the context of an associated non-complying activity rule status. I am of the opinion, and this would appear to be supported by current consent processing practice, that applications for these kinds of activities would not be successful when assessed in accordance with s104(1)(b), unless it was truly exceptional.

Policies 45 and 47

28 I have considered the various recommended changes to Policies 45 and 47 and the resulting questions. Overall, I am very supportive of Policy 45 and 47 “locking in” the region-wide objectives. These objectives are, in my opinion, sufficiently directive, high level and certain, especially in relation to Te Mana o te Wai, that they ought not to be re-litigated, adjusted or not given effect to in the FMU sections.

29 I also note that this change should be reflected in the introductory statements of the pSWLP (page 7).

DATED this 20th day of June 2019



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Matthew McCallum-Clark

Consolidated ‘tracked changes’ of Matthew McCallum-Clark for Southland Regional Council

Note – The Objectives of the pSWLP and relevant Policy sections that are the subject of the Topic A hearing are set out in full, for ease of reference, and those provisions that are under appeal have been shaded grey.

<u>Region-wide Objectives</u>	
<p><i>Note: While Objectives 1 to 18 are objectives relating to the management of freshwater, they are not freshwater objectives established in accordance with Section CA2 of the National Policy Statement for Freshwater Management. Freshwater objectives established in accordance with Section CA2 of the National Policy Statement for Freshwater Management will be developed under Southland Regional Council’s Freshwater Management Unit process, in time, in accordance with Southland Regional Council’s Progressive Implementation Programme.</i></p>	
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 3	The mauri of waterbodies provide for te hauora o te tangata (health and mauri of the people), te hauora o te taiao (health and mauri of the environment) and te hauora o te wai (health and mauri of the waterbody).
Objective 2	Water and land is <u>are</u> recognised as an enablers <u>enablers</u> of primary production and the economic, social and cultural wellbeing of the region (including primary production) .
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, mātaítai and taiāpure.
Objective 6	(Prior to the establishment of freshwater objectives, limits and targets under Freshwater Management Unit processes.) <u>Water quality</u> There is no reduction in the overall quality of freshwater, and water in rivers, lakes, estuaries and coastal lagoons is: , by:

	<p>(a) maintained maintaining the quality of water in waterbodies, estuaries and coastal lagoons, where the water quality is not degraded; and</p> <p>(b) improved where the water quality is improving the quality of water in waterbodies, estuaries and coastal lagoons, that have been degraded by human activities.</p>
Objective 7	<p><u>Following the establishment of freshwater objectives, limits and targets under Freshwater Management Unit processes:</u></p> <p>(a) Any further over-allocation of freshwater (water quality and quantity) is avoided; and</p> <p>(b) Any any existing over-allocation is phased out in accordance with freshwater objectives, <u>targets</u>, freshwater quality limits and timeframes established under Freshwater Management Unit processes.</p>
Objective 8	<p>(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 waterbodies, established under Freshwater Management Unit processes is maintained; and</p> <p>(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:</p> <p>(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</p> <p>(2) groundwater meets any freshwater objectives and freshwater quality limits established under Freshwater Management Unit processes.</p>

Objectives 9 and 9A	<p>The quantity of water in surface waterbodies is managed so that:</p> <p>(a) <u>aquatic ecosystem health, life-supporting capacity, outstanding natural features and landscapes, and natural character of waterbodies and their margins and human health for recreation</u> are safeguarded; and</p> <p>(b) <u>provided that (a) is met,</u> surface water is sustainably managed to support the reasonable needs of people and communities to provide for their social <u>(including through recreation),</u> economic and cultural wellbeing.</p>
Objective 9B	<p>The effective development, operation, maintenance and upgrading of Southland's regionally significant, nationally significant and critical infrastructure is <u>recognised and provided for enabled.</u></p>
Objective 10	<p>The national importance of <u>the existing hydro-electric generation schemes, including the Manapouri hydro-electric generation scheme in the Waiau catchment,</u> is provided for, recognised in any resulting flow and level regime, and <u>its their</u> structures are considered as part of the existing environment.</p>
Objective 11	<p>The amount of water abstracted is shown to be reasonable for its intended use and water is allocated and used efficiently.</p>
Objective 12	<p>Groundwater quantity is sustainably managed, including safeguarding the life-supporting capacity, ecosystem processes and indigenous species of surface water bodies where their flow is, at least in part, derived from groundwater.</p>
Objectives 13, 13A and 13B	<p>Enable the use and development of land and soils to support the economic, social <u>(including through recreation)</u> and cultural <u>(including through recognition of historic heritage)</u> wellbeing of the region <u>provided that:</u></p> <p>(a) The quantity, quality and structure of soil resources are not irreversibly degraded through land use activities or discharges to land; <u>and</u></p>

	<p>(b) The discharges of contaminants to land or water that have significant or cumulative <u>more than minor</u> adverse effects, <u>including cumulatively</u>, on human health are avoided; <u>and</u></p> <p><u>(b) The health of people and communities is safeguarded from the adverse effects of discharge of contaminants to land or water;</u></p> <p><u>(c) Ecosystems (including indigenous biological diversity and integrity of habitats), are safeguarded.</u></p>
Objective 14	The range and diversity of indigenous ecosystem types 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 16 ¹	Public access to, and along, river (excluding ephemeral rivers) and lake beds is maintained and enhanced, except in circumstances where public health and safety or significant indigenous biodiversity values are at risk.
Objective 17	The natural character values of wetlands, rivers and lakes and their margins, including channel and bed form, rapids, seasonably variable flows and natural habitats are protected from inappropriate use and development.
Objective 18	All activities operate in accordance with good environmental management practice or better to 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.
<u>Region-wide Policies</u>	
The Policies of this Plan implement the Objectives and must be read in their entirety and considered together.	

¹ Noting that this Objective is not part of Topic A, and will be considered in Topic B.

Ngāi Tahu Policies	
Policy 1 – Enable papatipu rūnanga to participate	<p>Enable papatipu rūnanga to effectively undertake their kaitiaki (guardian/steward) responsibilities in freshwater and land management through the Southland Regional Council:</p> <ol style="list-style-type: none"> 1. providing copies of all applications that may affect a Statutory Acknowledgement area, tōpuni (landscape features of special importance or value), nohoanga, mātaimai or taiāpure to Te Rūnanga o Ngāi Tahu and the relevant papatipu rūnanga; 2. identifying Ngāi Tahu interests in freshwater and associated ecosystems in Murihiku (includes the Southland Region); and 3. reflecting Ngāi Tahu values and interests in the management of and decision-making on freshwater and freshwater ecosystems in Murihiku (includes the Southland Region), consistent with the Charter of Understanding.
Policy 2 – Take into account iwi management plans	<p>Any assessment of an activity covered by this Plan must:</p> <ol style="list-style-type: none"> 1. take into account any relevant iwi management plan; and 2. assess water quality and quantity, taking into account Ngāi Tahu indicators of health.
Policy 3 – Ngāi Tahu ki Murihiku taonga species	<p>To manage activities that adversely affect taonga species, identified in Appendix M, <u>and their related habitats.</u></p>
Physiographic Zone Policies	
Policy 5 – Central Plains	<p>In the Central Plains physiographic zone, avoid, remedy, or mitigate adverse effects on water quality from contaminants, by:</p> <ol style="list-style-type: none"> 1. requiring implementation of good <u>farming</u> management practices to manage adverse effects on water quality, <u>particularly</u> from contaminants transported via artificial drainage and deep drainage;

	<p>2. having particular regard to adverse effects on water quality from contaminants transported via artificial drainage and deep drainage when assessing resource consent applications and preparing or considering Farm Environmental Management Plans; and</p> <p>3. strongly discouraging the granting of decision makers generally not granting resource consents for additional dairy farming of cows or additional intensive winter grazing where contaminant losses will increase as a result of the proposed activity.</p>
Policies 6-12	Not included here, but further adjustments per clause 1 of Policy 5 recommended.
Policy 12A – Improved physiographic zone information	Where site specific information is available that better identifies or delineates the relevant physiographic zones or contaminant loss pathways for a landholding or site, that information must be taken into account when undertaking activities, preparing Farm Environmental Management Plans or when determining resource consent applications for that landholding or site.
Freshwater Management Unit Process Policies	
Policy 44 – Implementing Te Mana o te Wai	<p>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 waterbody and freshwater management unit.</p> <p>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:</p> <ul style="list-style-type: none"> • 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);

	<ul style="list-style-type: none"> • Wai Tapu (Sacred Waters); • Wai Māori (municipal and domestic water supply); • Āu Putea (economic or commercial value); • He ara haere (navigation).
<p>Policy 45 – Priority of FMU values, objectives, policies and rules</p>	<p>In response to Ngāi Tahu and community aspirations and local water quality and quantity issues, FMU sections may include additional catchment-specific values, objectives, policies, attributes, rules and limits which will be read and considered together with the Region-wide Objectives and Regionwide Policies. Any provision on the same subject matter in the relevant FMU section of this Plan <u>must give effect to the</u> prevails over the relevant provision within the Region-wide Objectives, <u>but prevails over Regionwide Policies or rules</u> and Region-wide Policy sections, unless it is explicitly stated to the contrary.</p> <p>As the FMU sections of this Plan are developed in a specific geographical area, FMU sections will not make any changes to the Region-wide Objectives or Region-wide Policies.</p> <p><i>Note: It would be unfair if changes are made to Region-wide objectives and policies, which apply in other parts of Southland, without the involvement of those wider communities.</i></p>
<p>Policy 46 – Identified FMUs</p>	<p>The FMU Sections of this Plan are based on the following identified Freshwater Management Units for Southland, as shown on Map Series 6: Freshwater Management Units:</p> <ul style="list-style-type: none"> • Fiordland and the islands; • Aparima; • Mataura; • Ōreti; and • Waiau; and • <u>Waituna.</u>
<p>Policy 47 – FMU Processes</p>	<p>The FMU sections will <u>give effect to the Region-wide Objectives and:</u></p> <ol style="list-style-type: none"> 1. identify values and establish freshwater objectives for each Freshwater Management Unit, including where

	<p>appropriate at a catchment or sub-catchment level, having particular regard to the national significance of Te Mana o te Wai, and any other values developed in accordance with Policies CA1-CA4 and Policy D1 of the National Policy Statement for Freshwater Management 2014 (as amended in 2017); and</p> <ol style="list-style-type: none"><li data-bbox="694 521 1425 600">2. set water quality and water quantity limits and targets to achieve the and freshwater objectives; and<li data-bbox="694 640 1409 719">3. set methods to phase out any over-allocation, within a specified timeframe; and<li data-bbox="694 759 1417 837">4. assess water quality and quantity taking into account Ngāi Tahu indicators of health.
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