

BEFORE THE ENVIRONMENT COURT

ENV-2018-CHC-37

I MUA I TE KOOTI TAI AO O AOTEAROA

ENV-2018-CHC-50

IN THE MATTER of the Resource Management Act 1991

AND of appeals under Clause 14 of the First Schedule of the Act

BETWEEN **SOUTHLAND FISH AND GAME COUNCIL**

Appellant

AND **ROYAL FOREST AND BIRD PROTECTION SOCIETY OF NEW ZEALAND INCORPORATED**

Appellant

AND **SOUTHLAND REGIONAL COUNCIL**

Respondent

Joint Memorandum of Counsel regarding rebuttal evidence timetable

Dated: 18 April 2019

COUNSEL for SOUTHLAND FISH AND GAME COUNCIL	SARAH ONGLEY Barrister PO Box 8213 New Plymouth Central Phone: (06) 769 9400 Email: sarah@ongley.co.nz
---	---

COUNSEL for ROYAL FOREST AND BIRD PROTECTION SOCIETY OF NEW ZEALAND INC	SALLY GEPP PO Box 266 Nelson 7040 Phone: 021 558 241 Email: s.gepp@forestandbird.org.nz
--	---

MAY IT PLEASE THE COURT

1. This Memorandum is filed on behalf of Fish & Game, Forest & Bird and the Southland Regional Council. This Memorandum seeks enlargement of the timetable for rebuttal evidence given Commissioner Hodges' direction that river water quality and freshwater ecology expert conferencing commence on 7 May 2019, and continue thereafter for as long as required.¹ The parties had previously estimated that this conference would take two days. Commissioner Hodges has also directed that the lake water quality and ecology conference is to commence as soon as possible after the completion of the river water quality and ecology conference.

2. The evidence exchange timetable currently provides:²

JWS filed	03.05.19
Appellants rebuttal	08.05.19
s274 party rebuttal	15.05.19
Council to file hard copies of all evidence	17.05.19
Council rebuttal (including hard copies)	22.05.19
Hearing commences	04.06.19

3. Forest & Bird and Fish & Game had intended to call rebuttal planning evidence (if necessary) that takes into account the outcomes of freshwater conferencing. This will be difficult if rebuttal evidence for appellants is due on 8 May 2019, as it will only allow a day at the most (and potentially no time) for the planners to digest the river freshwater conferencing statement and produce rebuttal evidence. Further, the joint witness statement for the lake water quality and ecology conference is unlikely to have been filed before that date.

4. Accordingly, Forest & Bird and Fish & Game respectfully request a variation to the evidence exchange timetable, so that rebuttal for the Appellants would be due on 15 May 2019. Upon conferring with other Counsel:

¹ Commissioner's Minute dated 15 April 2019.

² Minute dated 20 March 2019.

- Counsel for Ngā Rūnanga, Meridian Energy Limited, Alliance Group Limited and the Territorial authorities have indicated those Appellants support an extension of the date for Appellant’s rebuttal evidence (for the above reasons).
 - Counsel for Fonterra and Dairy NZ considers that rebuttal for section 274 parties should still follow the Appellants’ rebuttal to provide an opportunity for s274 parties’ witnesses to comment on Appellant rebuttal evidence prior to the hearing.
5. The Regional Council considers that its rebuttal evidence should continue to follow all other parties’ rebuttal, with a brief extension to the date by which it must file rebuttal, to allow a reasonable opportunity for Council witnesses to consider the parties’ rebuttal evidence, in light of the extension sought by the appellants and section 274 parties.
6. On this basis the following amended timetable is sought:

Joint witness statements filed	The joint witness statements will be signed by the experts at the conclusion of the conferences and filed in court, unless otherwise agreed by Commissioner Hodges and filed by 10 May 2019.
Appellants rebuttal	15.05.19
s274 party rebuttal	20.05.19
Council to file six hard copies of all evidence (excluding rebuttal for the Council)	22.05.19
Council rebuttal (including six hard copies)	27.05.19
Hearing commences	04.06.19

7. Counsel have taken into account the Court’s comment that a potential advantage of conferencing is that the joint witness statement can, if comprehensive, ‘stand-

in' for rebuttal.³ This provides another reason for requesting the date for filing rebuttal evidence on behalf of the Appellants follow completion of expert conferencing. That is, the need for freshwater expert rebuttal evidence may be obviated.

Dated 18 April 2019



S Ongley

Counsel for the Southland Fish and Game Council



S Gepp

Counsel for Forest & Bird



K Wyss

Counsel for Southland Regional Council

³ Minute 14 March 2019.