

**BEFORE THE ENVIRONMENT COURT  
I MUA I TE KOOTI TAIAO 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)

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**JOINT MEMORANDUM IN SUPPORT OF CONSENT ORDER**

**TOPIC B1 ISSUES 1, 4, 5, 10, 13, 16, & 17  
RELATING TO  
POLICIES 20 & 25, RULES 49 & 54, AND APPENDIX K & L.5**

**3 February 2022**

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Judicial Officer: Judge Borthwick

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**WILKINS FARMING CO**  
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**GORE DISTRICT COUNCIL, SOUTHLAND DISTRICT  
COUNCIL & INVERCARGILL CITY 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**

**MAY IT PLEASE THE COURT**

- 1 This joint memorandum relates to appeals against Southland Regional Council's decision on the proposed Southland Water and Land Plan (**pSWLP**), in respect of provisions relating to Topic B1 – Water Takes.
- 2 The parties participated in Court-assisted mediation on these appeals on 30 March 2021, and subsequently engaged in informal discussions on some of the issues.
- 3 During Court-assisted mediation and the discussions that followed, the parties have reached agreement on the resolution of the following provisions under appeal:
  - (a) Issues 1 and 4 – Policy 20;
  - (b) Issue 5 – Policy 25;
  - (c) Issue 10 – Rule 49;
  - (d) Issue 13 – Rules 54;
  - (e) Issue 16 – Appendix K; and
  - (f) Issue 17 – Table L.4 of Appendix L.5.
- 4 This joint memorandum is filed in support of a draft consent order to resolve the appeals relating to provisions referred above at paragraph 3.
- 5 This joint memorandum has been signed by each of the Appellants, the Respondent, and each of the section 274 parties.

**The changes agreed, the rationale for the same, and draft Consent Orders**

- 6 The changes to the provisions referred to in paragraph 3, as agreed between the parties, are detailed in the draft Consent Order included at **Appendix 1** to this joint memorandum.
- 7 The changes, including the rationale for the same, are also explained in more detail in the affidavit of Lauren Maciaszek dated 2 February 2022, attached as **Appendix 2** to this joint memorandum. This affidavit provides an evaluation of the agreed changes in terms of section 32AA of the Act and (where relevant) the higher order policy documents, including in particular the National Policy Statement for Freshwater Management 2020 (**NPSFM**).

- 8 Counsel also record at the outset, that the parties, throughout mediation and informal discussions, were cognisant of the findings in the Court's Interim Decisions<sup>1</sup> and are satisfied that all changes agreed to are consistent with those findings and/or, within the bounds of scope, bring the pSWLP closer to the direction in those decisions.

### **Details of appeals**

- 9 The sub-sections below detail the provisions that were appealed, who appealed each provision, what those appellants sought, and who joined those appeals as section 274 parties.
- 10 As the rationale for the changes agreed and an analysis in line with section 32AA has been provided in the affidavit of Lauren Maciaszek, such detail is not reproduced here. Rather, cross-referencing to that reasoning is provided to assist with readability of the suite of documents filed in support of orders being made by consent.

### **Issues 1 and 4 – Policy 20**

- 11 Policy 20 provides policy direction for the taking, abstraction, use, damming or diversion of surface water and groundwater.
- 12 Policy 20(1) and (2) were appealed by Southland Fish and Game Council (**Fish and Game**) and Royal Forest and Bird Protection Society of New Zealand Incorporated (**Forest and Bird**).
- 13 Fish and Game sought to place greater emphasis on the duty to avoid adverse effects in the first instance, before considering whether they can be remedied or mitigated, whereas Forest and Bird sought that the option to “remedy or mitigate” be removed entirely in relation to subclause (1) and subclauses (2)(a), (b), and (d).
- 14 The following parties joined these appeals as section 274 parties in relation to Policy 20(1) and (2):
- (a) Alliance Group Limited;<sup>2</sup>
  - (b) Aratiatia Livestock Limited;
  - (c) DairyNZ Limited;

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<sup>1</sup> [2019] NZEnvC 208, [2020] NZEnvC 93, [2020] NZEnvC 110, and [2020] NZEnvC 191.

<sup>2</sup> Noting that Alliance Group Limited withdrew its interest in this matter on 1 April 2021.

- (d) Director-General of Conservation
  - (e) Federated Farmers of New Zealand (**Federated Farmers**);
  - (f) Fonterra Co-operative Group Limited (**Fonterra**);
  - (g) Gore District Council, Southland District Council and Invercargill City Council;
  - (h) Meridian Energy Limited;
  - (i) Oil Companies;<sup>3</sup>
  - (j) Forest and Bird; and
  - (k) Fish and Game.
- 15 Policy 20(2)(d) of the pSWLP was also appealed by Fish and Game. It sought that temperature and oxygen content be added to the Policy.
- 16 The following parties joined this appeal as section 274 parties in relation to Policy 20(2)(d):
- (a) Director-General of Conservation;
  - (b) Forest and Bird;
  - (c) Fonterra;
  - (d) Alliance Group Limited;<sup>4</sup> and
  - (e) Federated Farmers.
- 17 Through mediation the parties agreed to amend Policy 20 as set out in the draft consent order and paragraph [17] of the affidavit of Lauren Maciaszek in relation to Topic B1.
- 18 The rationale for the changes agreed are also included in that affidavit at paragraphs [18] – [26].

### ***Issue 5 – Policy 25***

- 19 Policy 25 provides policy direction for the Regional Council when it issues water shortage directions, requiring that it give priority to particular listed uses.

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<sup>3</sup> Note that the Oil Companies have withdrawn their interests in this matter.

<sup>4</sup> Noting that Alliance Group Limited withdrew its interest in this matter on 1 April 2021.

- 20 Policy 25(2a) was appealed by Te Rūnanga o Ngāi Tahu, Hokonui Rūnaka, Waihōpai Rūnaka, Te Rūnanga o Awarua, and Te Rūnanga o Oraka Aparima (**Ngā Rūnanga**).
- 21 Ngā Rūnanga sought that reference to “industries that process perishable foods” in Policy 25 either be deleted or clarified.
- 22 The following parties joined this appeal as section 274 parties in relation to Policy 25(2a):
- (a) Alliance Group Limited;<sup>5</sup>
  - (b) Fish and Game;
  - (c) Forest and Bird; and
  - (d) DairyNZ Limited.
- 23 Through mediation the parties agreed to amend Policy 25 as set out in the draft consent order and paragraph [29] of the affidavit of Lauren Maciaszek in relation to Topic B1.
- 24 The rationale for the changes agreed are also included in that affidavit at paragraphs [30] – [39].

***Issue 10 – Rule 49***

- 25 Rule 49(a) provides for the take and use of surface water as a permitted activity, provided conditions are met.
- 26 Rule 49(a) was appealed by Federated Farmers.
- 27 Federated Farmers sought that Rules 49(a)(vi)(1)-(5) be deleted.
- 28 The following parties joined this appeal as section 274 parties in relation to Rule 49:
- (a) Dairy Holdings Limited;<sup>6</sup>
  - (b) Director-General of Conservation;
  - (c) Forest and Bird; and
  - (d) Ngā Rūnanga.

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<sup>5</sup> Noting that Alliance Group Limited withdrew its interest in this matter on 1 April 2021.

<sup>6</sup> Dairy Holdings Limited did not attend mediation.

- 29 Through mediation the parties agreed to amend Rule 49(a) as set out in the draft consent order and paragraph [42] of the affidavit of Lauren Maciaszek in relation to Topic B1.
- 30 The rationale for the changes agreed are also included in that affidavit at paragraphs [43] – [47].

***Issue 13 – Rules 54***

- 31 Rule 54(a) provides for the take and use of groundwater as a permitted activity, provided conditions are met.
- 32 Rule 54(a) was appealed by Fonterra.
- 33 Fonterra sought that Rule 54(a)(iv) be amended to require weekly rather than daily recording of water take data.
- 34 The following parties joined this appeal as section 274 parties in relation to Rule 54(a):
- (a) Dairy Holdings Limited<sup>7</sup>;
  - (b) Federated Farmers of New Zealand; and
  - (c) Forest and Bird.
- 35 Through mediation the parties agreed to amend Rule 54 as set out in the draft consent order and paragraph [50] of the affidavit of Lauren Maciaszek in relation to Topic B1.
- 36 The rationale for the changes agreed are also included in that affidavit at paragraphs [51] – [55].

***Issue 16 – Appendix K; and***

- 37 Appendix K provides, among other things, a method for assessments of environmental effects for surface water takes, diversion, and use. Method 1 in particular sets out the process for undertaking an assessment of environmental effects using generalised habitat models.
- 38 Appendix K - Surface Water was appealed by Fish and Game.
- 39 Fish and Game sought to:

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<sup>7</sup> Dairy Holdings Limited did not attend mediation.



- (i) Amend various parts of the table for Method 1 to add additional critical value species;
- (ii) Amend Method 1 to replace Generalised Habitat Models with Instream Habitat Flow Incremental Methodology;
- (iii) Amend Methods 1 and 2 to replace the NIWA report mentioned with “an updated review reflecting the most recent international research”;
- (iv) Amend step 3 of Method 2 to remove “with rivers with a median flow greater than 4.5 m<sup>3</sup>/s”;
- (v) Amend step 4 of Method 2 to remove “or a proportion of the maximum habitat if it occurs at a flow less than the Q95”;  
and
- (vi) Amend the table in Method 2 to replace “90%” habitat retention with “100%” habitat retention for high quality large adult trout – perennial fishery.

40 Forest and Bird joined this appeal as a section 274 party in relation to Appendix K – Surface Water.

41 Through mediation the parties agreed to amend Appendix K as set out in the draft consent order and paragraph [58] of the affidavit of Lauren Maciaszek in relation to Topic B1.

42 The rationale for the changes agreed are also included in that affidavit at paragraphs [59] – [63].

***Issue 17 – Table L.4 of Appendix L.5.***

43 Appendix L.5 relates to groundwater allocation. Table L.4 sets the primary groundwater allocation limits for the pSWLP’s groundwater management zones.

44 Table L.4 of Appendix L.5 was appealed by the Director-General of Conservation.

45 The Director-General of Conservation sought to reduce the Te Anau groundwater allocation zone limit in Table L.4 of Appendix L.5 from 118.25 to 88.94.

46 The following parties joined this appeal as section 274 parties:

- (a) Meridian Energy Limited; and
- (b) Ngā Rūnanga.

47 Through mediation the parties agreed to amend Table L.4 of Appendix L.5 20 as set out in the draft consent order and paragraph [67] of the affidavit of Lauren Maciaszek in relation to Topic B1.

48 The rationale for the changes agreed are also included in that affidavit at paragraphs [68] – [75].

### **Orders sought**

49 All parties are satisfied that all matters proposed for the Court's endorsement are within the scope of submissions and appeals, fall within the Court's jurisdiction, and conform to the relevant requirements and objectives of the Act including, in particular, Part 2.

50 For the avoidance of doubt, the parties are satisfied that the amendments give effect to the National Policy Statement for Freshwater Management 2020, insofar as there is scope to do so.

51 The parties are also satisfied that the changes appropriately respond to the direction from the Court in its Interim Decisions.<sup>8</sup>

52 The parties therefore respectfully request that the Court make the orders sought in **Appendix 1** to this memorandum.

53 No party has any issue as to costs.

54 For completeness, it is noted that the order, if granted, resolves all appeals in relation to:

- (a) Policy 25 (Issue 5);
- (b) Rule 54 (Issue 13); and
- (c) Appendix K (Issue 16);

and partially resolves the appeals in relation to:

- (a) Policy 20 (Issues 1 and 4). Policy 20 is also under appeal in relation to Issue 3 of Topic B1. That appeal is also proposed to be resolved by consent. See paragraphs [11] to [19] of the Joint

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<sup>8</sup> [2019] NZEnvC 208, [2020] NZEnvC 93, [2020] NZEnvC 110, and [2020] NZEnvC 191.

Memorandum in relation to Topic B2 and paragraphs [19] to [24] of the affidavit of Matthew McCallum-Clark in relation to the same.

- (b) Rule 49 (Issue 10). Rule 49 remains under appeal in relation to Topic B1 Issue 11.
- (c) Table L.4 of Appendix L.5 (Issue 17). Table L.4 of Appendix L.5 remains under appeal in relation to the Topic B1 Issue 17 appeal by Wilkins Farming Co (which is to be heard as Tranche 2).

**DATED** this 3<sup>rd</sup> day of February 2022



.....  
**P A C Maw / A M Langford**

Counsel for Southland Regional Council

.....  
**D Allan**

Counsel for Aratiatia Livestock Limited

.....  
**B Williams**

Counsel for Dairy Holdings Limited

Memorandum in relation to Topic B2 and paragraphs [19] to [24] of the affidavit of Matthew McCallum-Clark in relation to the same.

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**DATED** this 3<sup>rd</sup> day of February 2022

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**P A C Maw / A M Langford**

Counsel for Southland Regional Council



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**B Williams**

Counsel for Dairy Holdings Limited



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**B Matheson / K Forward**

Counsel for DairyNZ Limited

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**P Williams**

Counsel for Director-General of Conservation

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**R Gardner**

Counsel for Federated Farmers of New Zealand



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**B Matheson / K Forward**

Counsel for Fonterra Co-operative Group Limited

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**M Garbett**

Counsel for Gore District Council, Southland District Council and Invercargill  
City Council

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**B Matheson / K Forward**

Counsel for DairyNZ Limited

*P Williams*  
.....

**P Williams**

Counsel for Director-General of Conservation

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Counsel for Federated Farmers of New Zealand

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**B Matheson / K Forward**

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**P Williams**

Counsel for Director-General of Conservation



.....  
P Wilson

~~R Gardner~~

~~Counsel~~ for Federated Farmers of New Zealand

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**B Matheson / K Forward**

Counsel for Fonterra Co-operative Group Limited

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**M Garbett**

Counsel for Gore District Council, Southland District Council and Invercargill  
City Council



.....  
**B Matheson / K Forward**

Counsel for DairyNZ Limited

.....  
**P Williams**

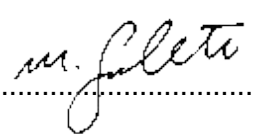
Counsel for Director-General of Conservation

.....  
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Counsel for Federated Farmers of New Zealand

.....  
**B Matheson / K Forward**

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**M Garbett**

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City Council



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**S Christensen**

Counsel for Meridian Energy Limited

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**S Gepp**

Counsel for Forest and Bird

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**S Gepp**

Counsel for Fish and Game

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**J Winchester / S Lennon**

Counsel for Ngā Rūnanga

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**S Gepp**

Counsel for Forest and Bird



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Counsel for Fish and Game

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**J Winchester / S Lennon**

Counsel for Ngā Rūnanga

.....

**S Christensen**

Counsel for Meridian Energy Limited

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**S Gepp**

Counsel for Forest and Bird

.....

**S Gepp**

Counsel for Fish and Game



.....

**J Winchester / S Lennon**

Counsel for Ngā Rūnanga

**Appendix 1 – Draft consent order**

**BEFORE THE ENVIRONMENT COURT  
I MUA I TE KOOTI TAIAO 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**  
(ENV-2018-CHC-30)

**GORE DISTRICT COUNCIL, SOUTHLAND DISTRICT  
COUNCIL & INVERCARGILL CITY COUNCIL**  
(ENV-2018-CHC-31)

**DAIRYNZ LIMITED**  
(ENV-2018-CHC-32)

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**CONSENT ORDER**

**TOPIC B1 ISSUES 1, 4, 5, 10, 13, 16, & 17  
RELATING TO  
POLICIES 20 & 25, RULES 49 & 54, AND APPENDIX K & L.5**

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Judicial Officer: Judge Borthwick

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**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)

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(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)

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(ENV-2018-CHC-45)

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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**



- [A] Under section 279(1) of the Resource Management Act 1991, the Environment Court, by consent, orders that the appeal is allowed in accordance with Annexure A to this Order.
- [B] Under section 285 of the Resource Management Act 1991, there is no order as to costs.

## REASONS

### Introduction

- 1 The following parties have appealed provisions of the proposed Southland Water and Land Plan as they relate to Topic B1:<sup>1</sup>
  - (a) Director-General of Conservation;
  - (b) Federated Farmers of New Zealand (**Federated Farmers**);
  - (c) Fonterra Co-operative Group Limited (**Fonterra**);
  - (d) Royal Forest and Bird Protection Society of New Zealand Incorporated (**Forest and Bird**);
  - (e) Southland Fish and Game Council (**Fish and Game**); and
  - (f) Te Rūnanga o Ngāi Tahu, Hokonui Rūnaka, Waihōpai Rūnaka, Te Rūnanga o Awarua, and Te Rūnanga o Oraka Aparima (**Ngā Rūnanga**).
  
- 2 The Court has read and considered the joint memorandum of the parties dated 3 February 2022, which proposes to resolve the appeals that relate to:
  - (a) Policy 20 (Issues 1 and 4);
  - (b) Policy 25 (Issue 5);
  - (c) Rule 54 (Issue 13); and
  - (d) Appendix K (Issue 16);and partially resolve the appeals in relation to:
  - (e) Rule 49 (Issue 10). Rule 49 remains under appeal in relation to Topic B1 Issue 11.
  - (f) Table L.4 of Appendix L.5 (Issue 17). Table L.4 of Appendix L.5 remains under appeal in relation to the Topic B1 Issue 17 appeal by Wilkins Farming Co (which is to be heard as Tranche 2).
  
- 3 The Court has also read and considered the affidavit of Lauren Maciaszek dated 2 February 2022, which provides an analysis of the

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<sup>1</sup> The particular provisions each party has appealed is set out in the joint memorandum of the parties dated 3 February 2022.

changes proposed by the parties in terms of section 32AA of the Resource Management Act 1991 (**Act**).

- 4 The following parties gave notice of their intention to become parties under section 274 of the Act and have signed the joint memorandum of the parties dated 3 February 2022:<sup>2</sup>
- (a) Alliance Group Limited;<sup>3</sup>
  - (b) Aratiatia Livestock Limited;
  - (c) Dairy Holdings Limited;
  - (d) DairyNZ Limited;
  - (e) Director-General of Conservation
  - (f) Federated Farmers;
  - (g) Fish and Game;
  - (h) Fonterra;
  - (i) Forest and Bird;
  - (j) Gore District Council, Southland District Council and Invercargill City Council;
  - (k) Meridian Energy Limited;
  - (l) Ngā Rūnanga; and
  - (m) Oil Companies.<sup>4</sup>
- 5 The Court is making this order under section 279(1)(b) of the Act; such order being by consent pursuant to section 297, rather than representing a decision or determination on the merits. The Court understands that for the present purposes that:
- (a) all parties to the proceedings have executed the memorandum requesting this order;
  - (b) all parties are satisfied that all matters proposed for the Court's endorsement are within the scope of submissions and appeals, fall

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<sup>2</sup> The particular appeal each party has joined as a s274 party is set out in the joint memorandum of the parties dated 3 February 2022.

<sup>3</sup> Note that Alliance Group Limited withdrew its interest in this matter on 1 April 2021.

<sup>4</sup> Note that the Oil Companies have withdrawn their interests in this matter.



## ANNEXURE A

Amended text for Policy 20, Policy 25, Rule 49, Rule 54, Appendix K and Table L.4 of Appendix L.5 (deleted text in strikethrough, new text underlined):

### **Policy 20 – Management of water resources**

Manage the taking, abstraction, use, damming or diversion of surface water and groundwater so as to:

- 1A. recognise that the use and development (such as primary production) of Southland's land and water resources, ~~including for primary production,~~ can have positive effects including enabling people and communities to provide for their social, economic and cultural wellbeing;
  
1. Avoid where reasonably practicable, or otherwise remedy or mitigate, adverse effects from the use and development of surface water resources on:
  - (a) the quality and quantity of aquatic habitat, including the life supporting capacity and ecosystem health and processes of water bodies;
  - (b) natural character values, natural features, and amenity, aesthetic and landscape values;
  - (c) areas of significant indigenous vegetation and significant habitats of indigenous fauna;
  - (d) recreational values;
  - (e) the spiritual and cultural values and beliefs of tangata whenua;
  - (f) water quality, including temperature and oxygen content;
  - (g) the reliability of supply for lawful existing surface water users, including those with existing, but not yet implemented, resource consents;
  - (h) groundwater quality and quantity; and
  - (i) mātaimai, taiāpure and nohoanga;
  
2. Avoid ~~remedy or mitigate~~ where reasonably practicable, or otherwise remedy or mitigate, ~~significant~~ adverse effects from the use and development of groundwater resources on:
  - (a) long-term aquifer storage volumes;

- (b) the reliability of supply for lawful existing groundwater users, including those with existing, but not yet implemented, resource consents;
  - (c) surface water flows and levels, particularly in spring-fed streams, natural wetlands, lakes, aquatic ecosystems and habitats (including life supporting capacity and ecosystem health and processes of water bodies) and their natural character; and
  - (d) water quality, including temperature and oxygen content;
3. ensure water is used efficiently and reasonably by requiring that the rate and volume of abstraction specified on water permits to take and use water are no more than reasonable for the intended end use following the criteria established in Appendix O and Appendix L.4.

#### **Policy 25 – Priority takes**

When issuing a water shortage direction, the Southland Regional Council will give priority to reasonable water abstractions for the following uses (in no particular order):

- 1. domestic needs, including community water supplies;
- 2. reasonable animal drinking needs;
- ~~2a. industries that process perishable foods;~~
- 3. fire-fighting purposes;
- 4. public health needs; and
- 5. animal welfare needs;

and as a second priority industries that process perishable primary produce.

#### **Rule 49 – Abstraction, diversion and use of surface water**

- (a) The take and use of surface water is a permitted activity provided the following conditions are met:

...

- (vi) the following details are supplied to the Southland Regional Council upon request (if applicable):

...

- (5) maximum instantaneous rate of take;

...

#### **Rule 54 – Abstraction and use of groundwater**

...

- (a) The take and use of groundwater is a permitted activity provided the following conditions are met:

...

- (iv) where the volume of the take exceeds 20,000 litres per day, a water meter capable of recording the rate of take and daily volume of take must be used. Water take data must be recorded daily at least weekly and provided to the Southland Regional Council on request. The accuracy of the water meter must be verified every 12 months.

#### **Appendix K – Surface Water Appendix**

...

#### **Assessments of environmental effects for surface water takes, diversion and use**

...

##### ***Method 1 – Assessment using Generalised Habitat Models***

The process for undertaking an assessment of environmental effects using generalised habitat models is as follows:

- **Step 1:** Determine the relevant surface water management unit and flow range using Southland Regional Council flow data.
- **Step 2:** Determine the appropriate critical value from the data obtained in Step 1 using following table which shows critical values by surface water management unit and flow range:

Median flow	Surface Water Management Unit		
	Lowland	Hill/Mountain	Hill2 (Hokonui/Catlins)
0 – 300 L/s	Diadromous galaxiid	Non-diadromous galaxiid	Diadromous galaxiids (low elevation) and non-diadromous galaxiids at higher elevations
300 – 750 L/s	<u>Trout spawning/juvenile rearing or Redfin/common bully if trout excluded</u>	Trout spawning/juvenile rearing or non-diadromous galaxiid if trout excluded <u>Large adult trout</u>	Trout spawning/juvenile rearing or non-diadromous galaxiid if trout excluded Large adult trout
0.75 – 2.5 m <sup>3</sup> /s	Trout spawning/juvenile rearing* Large adult trout	Trout spawning/juvenile rearing Large adult trout	Trout spawning/juvenile rearing <u>Large adult trout</u>
2.5 – 5 m <sup>3</sup> /s	Trout spawning/juvenile rearing*	Large adult trout	Large adult trout
> 5 m <sup>3</sup> /s	Large adult trout	Large adult trout	Large adult trout

...



Table L.4 of Appendix L.5

Groundwater Zone	Primary Allocation (m <sup>3</sup> x 10 <sup>6</sup> /year)
...	...
Te Anau	<del>118.25</del> <u>88.94</u>
...	...

**Appendix 2 – Affidavit of Lauren Maciaszek dated 2 February 2022**

**BEFORE THE ENVIRONMENT COURT  
I MUA I TE KOOTI TAIAO 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)

*(Continued next page)*

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**AFFIDAVIT OF LAUREN MACIASZEK**

**TOPIC B1 ISSUES 1, 4, 5, 10, 13, 16, & 17  
RELATING TO  
POLICIES 20 & 25, RULES 49 & 54, AND APPENDIX K & L.5**

**2 February 2022**

---

Judicial Officer: Judge Borthwick

---

Respondent's Solicitor  
PO Box 4341 CHRISTCHURCH 8140  
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**WYNNWILLIAMS**

Solicitor: P A C Maw  
(philip.maw@wynnwilliams.co.nz)

**WILKINS FARMING CO**  
(ENV-2018-CHC-30)

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

I, Lauren Rachel Maciaszek, of Invercargill, Principal Policy Planner, solemnly and sincerely affirm:

- 1 I hold the qualifications of Bachelor of Environmental Management from Lincoln University and Master of Natural Resources Management and Ecological Engineering, jointly awarded by Lincoln University and BOKU University in Vienna, Austria. I am employed by the Southland Regional Council (**Council**) as a Principal Policy Planner and have been in the Policy and Planning division since October 2019. Prior to this, I worked in Council's Consents division for five years.
- 2 While this affidavit in part records the reasoning and conclusion of the parties present at mediation, in places I express my professional opinion. For this material, 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 opinions are 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.
- 3 This affidavit provides an evaluation in accordance with section 32AA of the Resource Management Act 1991 (**Act**) to accompany the draft consent order to which this affidavit relates.<sup>1</sup> Within the context of the section 32AA assessment, I have also assessed the higher order policy documents including in particular, the National Policy Statement for Freshwater Management 2020 (**NPSFM**).
- 4 As with any negotiated outcome, the position arrived at by the parties does not necessarily reflect my professional opinion of what the best wording would be. In my opinion, in part, some of the wording is acceptable rather than preferred. That said, the agreed outcome was the result of considerable discussion and investment in time and thought, which I respect. I have attempted to set out below the reasoning that the Court has required to be provided, based on my understanding and recollections of the discussion that occurred.

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<sup>1</sup> Minute of the Environment Court dated 22 October 2020, at [12].

RL *Lauren*

### Introduction

5 This affidavit relates to those issues under Topic B1 where an outcome has been agreed between the parties, namely:

- (a) Issues 1 and 4 – Policy 20;
- (b) Issue 5 – Policy 25;
- (c) Issue 10 – Rule 49;
- (d) Issue 13 – Rule 54;
- (e) Issue 16 – Appendix K; and
- (f) Issue 17 – Table L.4 of Appendix L.5.

6 In this affidavit I first set out the relevant legal tests under s32AA of the Act and then provide an evaluation in accordance with s32AA for each of the provisions that have been agreed.

### Section 32AA of the Act

7 Section 32AA of the Act requires:

- (1) *A further evaluation required under this Act—*
  - (a) *is required only for any changes that have been made to, or are proposed for, the proposal since the evaluation report for the proposal was completed (the changes); and*
  - (b) *must be undertaken in accordance with section 32(1) to (4); and*
  - (c) *must, despite paragraph (b) and section 32(1)(c), be undertaken at a level of detail that corresponds to the scale and significance of the changes; and...*

8 The core of section 32 of the Act is in sub-section (1), which requires a decision-maker to (relevantly):

- ...
  - (b) *examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by—*
    - (i) *identifying other reasonably practicable options for achieving the objectives; and*
    - (ii) *assessing the efficiency and effectiveness of the provisions in achieving the objectives; and*
    - (iii) *summarising the reasons for deciding on the provisions; and*

RR  
Hall

- ...
- 9 Sub-section (2) specifies how the analysis under section 32(1)(b)(ii) is to be undertaken. In summary, this requires an assessment of the benefits and costs of the environmental, economic, social and cultural effects anticipated from the implementation of the provisions, and an assessment of the risk of acting or not acting if there is uncertain or insufficient information.
- 10 Section 32(3) is not relevant given the proposed Southland Water and Land Plan (**pSWLP**) is not an amending proposal, rather it is a whole new plan.
- 11 Section 32(4) may be relevant where the provision is a rule and will impose a greater or lesser restriction on an activity to which a national environmental standard applies than the existing restrictions in that standard.

**Evaluation in accordance with section 32AA for each provision where a change has been agreed**

- 12 In accordance with the requirements of sections 32(1) and 32(2), in relation to each provision where a change has been agreed I:
- (a) list the most relevant objectives;
  - (b) explain the "other reasonably practicable options" for achieving the objectives;
  - (c) summarise the reasons for the changes agreed; and
  - (d) provide an assessment of benefits, costs, and risks as required by section 32(2).

**Issues 1 and 4 – Policy 20**

- 13 Policy 20(1) and (2) of the pSWLP were appealed by Southland Fish and Game Council and Royal Forest and Bird Protection Society of New Zealand Incorporated.
- 14 The following parties joined these appeals as section 274 parties in relation to Policy 20(1) and (2):
- (a) Alliance Group Limited;
  - (b) Aratiatia Livestock Limited;

RL  
mll



- (c) DairyNZ Limited;
  - (d) Director-General of Conservation
  - (e) Federated Farmers of New Zealand;
  - (f) Fonterra Co-operative Group;
  - (g) Gore District Council, Southland District Council and Invercargill City Council;
  - (h) Meridian Energy Limited;
  - (i) The Oil Companies;<sup>2</sup>
  - (j) Royal Forest and Bird Protection Society of New Zealand Incorporated; and
  - (k) Southland Fish and Game Council.
- 15 Policy 20(2)(d) of the pSWLP was also appealed by Southland Fish and Game Council.
- 16 The following parties joined this appeal as section 274 parties in relation to Policy 20(2)(d):
- (a) Director-General of Conservation;
  - (b) Royal Forest and Bird Protection Society of New Zealand Incorporated;
  - (c) Fonterra Co-operative Group;
  - (d) Alliance Group Limited; and
  - (e) Federated Farmers of New Zealand.
- 17 The mediated outcome for Policy 20 is (deleted text in ~~strikeout~~, new text underlined):

**Policy 20 – Management of water resources**

Manage the taking, abstraction, use, damming or diversion of surface water and groundwater so as to:

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<sup>2</sup> Note that the Oil Companies have withdrawn their interests in this matter.

RR  
TAM

- 1A. recognise that the use and development (such as primary production)<sup>3</sup> of Southland's land and water resources, ~~including for primary production,~~<sup>4</sup> can have positive effects including enabling people and communities to provide for their social, economic and cultural wellbeing;
1. Avoid where reasonably practicable, or otherwise remedy or mitigate, adverse effects from the use and development of surface water resources on:
- (a) the quality and quantity of aquatic habitat, including the life supporting capacity and ecosystem health and processes of water bodies;
  - (b) natural character values, natural features, and amenity, aesthetic and landscape values;
  - (c) areas of significant indigenous vegetation and significant habitats of indigenous fauna;
  - (d) recreational values;
  - (e) the spiritual and cultural values and beliefs of tangata whenua;
  - (f) water quality, including temperature and oxygen content;
  - (g) the reliability of supply for lawful existing surface water users, including those with existing, but not yet implemented, resource consents;
  - (h) groundwater quality and quantity; and
  - (i) mātaītai, taiāpure and nohoanga;
2. Avoid ~~remedy or mitigate~~ where reasonably practicable, or otherwise remedy or mitigate, significant adverse effects from the use and development of groundwater resources on:
- (a) long-term aquifer storage volumes;
  - (b) the reliability of supply for lawful existing groundwater users, including those with existing, but not yet implemented, resource consents;

---

<sup>3</sup> Note that this agreed change is assessed in the affidavit by Matthew McCallum-Clark which (predominantly) addressed Topic B2, including Policy 13(1). See also footnote below.

<sup>4</sup> Given this change is closely related to an agreed change to Policy 13(1) (regarding the removal of the same phrase), this agreed change is assessed in the affidavit by Matthew McCallum-Clark which (predominantly) addressed Topic B2, including Policy 13(1).

RR  
 Smith

- (c) surface water flows and levels, particularly in spring-fed streams, natural wetlands, lakes, aquatic ecosystems and habitats (including life supporting capacity and ecosystem health and processes of water bodies) and their natural character; and
  - (d) water quality, including temperature and oxygen content;
3. ensure water is used efficiently and reasonably by requiring that the rate and volume of abstraction specified on water permits to take and use water are no more than reasonable for the intended end use following the criteria established in Appendix O and Appendix L.4.

*Relevant objectives*

- 18 While all the objectives of the pSWLP are relevant and have been considered, in terms of assessing whether Policy 20 is the most appropriate way to achieve the objectives, the most relevant objectives are Objective 1, Objective 2, Objective 3, Objective 4, Objective 5, Objective 6, Objective 7, Objective 8, Objective 9/9A, Objective 10, Objective 12, Objective 14, Objective 17 and Objective 18.

*Reasonably practicable options*

- 19 Section 32(1)(b)(i) requires the identification of "other reasonably practicable options" for achieving the objectives. The reasonably practicable options I have identified and considered are the Decisions Version wording, and the agreed wording shown in tracked changes in paragraph 17 above.

*Explanation and reasons for the changes agreed*

- 20 In my opinion the change to "where reasonably practicable, or otherwise remedy or mitigate" in Policy 20(1) and (2) places greater emphasis on the duty to avoid adverse effects in the first instance, before considering whether they can be remedied or mitigated. The inclusion of these words would make the policy more consistent with the hierarchy of Te Mana o te Wai in the NPSFM, by better prioritising the health of the water body and ecosystems. Parties at mediation were in agreement with this reasoning, and it is noted that agreed changes to Policies 15A, 15B, and 17A also use this wording.

hull  
RR

- 21 The removal of 'significant' from Policy 20(2) also better aligns with Te Mana o te Wai by ensuring that all adverse effects (rather than only significant adverse effects) are avoided where practicable, and then remedied or mitigated. This change also better aligns with ki uta ki tai (Objective 1 of the pSWLP) by making the direction in Policy 20(1) and (2) consistent, as effects from groundwater abstraction can affect surface water such as by hydraulically connected groundwater takes resulting in stream depletion effects on surface water.
- 22 In my opinion, the inclusion or otherwise of reference to "including temperature and oxygen content" in Policy 20(2)(d) is unlikely to result in different outcomes, as temperature and oxygen content are aspects of water quality whether separately specified or not. This was recognised by parties during the mediation discussion. Overall, the parties considered that the inclusion of these words in Policy 20(2)(d) would better align with the wording in Policy 20(1)(f), making the two parts consistent.
- 23 The reference to temperature and oxygen content is more specific than can be guided by the objectives identified above and the Objective of the NPSFM. However, the additional words are not inconsistent with these objectives.

*Benefits, costs and risk assessment*

- 24 With respect to the assessment of benefits, costs and risks set out in section 32(2), the specific outcomes from each of the two options of the wording of this Policy are difficult to assess due to the broad range of effects addressed by the policy. However, broadly speaking, it would be expected that there would be environmental, social, and cultural benefits associated with further prioritising the health of the water body and associated ecosystems. There are likely to be costs in an economic or social sense through reduced opportunities for future economic growth or employment, where water takes would not be viable if they were to comply with the agreed wording.
- 25 The difference between options in relation to Policy 20(2)(d) would be that the inclusion of the agreed wording ensures that the assessment of environmental effects provided with a consent application considers temperature and oxygen content in addition to other aspects of water quality, and to this end will improve certainty and consistency.

PR  
Full

- 26 Overall, having considered the options, the wording of the provision agreed by the parties (and set out at paragraph 17 above) is considered to be the most appropriate way to achieve the objectives of the pSWLP.

**Issue 5 – Policy 25**

- 27 Policy 25(2a) of the pSWLP was appealed by Te Rūnanga o Ngāi Tahu, Hokonui Rūnaka, Waihōpai Rūnaka, Te Rūnanga o Awarua, and Te Rūnanga o Oraka Aparima (**Ngā Rūnanga**).
- 28 The following parties joined this appeal as section 274 parties in relation to Policy 25(2a):
- (a) Alliance Group Limited;
  - (b) Southland Fish and Game Council;
  - (c) Royal Forest and Bird Protection Society of New Zealand Incorporated; and
  - (d) DairyNZ Limited.
- 29 The mediated outcome for Policy 25 is (deleted text in strikeout, new text underlined):

**Policy 25 – Priority takes**

When issuing a water shortage direction, the Southland Regional Council will give priority to reasonable water abstractions for the following uses (in no particular order):

1. domestic needs, including community water supplies;
2. reasonable animal drinking needs;
- ~~2a. industries that process perishable foods;~~
3. fire-fighting purposes;
4. public health needs; and
5. animal welfare needs;

and as a second priority industries that process perishable primary produce.

*Relevant objectives*

- 30 While all the objectives of the pSWLP are relevant and have been considered, in terms of assessing whether Policy 25 is the most appropriate way to achieve the objectives, the most relevant objectives are Objective 1, Objective 2, Objective 3, Objective 9/9A, Objective 11, and Objective 12.

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hull

*Reasonably practicable options*

- 31 Section 32(1)(b)(i) requires the identification of “other reasonably practicable options” for achieving the objectives. The reasonably practicable options I have identified and considered are the Decisions Version wording, and the agreed wording set out in tracked changes in paragraph 29 above.

*Explanation and reasons for the changes agreed*

- 32 The parties agreed that the wording of Policy 25(2a) should be altered from ‘foods’ to ‘primary produce’ to be clearer and allow more consistent interpretation of the Policy. I agree that this change will assist with interpretation of the Policy.
- 33 It was also agreed by parties that the inclusion of Policy 25(2a), as in the Decisions Version, does not align well with the hierarchy of Te Mana o te Wai set out in the NPSFM.<sup>5</sup> Inclusion of Policy 25(2a) as per the Decisions Version would mean that industries that process perishable foods (which fall into the third tier of the Te Mana o te Wai hierarchy) could be given equal or higher priority than the other uses of water which are specified in the Policy, some of which relate to the health needs of people (the second tier of the Te Mana o te Wai hierarchy). The agreed wording is more consistent with the NPSFM by ensuring that a third tier use is not given priority over a second tier use. The NPSFM does not preclude prioritisation of uses within the third tier of the hierarchy, therefore it is not inappropriate to prioritise industries that process perishable primary produce below other third tier uses included in the Policy and above third tier uses which are not specified in the Policy.
- 34 Overall, the parties were in agreement that referring to perishable primary produce as a second priority in Policy 25 would better align with the Objective of the NPSFM.
- 35 While the Policy does not refer to the first priority of the Te Mana o te Wai hierarchy, it should be noted that Te Mana o te Wai is relevant to all freshwater management (clause 1.3(2) of the NPSFM) which would include Council issuing a water shortage direction. Further, Objectives 1 and 2 of the pSWLP are relevant and require the principles of Te Mana o

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<sup>5</sup> Note that the scope of the appeal is limited to the deletion or clarification of Policy 25(2a). Accordingly, no other changes to the Policy have been considered.

RL  
hull

te Wai and ki uta ki tai to be at the forefront of all decisions about water and land. The agreed wording does not preclude the health and well-being of water bodies and freshwater ecosystems from being prioritised above all uses described in the Policy when the Policy is applied.

- 36 The reference to the use of water by industries that process perishable primary produce in comparison to other uses is more specific than can be guided by the objectives identified above. However, the agreed change is no less consistent with the objectives than the Decisions Version wording.

*Benefits, costs and risk assessment*

- 37 With respect to the assessment of benefits, costs and risks set out in section 32(2), the impact of any change to Policy 25(2a) would be limited to industries that process perishable primary produce and limited to times when Council has issued a water shortage direction. In these circumstances, application of the agreed wording would mean that industries processing perishable primary produce would have to cease abstraction before the other uses in the Policy, but may be able to continue abstraction after uses not listed in the Policy have had to cease abstraction. Under the Decisions Version wording, industries that process perishable foods may have been prioritised above, below, or equally to the other uses specified in Policy 25, which makes the difference between the two options more difficult to consider. Overall, there are likely to be economic costs associated with reduced operations of these industries when water cannot be taken, or increased investment in water storage, both of which may also result in social cost such as changes to employment. However, there would be social, cultural, and economic benefits related to the other uses in Policy 25 which are prioritised, because these uses would have comparatively greater certainty.
- 38 All of Policy 25 should be applied in the context of Te Mana o te Wai and the hierarchy in the NPSFM, which means that the health and well-being of water bodies and freshwater ecosystems should be prioritised first. In this context, environmental benefits or costs are not expected to change.
- 39 Overall, having considered the options, the wording of the provision agreed by the parties (and set out at paragraph 29 above) is considered to be the most appropriate way to achieve the objectives of the pSWLP.



**Issue 10 – Rule 49**

- 40 Rule 49 of the pSWLP was appealed by Federated Farmers of New Zealand.
- 41 The following parties joined this appeal as section 274 parties in relation to Rule 49:
- (a) Dairy Holdings Limited;<sup>6</sup>
  - (b) Director-General of Conservation;
  - (c) Royal Forest and Bird Protection Society of New Zealand Incorporated; and
  - (d) Ngā Rūnanga.
- 42 The mediated outcome for Rule 49 is outlined below (deleted text in ~~strikeout~~, new text underlined):

**Rule 49 – Abstraction, diversion and use of surface water**

- (a) The take and use of surface water is a permitted activity provided the following conditions are met:

...

- (vi) the following details are supplied to the Southland Regional Council upon request (if applicable):

...

- (5) maximum instantaneous rate of take;

...

**Relevant objectives**

- 43 While all the objectives of the pSWLP are relevant and have been considered, in terms of assessing whether Rule 49 is the most appropriate way to achieve the objectives, the most relevant objectives are Objective 1, Objective 2, Objective 3, Objective 9/9A, Objective 11, and Objective 18.

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<sup>6</sup> Dairy Holdings Limited did not attend mediation.

RL  
LMM



*Reasonably practicable options*

- 44 Section 32(1)(b)(i) requires the identification of "other reasonably practicable options" for achieving the objectives. The reasonably practicable options I have identified and considered are the Decisions Version wording, and the agreed wording set out in tracked changes in paragraph 42 above.

*Explanation and reasons for the changes agreed*

- 45 The agreed change to Rule 49(a)(vi)(5) clarifies the condition rather than changing the outcomes from it. On this basis, pursuant to section 32AA(1)(c), my analysis in relation to the efficiency and effectiveness of the agreed change is brief. Surface water allocation is managed in litres per second, and therefore it is the maximum instantaneous rate of take in litres per second that Council would need to know in order to manage surface water allocation. There is potential that the wording "maximum rate of take" in the Decisions Version could be misinterpreted as a daily or annual rate. The agreed change provides clarity as to what is required by this condition. In doing so, there is greater assurance that surface water allocation can be accurately managed and flow regimes maintained, and therefore achieve the objectives of the pSWLP.

*Benefits, costs and risk assessment*

- 46 With respect to the assessment of benefits, costs and risks required by section 32(2), I am of the opinion that the outcomes from each of the two options considered for this rule are difficult to distinguish from one another. The key difference is the environmental benefit to be gained from the agreed change by ensuring that appropriate information is gathered in order to most accurately manage surface water allocation. I consider the agreed change removes the risk of incorrect information being supplied, which will improve the efficiency and effectiveness of the rule in achieving the objectives.
- 47 Overall, having considered the options, the wording of the provision agreed by the parties (set out at paragraph 42 above) is considered to be the most appropriate way to achieve the objectives of the pSWLP.

**Issue 13 – Rule 54**

- 48 Rule 54(a) of the pSWLP was appealed Fonterra Co-operative Group Limited.

RR  


49 The following parties joined this appeal as section 274 parties in relation to Rule 54(a):

- (a) Dairy Holdings Limited<sup>7</sup>;
- (b) Federated Farmers of New Zealand; and
- (c) Royal Forest and Bird Protection Society of New Zealand Incorporated.

50 The mediated outcome for Rule 54(a) is (deleted text in strikeout, new text underlined):

**Rule 54 – Abstraction and use of groundwater**

...

- (a) The take and use of groundwater is a permitted activity provided the following conditions are met:

...

- (iv) where the volume of the take exceeds 20,000 litres per day, a water meter capable of recording the rate of take and daily volume of take must be used. Water take data must be recorded ~~daily~~ at least weekly and provided to the Southland Regional Council on request. The accuracy of the water meter must be verified every 12 months.

*Relevant objectives*

51 While all the objectives of the pSWLP are relevant and have been considered, in terms of assessing whether Rule 54 is the most appropriate way to achieve the objectives, the most relevant objectives are Objective 1, Objective 2, Objective 3, Objective 11, Objective 12, and Objective 18.

*Reasonably practicable options*

52 Section 32(1)(b)(i) requires the identification of “other reasonably practicable options” for achieving the objectives. The reasonably practicable options I have identified and considered are the Decisions

<sup>7</sup>

Dairy Holdings Limited did not attend mediation.

Version wording, and the agreed wording set out in tracked changes in paragraph 50 above.

*Explanation and reasons for the changes agreed*

- 53 The agreed change to Rule 54 is expected to be as effective as the decisions version wording because it does not impact the ability of Council to determine water usage of permitted activities for the purposes of maintaining allocations or determining compliance. I consider that the agreed change is likely to be more efficient in achieving the objectives of the pSWLP, as it reduces the effort or resources required by the water user and by Council to monitor water usage, without reducing the quality of the information able to be supplied to Council.

*Benefits, costs and risk assessment*

- 54 With respect to the assessment of benefits, costs and risks required by section 32(2), I am of the opinion that the outcomes from each of the two options considered for this rule are difficult to distinguish from one another. In particular, I do not consider that there are any environmental, economic, social, or cultural costs as a result of the agreed change. Given the reduced frequency of provision of information, there may be a small reduction in cost to those who must provide the information.
- 55 Overall, having considered the options, the wording of the provision agreed by the parties (set out at paragraph 50 above) is considered to be the most appropriate way to achieve the objectives of the pSWLP.

***Issue 16 – Appendix K***

- 56 Appendix K - Surface Water of the pSWLP was appealed by Southland Fish and Game Council.
- 57 Royal Forest and Bird Protection Society of New Zealand Incorporated joined this appeal as a section 274 party in relation to Appendix K – Surface Water.
- 58 The mediated outcome for Appendix K is (deleted text in ~~strikeout~~, new text underlined, and lines within the table shown for clarity):

**Appendix K – Surface Water Appendix**

...

**Assessments of environmental effects for surface water takes, diversion and use**

ER  
JMD

### Method 1 – Assessment using Generalised Habitat Models

The process for undertaking an assessment of environmental effects using generalised habitat models is as follows:

- **Step 1:** Determine the relevant surface water management unit and flow range using Southland Regional Council flow data.
- **Step 2:** Determine the appropriate critical value from the data obtained in Step 1 using following table which shows critical values by surface water management unit and flow range:

Median flow	Surface Water Management Unit		
	Lowland	Hill/Mountain	Hill2 (Hokonui/Catlins)
0 – 300 L/s	Diadromous galaxiid	Non-diadromous galaxiid	Diadromous galaxiids (low elevation) and non-diadromous galaxiids at higher elevations
300 – 750 L/s	<u>Trout spawning/juvenile rearing or Redfin/common bully if trout excluded</u>	Trout spawning/juvenile rearing or non-diadromous galaxiid if trout excluded <u>Large adult trout</u>	Trout spawning/juvenile rearing or non-diadromous galaxiid if trout excluded Large adult trout
0.75 – 2.5 m <sup>3</sup> /s	Trout spawning/juvenile rearing* Large adult trout	Trout spawning/juvenile rearing Large adult trout	Trout spawning/juvenile rearing <u>Large adult trout</u>
2.5 – 5 m <sup>3</sup> /s	Trout spawning/juvenile rearing*	Large adult trout	Large adult trout

*RR*  
*Lucy*

Median flow	Surface Water Management Unit		
	Lowland	Hill/Mountain	Hill2 (Hokonui/Catlins)
> 5 m <sup>3</sup> /s	Large adult trout	Large adult trout	Large adult trout

...

#### *Relevant objectives*

- 59 While all the objectives of the pSWLP are relevant and have been considered, in terms of assessing whether Appendix K is the most appropriate way of achieving these objectives, the most relevant objectives are Objective 1, Objective 2, Objective 9/9A, Objective 14, Objective 15, and Objective 17.

#### *Reasonably practicable options*

- 60 Section 32(1)(b)(i) requires the identification of “other reasonably practicable options” for achieving the objectives. The reasonably practicable options I have identified and considered are the Decisions Version wording, and the agreed wording set out in tracked changes in paragraph 58 above.
- 61 In my opinion, the agreed changes to include additional references to trout in the Method 1 table of Appendix K are likely to be more effective in achieving the objectives of the pSWLP, as the inclusion of trout is expected to require more water to be retained instream where trout habitat would be affected, and therefore maintain a higher quantity of aquatic habitat. This means that the agreed change is taking a more conservative approach in ensuring that the health of ecosystems is prioritised above water abstraction, which is consistent with the hierarchy in Te Mana o te Wai in the NPSFM and Objective 9/9A. The protection of the habitat of trout is listed in section 7(h) of the Act as a matter to which particular regard must be had when managing the use, development, and protection of natural and physical resources, and I consider the agreed change is also more appropriate in this context.

#### *Benefits, costs and risk assessment*

- 62 With respect to the assessment of benefits, costs and risks set out in section 32(2), I consider that the agreed change is likely to result in

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environmental, social, and cultural benefits by taking a more conservative approach to assessing the environmental effects of an activity and retaining aquatic habitat, including benefits to ecosystem health, taonga species, and cultural and recreational uses of waterways. Where a water user requires consent, the agreed change may require such a consent to have higher cut-offs than currently required in order to protect a greater amount of habitat. Accordingly, the agreed change is likely to result in economic costs through either loss of production when water cannot be taken, or costs associated with installing water storage.

63 Overall, having considered the options, the wording of the provision agreed by the parties (and set out at paragraph 58 above) is considered to be the most appropriate way to achieve the objectives of the pSWLP.

**Issue 17 – Appendix L.5**

64 Table L.4 of Appendix L.5 of the pSWLP was appealed by the Director-General of Conservation.

65 The following parties joined this appeal as section 274 parties:

- (a) Meridian Energy Limited; and
- (b) Ngā Rūnanga.

66 This appeal relates to the primary allocation for the Te Anau groundwater zone shown in Table L.4 of Appendix L.5. Appendix L.5 is also subject to appeal by Wilkins Farming Company Limited (**Wilkins**) in relation to the Upper Mataura and Wendonside groundwater zones. The Wilkins appeal remains unresolved. That appeal will have no bearing on the agreed outcome described in this affidavit as the groundwater zones in the two appeals are entirely unrelated from one another.

67 The mediated outcome for Table L.4 of Appendix L.5 in relation to the Director-General of Conservation’s appeal is (deleted text in ~~strikeout~~ and new text underlined):

Groundwater Zone	Primary Allocation (m <sup>3</sup> x 10 <sup>6</sup> /year)
...	...
Te Anau	<del>118.25</del> <u>88.94</u>
...	...

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*Relevant objectives*

- 68 While all the objectives of the pSWLP are relevant and have been considered, in terms of assessing whether Table L.4 of Appendix L.5 is the most appropriate way of achieving these objectives, the most relevant objectives are Objectives 1, 2, 3, 9/9A, and 12.

*Reasonably practicable options*

- 69 Section 32(1)(b)(i) requires the identification of "other reasonably practicable options" for achieving the objectives. The reasonably practicable options I have identified and considered are the Decisions Version wording, and the agreed wording shown in tracked changes in paragraph 67 above.

*Explanation and reasons for the changes agreed*

- 70 Allocation from the Te Anau groundwater zone is currently low, at 4,299,311m<sup>3</sup>/year (3.6% of the primary allocation in the Decisions Version, as at 11 January 2022). I understand that this would equate to approximately 4.8% of the agreed primary allocation volume set out in paragraph 67.
- 71 It was acknowledged during the mediation process that the main limiting factor to an increase in allocated water is the degree of hydraulic connection to surface water. Because the stream depletion effect is allocated to surface water rather than the groundwater zone for groundwater abstractions with a moderate, high, direct, or riparian degree of hydraulic connection, the allocation for groundwater is only available where there is also available surface water allocation. As there is no surface water allocation available in the Waiau catchment (which the Te Anau groundwater zone underlies), additional consents to take groundwater can only be granted if they have a low degree of hydraulic connection.
- 72 Ultimately, this means that the primary allocation available for the Te Anau groundwater zone is not expected to be the limiting factor for additional water abstractions and there is not expected to be any difference in the efficiency or effectiveness of the water quantity provisions achieving the objectives of the pSWLP. If the level of allocation did become higher than expected, the agreed change ensures a precautionary approach consistent with the objectives of the pSWLP

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and the hierarchy of Te Mana o te Wai as set out in the National Policy Statement for Freshwater Management 2020 by first providing for the well-being of water bodies and ecosystems. Therefore, I consider that the agreed change to Table L.4 of Appendix L.5 is appropriate in the context of the considerations required by Section 32(1).

*Benefits, costs and risk assessment*

- 73 In terms of the assessment of benefits, costs, and risks required by Section 32(2), I do not consider that there will be any environmental, economic, social, or cultural costs or benefits as a result of the agreed change, for the reasons outlined above.
- 74 In terms of section 32(2)(c), I do not consider there is uncertain or insufficient information about the subject matter of the provisions in this context and therefore a risk assessment is not required.
- 75 Overall, having considered the options, the change agreed by the parties (as set out at paragraph 67 above) is considered to be appropriate.



Lauren Maciaszek

Affirmed at Invercargill )  
 this 2<sup>nd</sup> day of February )  
 2022, before me: )



Roosje Aryan Rabusa  
Solicitor  
Invercargill

A Solicitor/Deputy Registrar of the High Court of New Zealand/  
Justice of the Peace