

BEFORE THE ENVIRONMENT COURT
AT CHRISTCHURCH

ENV-2018-CHC-000050

IN THE MATTER

of the Resource Management Act
1991

AND

IN THE MATTER

of an appeal under Clause 14(1),
First Schedule of the Resource
Management Act 1991 in relation
to the Proposed Southland Water
and Land Plan decisions

BETWEEN

**Royal Forest and Bird
Protection Society of New
Zealand Inc**
Appellant

AND

Southland Regional Council
Respondent

NOTICE OF BALLANCE AGRI-NUTRIENTS LIMITED'S WISH TO BECOME A PARTY TO
PROCEEDINGS PURSUANT TO SECTION 274 OF THE RESOURCE MANAGEMENT ACT
1991

22 June 2018

To: The Registrar
Environment Court

CHRISTCHURCH

1. BALLANCE AGRI-NUTRIENTS LIMITED ('Ballance'), wishes to become a party to ENV-2018-CHC-000050 - Royal Forest and Bird Protection Society of New Zealand Inc ('Forest and Bird') v Southland Regional Council which relates to decisions on the Proposed Southland Water and Land Plan ('Proposed SW&LP').
2. Ballance made submissions and further submissions to the Proposed SW&LP.
3. Ballance is not a trade competitor for the purposes of section 308C of the Resource Management Act 1991 ('the Act').
4. Ballance has an interest in part of the proceedings, in particular those parts relating to:
 - Objective 6;
 - Objectives 13 13A and 13B;
 - Policies 4 - 12;
 - Policy 13;
 - Policies 15, 15A, 15B and 15C;
 - Policy 16;
 - Rule 14;
 - Rule 20; and
 - Rule 25.
5. Ballance opposes the relief sought by the Appellant - Forest and Bird, with respect to those provisions set out in section 4 above, for the following reasons:

Objective 6

- (a) In its appeal, Forest and Bird seek the deletion of the word 'overall' from Objective 6, when referring to the reduction in the quality of freshwater and water in estuaries and coastal lagoons. Ballance consider that deletion of the reference to the word 'overall' from Objective 6 could be interpreted as requiring a more stringent threshold for water quality improvement than required by Objective A2 of the National Policy Statement for Freshwater Management. Ballance opposes the relief sought.

Objectives 13, 13A and 13B

- (b) The notified version of Objective 13 has been reframed into Objectives 13, 13A and 13B within the decision. Ballance lodged a submission in support of Objective 13 when notified, as it was considered to be consistent with the purpose of the Act. Forest and Bird seek the reinstatement of Objective 13 as notified, with an amendment to ensure

that the adverse effects on ecosystems (including indigenous biological diversity and integrity of habitats) are mitigated to ensure the values are safeguarded or enhanced, and that the use and development of land and soils only be provided for when this protection and enhancement is achieved. Ballance consider that the amendments sought in Forest and Bird's appeal go beyond what is intended within the purpose of the Act and are therefore inconsistent with it. Ballance opposes the relief sought.

Policies 4 - 12

- (c) The Forest and Bird appeal seeks to amend Policies 4 - 12 to ensure that they only provide for activities where water quality will be maintained or enhanced in such circumstances where it is already degraded. Further, Forest and Bird seek the deletion of references to 'generally not granting resource consents' and the amendment of policies 4, 9, 10 and 11 to make dairy farming, intensive winter grazing and cultivation prohibited where these policies apply. Ballance considers the relief sought by Forest and Bird to be overly restrictive and inconsistent with the purpose of the Act. Ballance opposes the relief sought.

Policy 13

- (d) The Forest and Bird appeal seeks that Policy 13 be amended to recognise the 'sustainable' use and development of Southland's land and to delete the reference to primary production, proclaiming that there is a conflict between enabling primary production and maintaining and improving water quality. Ballance is of the view that a policy providing for primary production does not, in of itself, result in the degradation of water quality. Ballance opposes the relief sought.

Policies 15, 15A, 15B and 15C

- (e) Policy 15 has been deleted from the decisions version of the Proposed SW&LP and replaced with Policies 15A, B and C. Proposed Policy 15 sought that water quality be maintained and improved. Ballance submitted that the policy was overly restrictive and that it should be amended to reflect overall water quality standards. In its appeal, Forest and Bird have requested the reinstatement of the policy as notified, together with amendments to delete reference to adverse effects being able to be avoided, remedied or mitigated. Ballance consider that the amendments requested by Forest and Bird will serve to make the provision more restrictive than that originally notified. As such, Ballance is opposed to the relief sought.

Forest and Bird propose Policy 15A be amended to ensure it provides for the maintenance of water quality and to delete references to 'remedy or mitigate'. Ballance consider that the amendments proposed by Forest and Bird are contrary to the purpose of the Act and could result in an unsuitably restrictive regulatory framework.

Forest and Bird have sought that Policy 15B(1) be amended to require new discharges to contribute to the enhancement of water quality along with amendments to Policy 15B(2), to provide guidance to consent authorities to distinguish between minor and major improvements and timeframes.

Forest and Bird's appeal also seeks the deletion of references to 'remedy or mitigate'. Ballance consider that the amendments requested by Forest and Bird go beyond what is intended within the purpose of the Act, particularly through the removal of the ability to remedy or mitigate effects. Ballance opposes the relief sought.

Policy 16

- (f) The Forest and Bird appeal seeks to amend Policy 16 so that adverse effects on water quality are avoided and other adverse environmental effects are avoided, remedied or mitigated; amend 'discouraging' to 'avoiding' in 16(1)(a); and delete 'generally' and 'or mitigated' in 16(1)(b) and 16(1)(c). Ballance consider that such an approach will prohibit the establishment of farming activities in some situations, without the ability to consider the effects of such an activity, or the mitigation methods available to address potential effects. Such an approach is inconsistent with the purpose of the Act and therefore inappropriate. Ballance opposes the relief sought.

Rule 14

- (g) In its appeal, Forest and Bird state that a 3 metre setback to a significant indigenous biodiversity site, lake, river, artificial watercourse, modified watercourse or wetland associated with the application of fertiliser is insufficient and that a 10 metre setback should be applied in all identified circumstances, including to ephemeral waterways. Ballance considers that a restriction of 10 metres is arbitrary, and does not reflect recognised good management practice, site specific conditions, the type of fertiliser being applied or the method of application. As a result, such a significant setback, and the consequential non-complying activity status for not meeting it, is considered overly restrictive. Ballance opposes the relief sought.

Rule 20

- (h) Ballance submitted in general support of proposed Rule 20 as notified, subject to a number of amendments including changes to the status of activities unable to comply with the permitted standards. In its appeal, Forest and Bird is seeking changes to the rule to delete part (aa); add intensive horticulture to part (a); include restrictions relating to ephemeral streams; provide for increased setbacks; and to amend part (d) to require farming that does not meet the standards to be considered as a non-complying activity. Ballance consider that the changes proposed by Forest and Bird are overly restrictive and do not enable the adoption of recognised good management practice or site-specific considerations. Ballance opposes the relief sought.

Rule 25

- (i) In its appeal, Forest and Bird seek that Rule 25 be amended to include ephemeral waterways and increase setbacks relative to the slope of the land. Further, Forest and Bird seek that cultivation in the Alpine Zone be identified as a prohibited activity, together with requiring some amendments to the rule's assessment criteria. Ballance considers that the

amendments proposed by Forest and Bird are overly restrictive and do not enable the adoption of recognised good management practice or site-specific considerations. Ballance opposes the relief sought.

6. Further to the reasons set out in section 5 above, Ballance wishes to be a party to the appeal so that it may be involved in the development of any specific amendments that may affect its interests.
7. Ballance agrees to participate in mediation or other alternative dispute resolution proceedings.



Kevin Wood
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Ballance Agri-Nutrients Limited

Dated: 22nd June 2018

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