

BEFORE THE ENVIRONMENT COURT  
AT CHRISTCHURCH

ENV-2018-CHC-000037

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

**Southland Fish and Game  
Council**  
Appellant

AND

**Southland Regional Council**  
Respondent

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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

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To: The Registrar  
Environment Court

CHRISTCHURCH

1. BALLANCE AGRI-NUTRIENTS LIMITED ('Ballance'), wishes to become a party to ENV-2018-CHC-000037 - Southland Fish and Game Council ('Fish and Game') 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 2;
  - Objective 6;
  - Objective 7;
  - Objectives 13 13A and 13B;
  - Objective 18;
  - Policies 4 - 12;
  - Policy 13;
  - Policy 16;
  - Policy 16A;
  - Policy 45;
  - Rule 14;
  - Rule 20;
  - Rule 25; and
  - Appendix N.
5. Ballance supports the relief sought by the Appellant - Fish and Game with respect to Policy 16A for the following reasons:

#### **Policy 16A**

- (a) Policy 16A is a new Policy introduced through the decision. Ballance owns and operates industrial and trade premises in the Southland Region, and as such, has an interest in the policy greater than the general public. In its appeal, Fish and Game propose amending Policy 16A to replace 'minimise' with 'avoid where practicable, or otherwise remedy or mitigate' adverse environmental effects. Ballance considers that such an approach, to avoid, remedy or mitigate adverse effects is broadly appropriate in the context of water quality standards and discharges to water. Ballance supports the relief sought.

6. Ballance opposes the relief sought by the Appellant - Fish and Game, with respect to those provisions set out in section 4 above with the exception of Policy 16A (where Ballance supports the Appellant's relief), for the following reasons:

**Objective 2**

- (a) Ballance submitted on Objective 2, requesting amendments to include reference to sustainable management and the resulting economic benefits to the community. In its appeal, Fish and Game seek to remove the term 'primary production' from the decisions version of the objective. Ballance consider that the proposed inclusion of the term primary production within the provision recognises the importance of primary production within the Southland Region. Ballance opposes the relief sought.

**Objective 6**

- (b) In its appeal, Fish and Game 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.

**Objective 7**

- (c) In its appeal to Objective 7, Fish and Games seek that the objective be amended to enable the over-allocation of water resources to be addressed during the consideration of resource consent applications, even if this occurs prior to the development of the Freshwater Management Unit process. Ballance considers that requiring decisions on water allocation to be made prior to the development of Freshwater Management Units being established is not good practice and can lead to uncertainty within the community. Ballance opposes the relief sought.

**Objectives 13, 13A and 13B**

- (d) 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. Fish and Game seek the reinstatement of Objective 13 as notified, with an amendment to ensure that the use and development of land and soils only be enabled when land use activities or discharges to land which have adverse effects quantity, quality and structure of soil resources are avoided; discharges of contaminants to land or water that have adverse effects on human health are avoided; and adverse effects to surface or groundwater quality or quantity, ecosystems, life-supporting capacity, mahinga kai, outstanding natural features and landscapes, indigenous vegetation and fauna, recreational values, amenity values and natural character are avoided. Ballance consider that the amendments sought in Fish and Game's appeal

go beyond what is intended within the purpose of the Act and are therefore inconsistent with it. Ballance opposes the relief sought.

### **Objective 18**

- (e) Ballance submitted in general support of Objective 18 as notified, subject to amendments, in particular by providing clarification to the meaning of 'Good Management Practice'. The Fish and Game appeal seeks to amend the objective to require that activities implement the 'best practicable option', rather than good management practice. Such a term is not defined and as a result creates uncertainty with regard to implementation and enforcement. Ballance opposes the relief sought.

### **Policies 4 - 12**

- (f) The Fish and Game appeal seeks to amend policies 4-12 to replace the reference to implementing 'good management practices' with the 'best practicable option', along with a number of smaller amendments. The use of the term 'best practicable option' is not defined and creates uncertainty with regard to implementation and enforcement. Ballance opposes the relief sought.

### **Policy 13**

- (g) The Fish and Game appeal seeks that Policy 13 be amended to delete the reference to primary production. The specific recognition of primary production within the policy provides clarity that the use and development of land and water are necessary for primary production activities. Ballance is of the view that removing the reference to primary production reduces this clarity and therefore reduces the effectiveness of the policy. Ballance opposes the relief sought.

### **Policy 16**

- (h) The Fish and Game 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; along with requiring changes to practices, in a number of instances to make them more restrictive; the use of the best practicable option; and the completion of reporting via the Farm Environmental Management Plan. Ballance considers that the proposed approach may result in over complication and uncertainty. For example, Ballance notes that the term 'best practicable option' is not defined within the Proposed SW&LP. Ballance opposes the relief sought.

### **Policy 45**

- (i) In its appeal to Policy 45, Fish and Game seeks an amendment to the policy to state that should the proposed Plan contain more than one provision on the same subject matter, the relevant FMU section of the Plan prevails, unless *'the provision in the relevant FMU Section of this plan is not more lenient or less protective of water quality, quantity or aquatic ecology than the Region-wide Objectives and Region-wide Policies'*. Ballance consider that the amendments proposed create

uncertainty with regard to the use of the terms ‘more lenient’ and ‘less protective’ and as a result do not represent good planning practice. Ballance opposes the relief sought.

#### **Rule 14**

- (j) In its appeal to Rule 14, Fish and Game are proposing that the rule be amended to specifically exclude the application of fertiliser to ephemeral or intermittent rivers. Whilst such an approach may be appropriate in some situations, it does not consider the site-specific characteristics, good management practice fertiliser application or the type and frequency of fertiliser application. As a result, Ballance consider that such an amendment and the resulting activity status (non-complying activity) are inappropriate. Ballance opposes the relief sought.

#### **Rule 20**

- (k) 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, Fish and Game are seeking changes to the rule to delete part (aa); include restrictions relating to ephemeral streams and the slope of land; excluding stock from critical source areas; provide for increased setbacks; and to amend part (e) to require farming that does not meet the standards to be considered as a non-complying activity. Ballance consider that the changes proposed by Fish and Game are overly restrictive and do not enable the adoption of recognised good management practice or site-specific considerations. Ballance opposes the relief sought.

#### **Rule 25**

- (l) Within its appeal to Rule 25, Fish and Game seek that much of the proposed rule be reinstated, including specific setbacks relative to the slope of the land. Further restrictions to critical source areas and amendments to the matters of discretion are also proposed. Ballance’s submission sought to amend the structure of the rule to enable flexibility in its application, based on good management practice. As such, Ballance considers that the amendment proposed by Fish and Game is overly restrictive and does not enable the ready adoption of good management practice. Ballance opposes the relief sought.

#### **Appendix N**

- (m) The Fish and Game appeal is seeking significant changes to the structure of Appendix N. A number of the changes appear counter-intuitive to recognised good management practices, and as a result the provisions in-of-themselves are likely to result in unnecessary changes and increased reporting requirements. In turn, such changes may result in disproportionate additional administrative responsibilities for farmers. Ballance opposes the relief sought.

7. Further to the reasons set out in sections 5 and 6 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.
8. Ballance agrees to participate in mediation or other alternative dispute resolution proceedings.



Kevin Wood  
Environmental Manager  
Ballance Agri-Nutrients Limited

Dated: 22<sup>nd</sup> June 2018

Address for service of person wishing to be a party:

Ballance Agri-Nutrients Limited  
Hewletts Road, Mt Maunganui  
Private Bag 12 503  
Tauranga Mail Centre  
Tauranga 3143

Attention: Mr Kevin Wood

Email: [Kevin.Wood@ballance.co.nz](mailto:Kevin.Wood@ballance.co.nz)

Phone: (07) 572 7874