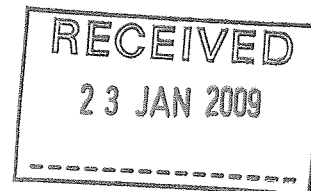


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Submission of Todd Energy on Proposed National Policy Statement for Freshwater Management

To: Board of Inquiry-Water
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1. Introduction

Todd Energy (Todd) is a privately owned New Zealand energy company. It is New Zealand's largest domestically-owned energy business and the second largest contributor to the country's energy supply. Todd has diversified interests in oil and gas exploration and production, natural gas and LPG wholesale and retail, electricity generation and retail, and solar energy manufacture and supply.

Todd owns and operates, or has interests in, several hydro-electric power stations in New Zealand. It is also close to applying for consents to build a new hydro scheme on the Kaituna River. Todd is therefore a major water user.

2. General comments

We support the preparation of a National Policy Statement (NPS) on Freshwater Management because there are water management (and related land management) issues that are not being adequately addressed by regional and district councils and there is a high degree of variability in the approaches being adopted by different councils around the country. It is apparent that existing approaches under the RMA are not working. There is a need for clear specification of water management instruments and methods and guidance, if not directives, as to how to apply them.

However, Todd is very concerned about the implications of the *Proposed* NPS (the subject of this submission) for the ongoing viability of existing hydro-electric power schemes and for the consenting of new schemes. More generally, we are concerned about the implications of the proposals for New Zealand Inc.

In our view, some of the proposals are ill-conceived and unworkable. Some are also unnecessarily complex and potentially very time consuming and costly to implement. A lack of precision in the wording of proposed objectives and policies and in the definition of key terms means that the intent of some of the objectives and policies is not clear. In short, the NPS, as it stands, is very unlikely to achieve its purpose and, if confirmed in anything like its current form, would lead to widespread confusion and uncertainty.

It is Todd's view that the Proposed NPS is so badly flawed that the best course of action would be for the Board to recommend that the NPS be withdrawn in its entirety on the basis that, in its present form, it is unlikely to achieve its stated purpose. We are not sure whether such action is within the mandate of the Board.

We devote most of our submission to elaborating on our concerns and indicating why we believe the NPS should be withdrawn and re-written. If the Board is unable to recommend such action, we consider that our comments are nonetheless relevant to the Board's Terms of Reference which includes the making of recommended amendments to the NPS so that it will more fully serve the purpose of the RMA and the NPS itself. We also note that the Board's recommendations may cover improvements to clarity and internal consistency.

We have not attempted to "re-write" the objectives and policy proposals, or labour over alternative wording, due to our belief that the document needs to be re-written from scratch following a more thorough analysis of the issues and wider consultation. Nevertheless, we generally support the proposed wording changes contained in the submission of King Country Energy, in which Todd has a 35 % stake.

3. Todd's concerns

3.1 NPS lacks context and cohesiveness

Like the proposed NES on Ecological Flows and Water Levels, the Proposed NES on Freshwater Management lacks context. Both appear to have been developed in the absence of a cohesive "big picture" framework for water management in New Zealand.

Although the proposed objectives and policies are, on the face of it, wide ranging, close examination of the Section 32 Analysis confirms that the NPS is based on a somewhat piecemeal analysis of the issues facing water managers. In places there are vague references to "complementary measures" being necessary. The NPS is silent on key issues such as water transfer and pricing instruments. The consequence is that the NPS fails to advance a package of comprehensive, integrated, solutions.

We believe that what is needed is a comprehensive analysis of the key water management issues and the relationships between them, of the type undertaken by the New Zealand Business Council for Sustainable Development (NZBCSD) in its report "A Best Use Solution for New Zealand's Water Problems" (July 2008). The report was prepared by consultants and involved consultation with a wide range of parties with water interests.

Todd is not a member of the NZBCSD but we recognize the quality of analysis in the report and the merits of many of its proposals for reform of our water management system.

3.2 Failure to adequately define the problems

The NPS, more particularly its accompanying Section 32 analysis, fails, in our view to adequately identify or articulate the key problem areas facing water management in NZ.

The section 32 analysis does not make a clear distinction between problems, the consequences (effects), and the causes. This is not semantics; it has led to the poor definition of objectives (which should address the core problems) and policies (which should support the objectives by addressing the causative factors).

The section 32 analysis (p13-15) contains a "problem statement". It identifies 5 problems. Briefly, to illustrate the point we are making:

Problem 1: Decline in a wide range of freshwater quality indicators

Yes, deterioration of water quality is a problem in some water bodies, or parts of them, in some parts of New Zealand, but the statement and its accompanying explanation lack precision. What does "decline" mean? What does "wide range" mean? What water quality parameters are being referred to? It is the water quality that is deteriorating not the indicators.

Problem 2: Lack of integrated management

This is not a problem per se (problems should relate to outcomes), rather it is arguably the main *cause* of both water allocation/quantity and water quality problems in NZ and, as such, needs to be addressed by way of a policy initiative and possibly associated amendment to the RMA (see below).

Problem 3: Lack of focus on the use of freshwater resources

What does this mean? The accompanying explanation is vague and in some places almost incomprehensible eg "Social, economic and cultural uses of water need national recognition, or there will be a continuing lack of focus on the national significance of freshwater resources".

Problem 4: Freshwater demand management is not presently sustainable

Again, what does this mean? The explanation indicates that it is referring to the fact that water is fully or over-allocated in some catchments but it is not the *management* of demand that is not sustainable. Clearly demand cannot always be satisfied (in the absence of storage) because water is a finite resource and its availability is limited in time and space.

Problem 5: Insufficient information and reporting

We would argue that this is in fact a causative or exacerbating factor affecting the ability of management agencies to adequately address problem areas such as allocation and water quality deterioration; it does not need to be given the status of “problem”.

Some of the above comments may appear to be in the category of splitting hairs but their significance is indicated by reference to the **attached Table**, which is aimed at illustrating how a more systematic approach to the separation of problems, consequences and causes can lead to identification of a package of integrated remedial actions. The Table is based to a large extent on the NZBCSD analysis referred to above but modified to reflect our view that some of the “problems” identified by NZBCSD are better expressed as consequences or causes. We consider that, boiled down, there are essentially only 4 (related) problem areas that need to be addressed on a national basis and these can be attributed to a number of inter-related causative factors. Further, that the problems cannot be resolved by addressing the causative factors on a piecemeal basis.....there needs to be an holistic approach, leading to a package of integrated remedial measures, each designed to support each other. Implementation of these measures may involve legislative change, the content of NPSs or NESs, or the content of guidelines.

3.3 Lack of Clarity

The proposed NPS and the Section 32 analysis are peppered with vague statements and ill-defined terms.

To illustrate the point, we select a few examples:

- Proposed policy 1(j), if proceeded with, would require Regional Policy Statements (RPS) to guide and direct regional and district plans to : “ ensure *integrated management* of the effects of land use development by: (i) encouraging co-ordination and sequencing of infrastructure for supply , storage and distribution of freshwater, and (ii) controlling adverse effects (including discharges of contaminants) on the quality and available quantity of freshwater resources.” But neither of these two actions would “ensure” integrated management of the effects of land use. What is meant by “encouraging co-ordination”? Why focus on infrastructure for water supply? Action (ii) is already a responsibility of regional councils....is it being suggested that district councils share that responsibility? The key issue here (unaddressed) is whether or not there should be a mandatory requirement for regional councils to work with district councils to produce Integrated Catchment Management Plans (ICMP). There is currently , in the proposed NPS, a lack of clarity as to what is being “integrated”. The NPS refers to integrated management of the *effects* of land use but ICMP approaches relate to the integrated management of water allocation, water quality

and land use activities. It is unclear why the NPS stops short of adopting the ICMP approach.

- In objective 3, what is meant by “progressive enhancement” of “overall quality” and “appropriate freshwater resources”?
- In objective 6, what is meant by “managing demand” for freshwater ?
- Objective 7 is to ensure that allocated freshwater is used efficiently *inter alia* in terms of “facilitating opportunities to increase benefits from the use of water”. What does this mean? If the intention is to facilitate or improve the ability to *transfer* water to promote efficiency, then why doesn’t the NPS deal directly with water transfer as a key policy issue in its own right (see attached Table)?
- In objective 8, what is meant by the (vague) statement “to ensure iwi and hapu are *involved* in the management of freshwater resources” ?
- The policy proposals give considerable emphasis to the identification and sustaining of “notable values”. But the definition of notable values lacks precision and is framed in a way that means ALL scientific, ecological, biodiversity, cultural and recreational values qualify. Even if the definition was constrained to *outstanding* values of this nature, the time and cost implications of such a requirement are potentially huge
- Policy 1(g) specifies that provisions are to be implemented to “restrict” existing takes, uses, dammings and diversions of freshwater to sustain notable values and non-consumptive tangata whenua values and interests in times of low flow. It is not clear what is meant by the term “restrict”. The proposal has ominous overtones for existing and potential future hydro-electric power schemes, particularly in the absence of clear national specification of what notable values are to be protected (see section 4 below)
- A raft of key terms or expressions used in the policy statements are undefined including “sensitivity of the freshwater resource”, tangata whenua “interests”, social and economic “transition costs” and the “values of swimmability to the community”

It is a matter of considerable concern to Todd that, as with the proposed NES on Ecological Flows, the use of water for hydro-electric power generation appears to be being treated as an unqualified consumptive use of water. Clearly hydro should not be placed in the same category as other consumptive uses because, while flows may be diverted from a stretch of river, water is generally returned to the river a short distance downstream and is available for downstream uses and the maintenance of in-stream values.

3.4 NPS fails to provide requisite national leadership

The NPS should provide guidance, if not deliver directives, to regional and district councils in relation to remedying the causes of identified problems.

However the Proposed NPS does not provide this leadership. As currently framed, it leaves key management issues unresolved, effectively passing the buck back to local authorities. Policy 1 simply exhorts regional councils to “guide and direct” regional and district council plans on a range of issues, by way of amendments to their RPSs. The consequence of this will be a continuation of variable approaches across the country, many of them flawed.

The extent of the problem, is illustrated by reference to 4 issues:

- The Proposed NPS’s objectives and policies contain several references to “integrated management” but, as stated above, provide no clear statement or guidance as to what this means in practice. This is a key issue because, as indicated in the attached Table, the absence of an integrated catchment management planning system is arguably at the heart of water management problems currently being experienced in NZ.
- Policy 1(i) seeks to “prioritise” allocation of consumptive uses of water but the Proposed NPS is silent on the issue of what these priorities should be
- Policies 1 and 2 require RPSs to “specify objectives, policies and methods” which determine and timetable priorities for when regional plans will set environmental flows and levels for all freshwater resources of the region. However no guidance is provided as to *how* to set environmental flows. Again this is a key issue, a root cause of the over-allocation problem (see attached Table). The setting of overly conservative or otherwise inappropriate environmental flows or levels has the potential to have a serious adverse effect on the viability of existing and potential future hydro-electric power schemes.
- The Proposed NPS contains several references to “ecological values” but the NPS contains no national guidance as to how this term is to be interpreted and applied.

3.5 Inconsistencies between the Proposed NPS, the RMA, the Proposed NPS on Renewable Electricity Generation, and the NES on Ecological Flows

There appears to be some inconsistencies between the proposed provisions of the NPS on Freshwater Management, existing provisions of the RMA, the proposals in the NPS on Renewable Electricity Generation and proposals in the NES on Ecological Flows.

For example, the NPS on Freshwater Management’s section 32 analysis contains an assumption that in the majority of cases environmental flows will be established that are the same or greater than at present and it concludes that the likely effects on hydro-electric takes will be a decrease in the water available for storage, causing a possible loss of resilience in the generation network and in some circumstances an increase in electricity prices. This appears to run contrary to section 7 (j) of the Act and the thrust of the proposed NPS on Renewable Electricity Generation.

The NPS also intrudes on and in places appears to be inconsistent with aspects of the Proposed NES on Ecological Flows and Water Levels, a document which in our view contains an equally confusing set of proposals (refer Todd submission on the NES). Ecological flows are a subset of environmental flows but the NES confused the two issues.

If the NPS on Freshwater Management, the Proposed NPS on Renewable Electricity Generation, and the Proposed NES on Ecological Flows all proceed, they need to be better integrated (inconsistencies removed) and advanced together.

4. Non-derogation from existing uses

Little thought appears to have been given, by the architects of the Proposed NPS, to the implications of their proposals for existing activities such as hydro-electric power generation, which have already been through rigorous RMA consenting processes.

If the NPS proceeds, some of the objectives (eg objective 6) and policies need to be amended to uphold the principle of non-derogation from established uses. We strongly support the submissions of King Country Energy on this issue.

It goes without saying, perhaps, that existing hydro-electric power schemes are multi-million dollar facilities and essential components of New Zealand's infrastructure. It is our submission that the regulation of water abstraction and discharges from these schemes cannot be treated in the same way as most abstractions and discharges. They are designed and operated, and their economic viability depends on, access to specific quantities of water. It is simply not reasonable to retrospectively change the rules. If this occurs, compensation is likely to become a major issue.

Todd wishes to be heard on this submission.

Yours faithfully

Bill Armstrong
Environmental Manager
Todd Energy

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