



SUBMISSION TO
Ministry for the Environment

On the
PROPOSED NATIONAL POLICY STATEMENT ON FRESH
WATER MANAGEMENT

By
FEDERATED FARMERS OF NEW ZEALAND (INC)

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Contact: Melissa Jessen
Policy Advisor
Phone: 04 494 9186
E-mail: mjessen@fedfarm.org.nz

1.0 Introduction

- 1.1 Federated Farmers of New Zealand (Inc) welcomes the opportunity to comment on the proposed National Policy Statement on Fresh Water Management.
- 1.2 Federated Farmers is an industry organisation that has a long history of representing the interest of rural farming communities throughout New Zealand.
- 1.3 Federated Farmers is a member of a pan-sector group called the Primary Sector Water Partnership. The Partnership's overarching goals are:
 - Maintain and/or enhance water quality from primary production land, with demonstrable and accelerated progress on the resolution of water quality issues from agricultural land within five years; and
 - Demonstrable improvements in water use efficiency by the primary sector within five years¹.
- 1.4 The Partnership is currently undertaking work in line with the approach set out in the leadership document to engage with regional councils in identifying priority catchments where the Partnership and local government can work together to implement actions to improve water quality.
- 1.5 The Partnership would welcome the opportunity to discuss their work with the Board of Inquiry should the Board wish to do so.
- 1.6 Federated Farmers has developed a set of water allocation principles that we feel should be taken into account when any allocation systems are being developed. These are attached to our submission.

2.0 Recommendations

- 2.1 **Federated Farmers submits that the proposed National Policy Statement be amended as recommended below.**
- 2.2 Federated Farmers recommends that:
 - (a) the NPS be amended to focus more on addressing the effects of land use activities rather than limiting land use itself;
 - (b) Objective 1 be amended to be consistent with section 5 of the RMA;
 - (c) reference to 'potential values' be deleted from Objective 1(b);
 - (d) Objective 9 be amended to refer to cost-effective monitoring and reporting;

¹ Primary Sector Water Partnership Leadership Document Summary of the Plan of Action Draft for Consultation, 2008

- (e) the timeframes for councils to prepare and notify policy statements and plans be amended to be in line with the review timeframes in the RMA;
- (f) the NPS be amended to exclude policy statements and plans that are already complying with the NPS from undertaking the Schedule 1 process;
- (g) Policy 1(a) be amended to require fresh water quality standards and environmental flows and levels for *appropriate* freshwater resources in each region;
- (h) Policy 2(c)(ii) and Policy 6 be deleted;
- (i) Policy 3(b)(i) and Policy 6 be amended to be consistent with the RMA;
- (j) the terms used in the NPS should be consistent with those in the RMA which are backed with a body of interpretive case law.

3.0 General Comment

3.1 Federated Farmers generally supports the goals of the National Policy Statement on Freshwater Management. Water is a vital resource to farming businesses and it is an important facet of domestic and recreational life, for both rural and urban people.

3.2 Timeframes to Achieve Goals

The timeframe for any actions on water quality need to be long-term, such as the 25 year timeframe set in the NPS. Changes in water quality will require changes in attitudes and practices, possible changes in and the adoption of new technology. The groundwater age and its profile in some areas also needs to be taken into account when expecting results.

3.3 Local Flexibility

It is important for local communities to be able to decide for themselves what the priority issues and water resources are in their area, and how much they can afford to pay for improving water quality versus other community priorities. The Federation is pleased to see that the NPS provides for communities to set their own goals for their region. Maintaining the flexibility for regional councils to take into account their own set of circumstances is important due to the distinct geological and geographical features for different regions and sub-regions. The Rotorua area, for example, is made up of light ash soils from past volcanic activity. The area is subject to humid northerly and northeasterly winds, with a lower than average wind speed compared to other regions, and has a high number of lakes and groundwater systems. The geothermal activity in the area produces sulphur, arsenic, and boron in the water. There are high levels of naturally occurring iron and manganese in many shallower aquifers and deeper ignimbrite aquifers contain naturally corrosive water. In comparison, Canterbury plains soils are formed mostly from alluvium over greywacke gravels, with a layer of loess on the oldest plains. The downlands soils are largely formed in a layer of loess, also over greywacke gravels. Soils of both the plains and downs are subject to seasonal moisture deficiency, with annual rainfalls from 500 to 750 mm. The

Canterbury plains and downs have warm summers and are subject to hot north-westerly winds which have a major drying effect on their soils. Canterbury has substantial water resources: aquifers containing water which is generally of very high quality, several large alpine rivers, and many smaller rivers and streams which arise in the foothills.

3.4 **Scientific Water Quality Standards**

It is also important that decisions regarding water quality standards and goals are based on thorough understanding and accurate information, not perception. A scientific basis for water quality standards will help ensure that goals are realistic, measurable, achievable, and objective. It also provides the best way of focusing efforts on actions that will have the greatest impact on improving water quality.

3.5 **Economic Importance of Water**

An additional objective should be included which explicitly recognises the economic importance of freshwater and addresses its use in an economic context. Economic wellbeing is an important consideration in water management issues, as water is a vital component of farming and farmers need certainty of use and investment. This needs to be appropriately reflected and recognised in the NPS.

3.6 Approximately \$1 billion dollars net is produced on irrigated land per year, which is triple the production of equivalent land farmed under dryland systems². These benefits are realised not just by the irrigator but they flow through the wider economy both locally and nationally.

3.7 In a study of the impacts of the Opuha Dam in Canterbury, released in 2006, the irrigation from the Opuha Dam was found to result in an increase in value added for the Timaru District and Fairlie Basin of \$41 million per year (3.1% of the total value added for the area in 2003/04), and an additional 480 jobs (2.4% of the total employment for the area).

3.8 The investment made by irrigators is significant and must be protected. To take the example of the Mackenzie Basin, capital costs for irrigation infrastructure investment were calculated at \$68 million, with operating and maintenance costs of \$12 million³. If farmers do not have the certainty that they will benefit from returns on their investment, the investments will not be made and the non-economic benefits from using the latest and most efficient technology will not be received.

3.9 *An objective should be added to state the following:*

To ensure that the economic importance of freshwater resources and the use of water in productive activities is recognised and regional and district councils have regard to such economic importance, including the value of the investment of existing water users in infrastructure. (or words to that effect)

² Irrigation New Zealand www.irrigationnz.co.nz

³ Ministry for the Environment (2005) *Environmental, Economic, and Social Impacts of Irrigation in the Mackenzie Basin*

3.10 Council Consultation Timeframes

As discussed below in more detail, Federated Farmers believes the timeframes set out in the NPS for councils to prepare and notify policy statements and plans are too tight, and place an unrealistic time and cost burden on the councils and participants in the submission processes, particularly those who will be participating on a national scale. Many councils are already facing great strains on their resources, and these requirements may unnecessarily compromise existing work streams.

3.11 Recreational Values

Federated Farmers would be very concerned if the NPS results in recreational values being elevated above a well-established RMA hierarchy concerning the protection of water and its use. Recreational values are just one set of values that have to be considered and balanced with other values, and should not be artificially elevated above those other values. It should be remembered that “The maintenance and enhancement of amenity values” is listed under section 7, “Other matters” in the hierarchy within Part II of the RMA. In Part II of the RMA, section 5 sets out the purpose of the Act. Sections 6, 7, and 8 are to be interpreted and applied as an integral part of achieving the overall purpose defined in section 5⁴. The matters in sections 6, 7, and 8 are not to be regarded as ends in themselves. Section 7 and 8 matters carry less weight than those in section 6, which in turn are subordinate to the principle of sustainable management stated in section 5(2)⁵. There is a duty to provide for section 6 matters but there is discretion as to whether to provide for section 7 and 8 matters in any given situation⁶. Therefore, the maintenance and enhancement of amenity values should be placed in a context of the relative benefit and cost alongside other values within the Part II hierarchy.

3.12 Land Use Development

The NPS focuses on the effects of land use development rather than the effects of land use *activities*. The effects of the land use activities impact on resources such as water, not the land use itself, and a lack of reference to activities runs the risk of land use being controlled without just cause. It is the activities that take place within that land use that need to be controlled, and a focus on the effects of land use activities would make this clear.

3.13 Federated Farmers recommends that the proposed national policy statement on fresh water management be amended in line with our submission points.

4.0 Specific Comments on Objectives

4.1 Objective 1 – Enabling the well-being of people and communities

4.2 Objective 1 is a partial restatement of section 5 of the Resource Management Act but it has the potential to cause confusion as it is neither a restatement nor a new objective incorporating the words used in the Act.

⁴ *NZ Rail Limited v Marlborough District Council* [1994] NZRMA 70

⁵ Williams, D.A.R. 1997: *Environmental and Resource Management Law*. Butterworths, Wellington

⁶ *Ngati Hokopu ki hokowhitu v Whakatane DC* [2000] NZRMA 460

- 4.3 Requiring potential values of freshwater resources to be identified and provided for is inappropriate. Values should only be identified and provided for if they actually exist. All resources have potential values, depending on how they are used and what resources are allocated to realise those potential values.
- 4.4 *Objective 1 should either be reworded to completely restate section 5 of the Act (i.e. include the words “at a rate” and “while”) or should be reworded in terms of freshwater in order to be more directly applicable.*
- 4.5 *Reference to ‘potential values’ should be deleted from Objective 1(b).*
- 4.6 Objective 2 – Ensuring the integrated management of effects on fresh water**
- 4.7 The Federation is pleased to see that water storage is specifically recognised in the NPS. Water storage is a vital component of maintaining and enhancing our freshwater resources and recreational and economic opportunities. It is concerning, however, that the NPS focuses on controlling the effects of land use development. The focus should be on the effects of land use activities, not the land use itself, as discussed in paragraph 3.8. The NPS defines land use development as including land use intensification, land use change, and subdivision. None of these land uses necessarily cause adverse effects on water; it is the activities that take place within the land use type that may or may not affect water.
- 4.8 *Objective 2 should be amended to refer to land use activities rather than development.*
- 4.9 Objective 3 – Improving the quality of freshwater**
- 4.10 The Federation supports the application of the swimmable standard goal to *appropriate* freshwater resources. The inclusion of ‘appropriate’ in the goal empowers communities to apply this objective in their region according to their goals and taking into account issues specific to their region. It does need to be recognised, however, that areas will not necessarily be of a swimmable standard 100% of the time, due to natural variations and events, such as weather events or the occurrence of introduced pest plants.
- 4.11 Objective 5 – Addressing fresh water degradation**
- 4.12 As discussed in 4.5, the Federation is concerned at the focus on controlling the effects of land use development. In accordance with the enabling, effects-based philosophy of the RMA, the NPS should focus on controlling the effects of the land use activities, not the land use itself. While the Federation understands the intention to create a more integrated management regime between territorial authorities and regional councils in relation to water, there are more appropriate alternatives that remain in keeping with the RMA’s philosophy. The definition of land use development in the NPS refers to land use types rather than the activities that take place

and interact with the environmental resources. The definition of land use development fails to acknowledge that some land use changes may have a positive effect on water resources.

4.13 *Federated Farmers recommends that Objective 5 be reworded to relate to controlling the effects of activities rather than land use itself, and other direction be added to achieve more integrated catchment management between territorial authorities and regional councils.*

4.14 Objective 6 – Managing demand for fresh water

4.15 The Federation supports the acknowledgement of economic considerations and the development of water infrastructure and storage as important considerations when managing water demand. As discussed in section 3 above, water is a vital component of the agricultural industry, and contributes a huge amount to the productive capability of the industry in terms of export dollar value. The ability to store water for when it is needed will enable agriculture to remain productive in the face of continued and increased summer droughts.

4.16 Objective 9 – Ensuring Effective Monitoring and Reporting

4.17 While the Federation acknowledges that gathering information is an important part of ensuring effective management of resources, any monitoring and reporting should be subject to being cost-effective, so as to avoid excessive bureaucracy and costs being imposed on councils and resource users. It should also recognise the public/private balance of benefits of collecting environmental data. The public receives significant benefit from environmental monitoring, such as monitoring low flows, regardless of any direct benefits to resource users.

4.18 *Federated Farmers recommends rewording Objective 9 to refer to cost-effective monitoring and reporting that reflects an appropriate level of public benefit..*

5.0 Specific Comments on Policies

5.1 Policy 1 – Regional Policy Statements

5.2 The Federation believes that the timeframes set out in this policy are too tight, and do not take into account the effect on the councils and those parties who will be participating in the submission processes. The significance of such major changes to policy statements is often beyond the capabilities of individuals and small businesses to participate in such consultation periods. It is these individual consent holders and water users who will be the ones who are most affected by the scope of the NPS and also by the condensed timeframes for consultation. The processes of amending Regional Policy Statements, Regional Plans and District Plans will involve a huge amount of work for councils and stakeholders.

- 5.3 The policy does not allow for those regional policy statements that do not need amending in order to adequately address fresh water management. All Regional Policy Statements already address water quality as a regional issue, and set out objectives, policies, and methods accordingly, and while the extent to which water issues are addressed differs, this reflects the different regional circumstances. In areas where water issues are a major regional concern, such as Bay of Plenty, Canterbury, Waikato, Southland, Otago, and Horizons, for example, water is thoroughly addressed in the regional policy statements and plans.
- 5.4 The requirement for environmental quality standards and environmental flows and levels to be set for all freshwater resources is unnecessary and taxing on councils' resources. Such standards should only be set where the community has decided, based on a thorough understanding of the issues and data, the values of or demands on the water resource make setting such standards appropriate and where the resources are affected by discharges or abstractive use. Bay of Plenty, for example, has a high and low flow allocation regime and has a schedule of water quality classifications in the Regional Water and Land Plan, and specific rules relating to water quality in the priority Rotorua lakes catchments. Environment Waikato also has specific rules for the Lake Taupo catchment, and has notified a plan variation relating to water allocation issues in the upper Waikato River catchment.
- 5.5 As discussed above, the Federation is concerned with the focus on control of the effects of land use development rather than the effects from the activities that arise from land use development.
- 5.6 Any policy for allocation of water takes needs to adhere strongly to the principle of non derogation of rights. Existing water users have a legitimate expectation that, provided any effects are appropriately managed, their existing use will not be undermined.
- 5.7 As discussed above, the Federation is pleased to see, and supports, the specific recognition given to the importance of water infrastructure and storage.
- 5.8 *Federated Farmers recommends amending Policy 1 to allow regional policy statements to be amended in line with the review timeframes under the RMA.*
- 5.9 *Policy 1 should be amended to exclude from the Schedule 1 process any regional councils with regional policy statements that already adequately address the NPS objectives.*
- 5.10 *Policy 1(a) should require fresh water quality standards and environmental flows and levels for appropriate freshwater resources in each region, consistent with community priorities and confined to water bodies affected by discharges or abstraction.*
- 5.11 *Federated Farmers recommends amending Policy 1 to focus on the effects of land use activities rather than land use itself.*

5.12 Policies as to regional and district plans

5.13 Policy 2

- 5.14 The Federation believes that, as in the points relating to Policy 1 above, the timeframes set out in this policy are too tight, and do not take into account the effect on the councils or the parties who will be participating in the submission process.
- 5.15 The requirement for all regional plans to be rewritten under the Schedule 1 process does not take into account the current content of the regional plans and whether they already comply with the NPS and RPS. Environment Bay of Plenty, for example, has just made their Regional Water and Land Plan operative, Environment Canterbury is in the consultation process for their Proposed Natural Resources Regional Plan, and Horizons Regional Council is also in the consultation phase for their proposed One Plan. All of these plans address water management issues with policies, objectives, rules, and other methods of implementation.
- 5.16 The Federation supports the specific recognition of the part that industry good practice has to play in achieving water quality goals. The Federation strongly supports industry-led non-regulatory methods for achieving the objectives of the NPS, but these should not be adopted as default regulation, as this would defeat the purpose of non-regulatory methods. The adoption of industry-led best practice would, in itself, suggests meeting or exceeding the NPS objectives.
- 5.17 As some of our members have stated to us, they currently use industry best practice such as fencing waterways and riparian planting to help with nutrient loss, erosion, and sedimentation, but they do face significant barriers to being able to implement these practices, such as the cost implications, the time taken to implement the infrastructure, and the “overly bureaucratic” requirements they have to overcome before being able to undertake any actions. Further these actions are property specific and cost effectiveness decisions can be made by the individuals.
- 5.18 The purpose of the requirement for conditions relating to the return of water to water resources from consumptive takes is unclear. A consumptive take, by definition, consumes the water so that it cannot be returned to the water resource. There are already goals within the NPS to achieve water quality targets and a water allocation framework will be required to meet those targets and by default any land use or water activity which affects water is required to meet those targets, and it should not be a requirement in the NPS that consumptive takes be returned to water bodies. Delete Policy 2(c)(ii) and any other such references throughout the NPS.
- 5.19 The policy needs to focus on the effects of land use activities rather than land use itself.
- 5.20 *Federated Farmers recommends amending Policy 2 to allow regional plans to be amended in line with the review timeframes under the RMA.*

5.21 *Amend Policy 2 to exclude from the Schedule 1 process regional plans that already comply with the NPS and RPS.*

5.22 *Policy 2(c)(ii) should be deleted, as discussed in paragraph 5.18.*

5.23 *Federated Farmers recommends amending Policy 2 to focus on the effects of land use activities rather than land use itself.*

5.24 Policy 3

5.25 As in Policy 1 and Policy 2, the timeframes are too tight, and do not take into account the effect on councils and participants in the submission process.

5.26 As in Policy 1 and Policy 2, Policy 3 does not take into account situations where district plans may already comply with the NPS and RPS.

5.27 While we support the recognition of industry good practice as a way to achieve water quality goals, we are concerned with the focus on the effects of land use development rather than the effects of land use activities. Under the Act's enabling philosophy, activities should not be controlled but should be allowed as long as the effects from the activities on the environment can be avoided, mitigated, or remedied.

5.28 The protection of water resources from degradation, while a laudable intention, goes further than the RMA, which allows for a balancing of considerations and activities to occur as long as effects can be avoided, mitigated, or remedied. The balancing of considerations also gives local government the flexibility to take into account the achievability of goals.

5.29 *Federated Farmers recommends amending Policy 3 to allow district plans to be amended in line with the review timeframes under the RMA.*

5.30 *Amend Policy 3 to exclude from the Schedule 1 process district plans that already comply with the NPS and RPS.*

5.31 *Amend Policy 3 to focus on the effects of land use activities rather than land use itself, and other direction be added to achieve more integrated catchment management between territorial authorities and regional councils.*

5.32 *Amend Policy 3(b)(i) to be consistent with the RMA.*

5.33 Policies as to the preparation of policy statements and plans

5.34 Policy 4

5.35 The Federation is pleased to note the specific recognition of the needs of primary industry, economic considerations, and transition costs as matters for consideration in regional policy statements and plans. The recognition of the economic importance of water and the investment in existing water

infrastructure as contained in Policy 4 needs to be empowered by the inclusion of a specific economic objective.

5.36 *Include an objective specifically recognising the importance of the economic value of water and the investment in existing infrastructure.*

5.37 Policy 5

5.38 The focus on controlling the effects of land use development needs to be changed to a focus on controlling the effects of the activities that arise from land use, in line with the Act's philosophy.

5.39 The Federation is pleased to note, and supports, the specific recognition of industry good practice, water infrastructure and storage, and transition costs as vital components of water management.

5.40 *Federated Farmers recommends amending Policy 5 to focus on the effects of land use activities rather than land use itself.*

5.41 Policy 6 – Policy as to certain consents and delegations

5.42 *As discussed in paragraph 5.17, the requirement for conditions relating to returning water to water resources as part of a consumptive take needs to be deleted.*

5.43 *The requirement of protection against degradation of water resources, as discussed in 5.27, needs to be amended to be consistent with the RMA.*

5.44 *As discussed above, the focus on the effects of land use development needs to be amended to focus on the effects of land use activities.*

5.45 Policy 7 – Policy as to non-regulatory methods

5.46 The Federation is pleased to note the specific recognition of non-regulatory methods of achieving water goals. Non-regulatory methods are an important tool and a positive way of engaging resource users to work in partnership with councils. As discussed above, Federated Farmers is a member of the Primary Sector Water Partnership, which is engaging with local government to proactively address water quality issues through non-regulatory methods. Partnerships between local government and resource users can be more effective than regulatory methods as partnerships provide for buy-in and a sense of ownership of and responsibility for the resulting projects or actions.

6.0 Specific Comment on Definitions

6.1 The Federation has some concern regarding the identification of outstanding water resources and “notable values”. Previous discussions around similar identification of values in section 6 of the RMA in respect to landscapes and native vegetation have led to years of adversarial conflict, many of which have had to be resolved by the Environment Court. While the NPS defines

notable values, the definition is vague and broad, so will not avoid the contention regarding interpretation that has been previously experienced.

- 6.2 *Federated Farmers recommends using terms already defined in the RMA and backed with a body of interpretive case law.*

7.0 Specific Comment on Section 32 Analysis

- 7.1 The analysis assumes that the necessary reductions in agricultural discharges can be made and that those who will need to make reductions are all currently operating inefficiently. While some individuals may not be operating to best practice standards, many are operating to current best practice standards and any further reductions will therefore either be at a much higher cost to achieve or will not be achievable at all with currently available technology. By default, industry best practice will already be achieving the goals of the NPS. Industry best practice may also vary according to individual farm characteristics such as slope and aspect.
- 7.2 The cost to sectors and the general public of participating in the public consultation for planning provisions has not been taken into account. This is likely to be a significant cost, particularly for organisations such as Federated Farmers who will be participating on a national scale with many consultation processes likely to be occurring at the same time, placing significant strain on resources. As discussed above, individuals often do not have the capability to engage with the councils on such comprehensive consultation processes. Many of these individuals rely on member-led organisations, such as Federated Farmers, to engage in the consultation process on their behalf and in consultation with them, in order to have their views and circumstances represented to councils.
- 7.3 The listed benefit of opportunities for investment in and development of mitigation technologies is dubious and the economic cost of the investment has been discounted in favour of the possible long-term gain in efficiency. The agricultural sector is a proactive sector which is constantly developing new technology and practices to improve efficiency and reduce adverse effects. The opportunities for investment in and development of mitigation technologies is therefore already present and the NPS simply contributes a timeframe. The cost of not developing the necessary technology within that timeframe has also not been considered.
- 7.4 The listed economic benefits relating to consenting projects being aligned with regional policy statements and streamlining of consent applications are not benefits that are provided by the NPS. Consenting projects already have to be aligned with the regional policy statements, and the regional and district plans already provide clear guidance on what is considered for a resource consent application, the NPS simply adds to the content of those documents.

Federated Farmers Water Allocation Policy Principles

1. *Water allocation decisions must be based on sound information.*

It is essential that adequate, reliable information about individual catchments is established using science based information to determine the availability of water as a resource before water management policy is developed. Informed decisions may only be made on proven and tested information.

2. *The system for water allocation must be relatively simple and cost-effective, for both the regulator and the user.*

3. *Secure tenure and clear specifications for water use are fundamental.*

Water permit holders must have confidence that their investment will be protected from confiscation and unreasonable restrictions. Without security of tenure for water permits, long-term investment in improvements to existing irrigation schemes together with new investment in additional irrigation projects will be seriously inhibited.

4. *No one particular water allocation policy may be appropriate in all circumstances.*

Each catchment has different demands on water, different availability of water, and different values applied to water. It is therefore appropriate that individual catchments or sub-catchments have water allocation policies that suit their specific characteristics.

5. *Water allocation regimes must not undermine local or community water allocation strategies.*

Community involvement in negotiated settlements, particularly in areas where water is over-allocated, allows local communities to seek their own unique solutions. This gives communities a role in determining how allocation should be managed.

6. *Water allocation regimes should provide for water harvesting and storage.*

The augmentation and storage of current water supplies provide long-term opportunities to expand future water use options. Policies must enable and encourage this to happen in areas which are nearly fully allocated. Users should be able to utilise times of high flow and high groundwater to harvest water with least impact on the environment.

7. *Efficient use of water is best determined by water permit holders.*

Inappropriate regulations and controls on how and where water resources are used risk producing perverse outcomes that run counter to ensuring the efficient use of water resources. For example, efficiency tests should not be based on land use or whether the use is economic or not. Commercial drivers for efficiency should be left up to the user.

8. *The voluntary transfer or exchange of water permits must be accommodated in any water allocation regime.*

Flexibility is required within water allocation regimes to allow water permit holders to voluntarily transfer or exchange permits. Such transfers support the optimal use of water resources to meet the needs of both parties.