

Submission on 'Next steps for fresh water' consultation document

From:

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Introduction

We ran a mixed farm, including forestry plantings and raising dairy beef and a QE II Open Space Covenant, at the northern end of the South Island West Coast for 15 years.

We have a long standing interest in the sustainable management of the New Zealand environment and its natural resources for the long and short term.

General

Improving the way we manage freshwater

We need to get serious

New Zealand was blessed with plenty of clean water bodies but we have treated so many of them with disrespect and lack of thought for their, and our own, long term health and sustainability. Over the last 20-30 years, freshwater environmental protection has a history of being weakened, under-regulated and too often unenforced.

The degradation of our rivers is described as an environmental crisis by Dr Mike Joy, Massey University environmental scientist and ecologist. Hard to disagree when you look at the evidence¹. Nearly half of our lakes and around 90 per cent of our lowland rivers are classed as polluted. Bold action is needed to halt further freshwater decline and get serious about improving water quality. The proposals in this document fail to adequately address the crisis and take steps to halt the degradation of our water bodies. The time for making the hard calls is overdue. New Zealand can minimise further degradation of water bodies if strong measures are taken now.

Water is a necessity of life, a public good, a public trust, a 'commons'. Given this, no one has the right to profit from water at someone else's or the environment's expense.

New Zealanders rate freshwater degradation as their greatest environmental concern (Hughey, K.F.D., Kerr, G.N. and Cullen, R. 2013. Public Perceptions of New Zealand's Environment: 2013. EOS Ecology, Christchurch). Lincoln University report 'Public Opinion on Freshwater Issues and Management in Canterbury, Andrew Cook, Research Report No. 309, August 2008', showed that the taking of water for irrigation that facilitates more intensive agriculture and damage to clean water sources is not acceptable to the public and that the community is unwilling to bear the costs of environmental damage to freshwater. Increasingly New Zealanders are becoming more vocal on the desire for an end to deteriorating water bodies. The recent outcry over stock wading in Lake Taylor, Canterbury, demonstrates community dissatisfaction over management of water. The Choose Clean Water petition presented to Government by young people is yet another demonstration of general public dissatisfaction.

¹Ministry for the Environment and Statistics New Zealand 2015 and Verburg et al, 2010.

Such long times frames as currently proposed for some proposals, like stock exclusion from water bodies, will anger many of the public who are seriously unhappy about the state of our water bodies and the seeming unwillingness of Government to appreciate the level of concern and properly address it. The Government seems determined to continue to provide an environmental subsidy to farmers through facilitating their water use while having taxpayers and ratepayers pick up the high costs of the ensuing pollution and other environmental costs.

Fish & Game chief executive Bryce Johnson says that 'Next steps for fresh water' is overall a "win for agriculture and a defeat for the environment". It is not a true win for agriculture as it allows some of our agriculture to continue fouling its own nest thereby putting at risk New Zealand's agriculture export market. The sham of NZ agricultural products' clean low-cost reputation is being increasingly exposed overseas.

While proposals in the document may provide a little help in improving water quality, without further amendments to current legislation, policy and standards the significant improvement on freshwater health that is so desperately needed won't happen. The numbers and limits prescribed in the National Objectives Framework (NOF) are insufficient to achieve the purposes of the National Policy Statement - Freshwater (NPS). Some essential parameters for measuring freshwater health are excluded from the NOF (e.g. oxygen variability, temperature extremes, deposited sediment, limits for instream nitrogen concentration -not its toxicity effect but the ecosystem health effect-, instream phosphorus, IBI for a fish health measure). These current proposals will not be enough to achieve the improvement needed and in fact provide for still greater deterioration in our water bodies.

Currently 62% of our monitored waterways are unsafe to swim in. We must do better. As the Parliamentary Commissioner for the Environment said about our water standard goals: "We should be, and can be, more aspirational than this. Of course, some waterways may get worse before they get better, but that is no reason to set our sights low." If the water quality standard continues to be 'wadable and boatable', then our waters will continue to deteriorate.

Dr Smith's arguments against striving for the swimmable standard (stated when we attended one of his recent freshwater roadshows) are disingenuous. We appreciate that not all water bodies can be fit for swimming all the time because of water levels and rainfall events. We don't expect lakes traditionally heavily used by birds to be swimmable. These kinds of exceptions are no reason for not making swimmable water bodies the standard. Inevitably there will be costs and impacts. Equally there are high long and short term costs and impacts for setting the standards lower.

This document does not deal with a 'loophole' in section 104 of the Resource Management Act 1991 (RMA) that needs to be closed. Currently councils are required to 'have regard to' environmental bottom lines when deciding on granting resource consent applications. This means that activities can be consented that will cumulatively result in a breach of a directed bottom line and lead to a significant deterioration of water quality, for example in a catchment that is already over-allocated.

Councils must also be directed to address high-risk water bodies first and urgently.

Action sought:

We urge the Government to note the widespread concern over our freshwater degradation and move quickly to amend the numbers and limits prescribed in the National Objectives Framework (NOF) so that they are sufficient to achieve the purposes of the National Policy Statement - Freshwater (NPS), and at the same time add in all the other essential parameters for adequately

measuring freshwater health that are currently excluded from the NOF (e.g. oxygen variability, temperature extremes, deposited sediment, limits for instream nitrogen concentration -not its toxicity effect but the ecosystem health effect-, instream phosphorus, IBI for a fish health measure).

Amend the RMA so that councils and other consenting authorities must give effect to water quality and quantity limits and targets when making decisions on resource consent applications.

Direct councils and other consenting authorities to address high-risk water bodies in catchments first, and urgently, in their NFO setting processes and also to set limits for freshwater take.

Ecosystem services and recreation

We found no reference to ecosystem services anywhere in the document. We need to respect and protect the services our water bodies provide for free and take urgent steps to improve the quality of all our water bodies. The costs of degrading our water bodies are not taken into account when allowing for their use.

Use of water for recreation gets scant only passing mention.

Action sought:

Add in a proposal requiring councils to take account of the loss of ecosystem services, pollution of water ways and clean up consents when deciding on applications to take from and discharge to water bodies.

Fresh water and our environment

Proposals 1.1 and 1.2

The proposed change that will require water quality to be 'maintained or improved' within a Freshwater Management Unit (FMU) rather than a region has merit.

By itself this will not do much for water quality. The problems are that there is no incentive to improve water quality above secondary contact standards and that the attribute bands in the NOF are at present too broad and lack a number of parameters for adequately measuring freshwater health. This could allow some water bodies to deteriorate in quality, while they are meeting the definition of 'maintaining' quality. The current attribute bands and parameters for measuring freshwater health in the NOFs are insufficient to achieve the National Policy Statement- Fresh Water improvement targets. Most of the parameters previously used to measure fresh water health are not included in the NOFs, as only Nitrogen is included.

We do not support the proposal to allow for maintaining overall water quality within the FMU. We note that the Environment Court ruled in 2015 in the Ngāti Kahungunu Iwi Inc. v The Hawkes Bay Regional Council decision that maintaining 'overall' water quality does not fit with the RMA. The decision stated the "unders and overs" approach to water quality in a region to be inconsistent with both the "unqualified function" imposed on regional councils in section 30(1)(c)(ii) of the RMA, to control the use of land for the purpose of "the maintenance and enhancement of the quality of water in water bodies," and the requirement in section 69 that regional councils "shall not set standards in a plan which result, or may result, in a reduction of the quality of the water in any waters...unless it is consistent with the purpose of this Act to do so."

Action sought:

Amend Objective A2 of the National Policy Statement for Freshwater Management (NPS-FM) to define areas for managing water at Freshwater Management Unit levels, alongside raising the goal for water bodies to the quality required for safe swimming and amending the numbers and limits of the attribute bands in the NOFs, and adding in the other parameters required to adequately measure freshwater health, so that the National Policy Statement- Fresh Water improvement targets are able to be achieved.

Further amend Objective A2 of the NPS-FM by removing the term 'overall'.

Retain the proposed clarification that councils have flexibility to maintain water quality by ensuring water quality stays within an attribute band, where it is specified in the National Objectives Framework, or demonstrating that the values chosen for a freshwater management unit are not worse off, where an attribute band is not specified in the National Objectives Framework, as long as this is alongside amending the numbers and limits of the attribute bands in the NOFs and adding in all the other currently missing parameters required to achieve the National Policy Statement- Fresh Water improvement targets.

Macroinvertebrate Community Index as a measure of water quality

1.3 We support the proposal to use the Macroinvertebrate Community Index (MCI) as a measure of water quality in the NPS- FM by making it a mandatory method of monitoring ecosystem health.

We would like to see some additions to this proposal, namely including attribute numbers and limits for Nitrogen (particularly dissolved inorganic Nitrogen) and adding in parameters for oxygen variability, temperature extremes, deposited sediment – sufficient to maintain ecological health. We want to see a Natural Character Index included in water quality monitoring data, to show the ecological habitat of waterways and a well-defined statement on the need for environmental limits to effectively protect ecological health added.

Action sought:

Retain proposal to use the Macroinvertebrate Community Index (MCI) as a measure of water quality in the NPS- FM by making it a mandatory method of monitoring ecosystem health.

Add in further statement:

“Environmental limits must be set in a way that effectively protects ecological health”. (See above paragraph re numbers, limits and parameters.)

Amend to also include in water quality monitoring data a Natural Character Index.

Significant infrastructure and water quality

1.5 We support the need for further direction regarding evidence required when requests are made to include specific significant infrastructure in Appendix 3 of the National Policy Statement for Freshwater Management for an exception to the national bottom line for water quality. Any exceptions should be rare and must be fully justified and fully able to meet strict and rigorous set criteria.

Appendix 3 was intended to provide an exception for infrastructure in place when the NPS-FM came into effect in 2014. This should remain the purpose and be clearly stated.

Action sought:

Retain proposal 1.5. but amend by adding:

That any such requests for exceptional circumstance must be fully justified and must meet a set of rigorous criteria before they can be considered

and

That regional councils must take into account that exceptional circumstances apply only where the existing infrastructure is the reason for the FMU being below the bottom line.

Add in a definition of 'existing infrastructure' that makes it clear this refers to infrastructure in place before the date on which the NPS-FM came into effect".

Coastal lakes and lagoons

1.6 and 1.7 We support both these proposals. It is logical and essential to manage water quality issues across whole catchments, all the way from source to the sea. Here in Canterbury we have coastal lakes (and lagoons) with very poor water quality that must be addressed.

Action sought:

Retain proposals 1.6 and 1.7.

Stock exclusion from water bodies

1.8 We support progressing stock exclusion from water bodies but the timeframes are too long and the definition of water bodies is too narrow. Given the state of our water bodies more urgent action is needed. Allowing non-dairy cattle until 2030 to be fenced out and not having all dairy cattle completely excluded from water bodies until 2025 is far too long a time frame for a water quality crisis situation. This will just create a water pollution legacy for future generations.

We support the proposal requiring exclusion of dairy cattle (on milking platforms) from water bodies by 1 July 2017, but do not support the other stock exclusions having much longer exclusion deadline dates. Regarding dairy cows not on milking platforms, from 1 June 2017 the definition of 'dairy farm' in the Sustainable Dairying Water Accord will be changed to include not only the milking platform, but also any land regularly used for dairy grazing (whether or not this land adjoins the milking platform) that is owned or leased by the same entity as the milking platform. Given this is the case, the date for exclusion from water bodies of cattle on dairy support owned by the dairy farmer can logically be changed from 2020 to 2017.

Crisis management regulation is required, not just a few tweaks. There has been plenty of publicity about the state of water across the media so no farmer can justifiably claim to be ignorant about the issues and widespread concerns over stock in water bodies. Farmers should have realised that exclusion regulations would be inevitable and have built this into their planning if they are truly aiming to farm sustainably and be conservationists as is so often claimed to be the case for 'most farmers'. We are aware some farmers have already seen the need and excluded stock without being required to by regulation. Dairy support (third party grazing) should be able to comply with exclusion requirements by 2020, and both beef and deer on the plains (0–3°) should also be required to comply by 2020 and on lowland/rolling hills (4–15°) by 2025. These are generous timescales for polluters of our public water bodies who do not pay for the costs of their pollution.

Stock exclusions from water bodies will be a good move but these proposals on their own will not stop water quality decline. To make the needed improvements in water quality, stock exclusion needs to take place alongside amending the numbers and limits of the attribute bands and including

the other necessary parameters for assessing ecological health of water in the NOFs to enable the National Policy Statement- Fresh Water improvement targets to be achieved.

We note that exclusion of stock from water bodies does not protect all small streams. Small streams feed into larger water bodies and can pollute the same as big water bodies. The definition of water needs to make it clear all water bodies must be protected.

Action sought:

Amend proposal to require exclusion of dairy stock on milking platforms and on farmer-owned dairy support land from water bodies by 2017.

Amend proposal to require dairy support (third party grazing) stock beef and deer to be excluded from water bodies by 2020.

Introduce the above stock exclusions alongside amending the attribute bands and parameters in the NOFs sufficiently to enable the National Policy Statement- Fresh Water improvement targets to be achieved.

Amend to make it clear the exclusions apply to all water bodies.

Technical efficiency and good management practice standards

2.1, 2.2, 2.3 We support these proposals requiring technical efficiency and good management practices for water use and nutrient management. We also support the requirement for applying these standards at defined times.

However, the proposals as they stand cover only catchments that are at, or approaching full allocation of water. This does not go far enough and is less than what the Land and Water Forum recommended.

We support technical efficiency and good management practice standards across all catchments at all times for all industries. We support the LAWF recommendations that these requirements should be mandatory for all catchments. This makes sense to us as it requires catchments that are below full allocation to be better managed and hopefully able to avoid becoming fully allocated. The aim should be to create more value from each unit of water used rather than to extract more.

We support nationally developed standards but are very apprehensive about the standards being developed collaboratively. The document refers to the collaborative approach of the Land and Water Forum (LAWF). This forum favours industry; industry is heavily represented and very well-funded and pitted against fewer under-resourced environmental interests. We note Fish and Game left the forum as it felt the way the forum was going was not constructive. The Government has chosen to pick up only some of the LAWF recommendations, thereby undermining the use of the collaborative effort that they are promoting.

Living in Canterbury we are thoroughly disillusioned with the 'collaborative approach' used to arrive at and implement the Canterbury Water Management Strategy. Those wanting to use water for business purposes dominated the process. One result of this is that environmental targets are well behind schedule. It has also made many people, groups and organisations cynical of the strategy and process.

As Dr Mike Joy says, "Collaboration and consultation sounds like a good idea, but it actually becomes a subtle form of coercion".

The document states that 'good management practice' standards will be set through Government consulting with industry. Again we state that these will be less than what is required to prevent further deterioration without amending the NOFs to enable the NPS-FM to be achieved.

Action sought:

Apply technical efficiency standards across all catchments as part of the transfer to a NFO (limit/target) based management regime, alongside amending the numbers and limits of the attribute bands in the NOFs and including all the other currently missing parameters that will be required to achieve the National Policy Statement- Fresh Water improvement targets.

Set good management practice as the minimum requirement for all industries in all catchments.

If the collaborative process is to be used ensure there is a balance on the decision making groups between those interests wanting to use water for profit and those with environmental and recreational interests with neutral facilitators.

Transferring consents to more efficient, higher valued uses

2.4 We support the investigation of a package of measures for transferring consents.

We note that if consenting authorities do not have the ability to reduce allocation quantities on the basis of transfer then the initial user is effectively granted a property right to the consent in perpetuity. There will undoubtedly be circumstances when unused water take consents need to be returned to the original source for the health of that water body.

Action sought:

Investigate a package of measures for transferring consents to more efficient, higher valued uses.

Allow for consenting authorities to reduce allocation quantities when deciding on consent transfers.

Amend the numbers and limits of the attribute bands in the NOFs and the including all the other currently missing parameters that will be required to achieve the National Policy Statement- Fresh Water improvement targets.

Develop guidance on different methods of addressing over-allocation of water quality and/or quantity, if technical efficiency standards and good management practice standards are insufficient.

2.5 We support developing guidance on methods of addressing over-allocation and over-use of water in catchments where technical efficiency standards and good management practice requirements will not be enough. The guidance needs to then be properly developed into regulations. This requires urgency given our freshwater crisis.

Action sought:

Retain proposal 2.5 with additional wording after 'insufficient': "using the range of recommendations made by the Land & Water Forum on over-allocation and over-use and backed up by regulations and guidelines."

Council funding for freshwater management

2.6 Currently councils are not spending enough time and money on science, monitoring, management and enforcement regarding water allocation and use. Lack of cost recovery from users for these aspects is likely to be one reason for this. Proper water management is not cheap but good

rules and regulations are worth very little if councils do not allocate sufficient resources to regularly and adequately monitor users for compliance and follow up any breaches with enforcement and fines. Only then can councils hope to be in a position to ensure the ecological health of their water bodies can be maintained and improved

We support enabling councils to cost recover from water users for freshwater management as it is inappropriate and unfair to expect other ratepayers to subsidise these costs for people using commons water for business/profit making purposes.

The Government needs to take this proposal further. Despite what it says about no one owning the water, at present some water is currently in de facto ownership, albeit for a fixed period, with rights to use water being allocated (via consents). If there is to be any trading of consents this needs to happen alongside setting a resource use levy per litre of water used. It stands to reason that people/entities, would be more careful about how they used water if they paid for the litres of water used.

As Kevin Hackwell, Forest and Bird representative on the LAWF says, "You'll be much more efficient in your use and that's something we don't see at the moment. The farmers, for example, pay for resource consent to take water but they don't pay per litre for the water, and there are situations where there is no market incentive for them to actually use it efficiently. It's quite an irony, because you often get these people arguing market forces for other parts of their business, but they actually don't believe in market forces when it comes to paying for the raw material, water."

Except for reasonable domestic use or stock water, water use should not be free. We support introducing a resource use levy on all commercial users of water on a per volume used basis; i.e. per litre used. When the levy is set it should reflect all direct and indirect costs of water management and monitoring and be structured in a way that encourages efficient use of water. Charging should be administered by a publicly-elected body such as a regional council and any profits should be used to better manage water and encourage sustainable practices.

Water users must carry out mitigation and be financially responsible for the costs of any pollution clean-up or 'over take', not the ratepayers. Costs of restoration of water quality should be levied on the water user/polluter with the levy set by the community through the elected body managing water at an amount that is meaningful and discourages future pollution. Polluters should receive fines commensurate with their income, i.e. costs internalised not externalised.

Action sought:

Enable councils to recover costs from water users for regular and adequate monitoring and enforcement and other required water management that will enable their water bodies to reach and maintain ecological health.

Amend the RMA so that all commercial users of water will be required to pay a resource use cost on a per volume basis, set at a level that reflects all direct and indirect costs of water management and monitoring, and structured in a way that encourages efficient use of water.

Te Mana o te Wai in freshwater management

3.1 and 3.2

We support a purpose statement in the NPS-FM that provides context about the meaning of Te Mana o te Wai and its status as the underpinning platform for community discussions on freshwater

values, objectives and limits, as we understand Te Mana o te Wai to be a core concept that supports the health and well being of our water bodies.

Action sought:

Retain proposals 3.1. and 3.2

Iwi and hapū relationships with, and values for, water bodies

3.3 and 3.4 We support councils engaging with relevant iwi and hapu to identify their interests and values when setting objectives as long as other sectors of the community that have longstanding non-commercial interests in water have their interests and values adequately identified. We see this as necessary as we are aware of some iwi commercial development proposals that are inconsistent with Te Mana o te Wai philosophy.

Action sought:

Retain proposals 3.3 and 3.4 alongside a proposal providing for community sectors with non-commercial interests in water having their interests and values identified and requiring councils to engage with them in a similar way.

Enabling iwi and councils to agree how to work together

3.5 We do not support the proposals as they stand as this could exclude adequate representation of the interests and values of other sectors of the community with longstanding non-commercial interests in water from being properly acknowledged and adequately represented. This particularly applies to bullet point 5 regarding working together in relation to plan-making, consenting, appointment of committees, monitoring and enforcement, bylaws, regulations and other council statutory responsibilities. An example highlighting our concern is the potential for conflict of interest when iwi is given the right to have a representative on all hearing panels for resource consents (as is now the case in Canterbury). An iwi appointed commissioner can be on a hearing panel even when an application for a consent applies to his/her own iwi – a clear case of conflict of interest that would not be tolerated in any other context.

Action sought:

Remove proposal 3.5 to be reworked to ensure any RMA amendments regarding iwi and councils working together specifically spell out that any potential conflict of interest situations regarding water management must be avoided while at the same time ensuring that iwi council arrangements do not preclude those sectors of the community with longstanding non-commercial interests in water being properly recognised and adequately represented.

Water conservation orders

3.6

Water Conservation Orders have been described as providing the 'national parks' for water bodies. They are the means by which regional councils can protect their 'outstanding water bodies' as is required under the NPS-FM. Applications for WCOs should, therefore, not be in conflict with regional planning processes so there is no need for the proposal to enable the Minister for the Environment to delay an application if there will be a conflict with a regional planning process.

What would be appropriate is the ability to delay a development application that would have a negative effect on an outstanding water body.

WCOs were put in place to sit above regional planning processes. It is inappropriate to make them subservient to regional planning processes. This proposal suggests the Government is aiming to do away with WCOs.

Action sought:

Remove bullet point 4 proposal that would allow the Minister for the Environment to delay an application if there will be a conflict with a regional planning process.

Amend to provide for the ability of the Minister for the Environment to delay a development application that would have a negative effect on an outstanding water body.

Implementation support

3.7 The Ministry for the Environment will facilitate and resource programmes to support councils and iwi/hapū to engage effectively in freshwater planning and decision-making, including collaborative planning.

Support these proposals. Similar programmes should also be developed to support councils and the wider community to engage effectively in freshwater planning and decision-making, including collaborative planning.

Action sought:

Retain proposal 3.7.

Clean, safe drinking water for marae and papakāinga

3.8 We support these proposals for Government to consider if additional funding is required to develop or improve water infrastructure at marae and papakāinga.

Action sought:

Retain proposal 3.8.

Freshwater Improvement Fund

4.1 We do not support all these proposals. The scope of the funding is now too wide. It was initially directed to purchasing and retiring selected areas of farmland next to important waterways, to create an environmental buffer that helps improve water quality.

We do not support the proposal that irrigation projects be eligible for funding from the Freshwater Improvement Fund.

This is a sham. Irrigation is not an environmental strategy or benefit, rather it creates a dependency on extra fresh water taken from rivers or groundwater and it creates new risks to the environment. This proposal is in effect a further Government subsidisation of irrigation schemes - that so often have significant environmental impacts. Irrigation is already heavily subsidised by Government against the wishes of growing numbers in the community. Irrigation development funding should instead be used to deal with our freshwater crisis, not added to by this means.

Applications to the Freshwater Improvement Fund must demonstrate they will directly improve freshwater.

Action sought:

Remove proposal bullet point 4, "Irrigation projects will be eligible for funding only commensurate with any environmental benefits that would not be achieved by the funding available from other sources".

Add to the Freshwater Improvement Fund application criteria a requirement that there be a net ecological benefit, and that the application contributes to an identified wider, strategic environmental goal.

Transfer an additional \$200 million out of the two irrigation support schemes and into the Fresh Water Improvement Fund.