



TE RŪNANGA O NGĀTI RŪANUI TRUST

**SUBMISSION ON THE NEXT STEPS FOR
FRESHWATER CONSULTATION DOCUMENT**

22 APRIL 2016

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HE KARAKIA

Tipi nuku, tipi rangi, tipi raro, tipi haahaa

Ka tipi te wai, ka ora te wai, he wai ora

Ngāti Ruanui believes the mauri of the land does not come from the people it comes from the essence of Taranaki Maunga, from the sacred water that flows freely from the slopes. Ngāti Ruanui connection with the land and its mauri is part of our identity. Manaakitia mai to mokopuna. Wai tapu has always been used by Ngāti Ruanui to heal, protect and cleanse. Wai tapu is an important component of spirituality for Ngāti Ruanui.

We need to keep our waters clean because they circle the universe; if the universe is clean the world is. It personifies the representation of the forces of life and death traversing the world of the dead and the world of the living.

1. INTRODUCTION

- 1.1 This submission is made on behalf of Te Rūnanga o Ngāti Ruanui Trust (the **Rūnanga**) on the Government's consultation document on proposed freshwater management reforms, *Next Steps for Fresh Water (Consultation Document)*.¹
- 1.2 The Rūnanga is the mandated voice for the members of the 16 hapū that comprise Ngāti Ruanui and makes this submission on behalf of our hapū and iwi members. The takiwā (tribal region) of Ngāti Ruanui is bounded by the Whenuakura River in the South and the Waingongoro River in the North and extends inland to the east to the Matemateāonga Ranges. We acknowledge and affirm the intrinsic relationship of Ngāti Ruanui with our natural environment.
- 1.3 The Rūnanga notes that the Consultation Document sets out an ad hoc range of proposals and addresses various parts of the freshwater framework. The Rūnanga has addressed each of the proposals but has also set out its position on various related matters in order to provide a complete picture.
- 1.4 The Rūnanga seeks specific engagement with officials responsible for the Consultation Document on the matters set out in this submission. The Rūnanga can be contacted through Debbie Ngarewa-Packer, Kaiarataki, Te Rūnanga o Ngāti Ruanui Trust at [REDACTED]

¹ Ministry for the Environment. 2016. *Next steps for freshwater: Consultation Document*. Wellington: Ministry for the Environment (**Consultation Document**).

2. NGĀTI RUANUI POSITION

- 2.1. There are 35 catchment areas (including the boundary awa of the Waingongoro and the Whenuakura) and 66 named awa and streams within the takiwa of Ngāti Ruanui.
- 2.2. To Ngāti Ruanui, water is a taonga that must be protected for future generations and this can be done by ensuring that the quality of water is maintained and improved. The preservation of the mauri of a watercourse is important to Ngāti Ruanui. Water must be seen and managed in an integrated holistic manner, recognising its inextricable link to all other resources within the environment.
- 2.3. As kaitiaki, Ngāti Ruanui want greater involvement in the management of the different water forms in our takiwā to make certain that:
 - (a) the quality of water is maintained and improved and the mauri of water is preserved and enhanced;
 - (b) the relationship of Ngāti Ruanui and its culture and traditions with its ancestral waters is recognised and provided for;
 - (c) the mātauranga Māori – traditional environmental knowledge – of Ngāti Ruanui in relation to water is acknowledged and utilised;
 - (d) the allocation mechanisms for water are improved and better managed; and
 - (e) direct iwi engagement and involvement with local authorities who have responsibilities for consenting regimes for water is improved.
- 2.4. Accordingly, the Rūnanga endorses and welcomes legislative and policy development that is intended to achieve improved environmental outcomes and enhance iwi and hapū participation in fresh water management processes. We therefore welcome many of the proposals in the Consultation Document as seeking to realise these aspirations. However, we consider that these reform proposals do not go far enough to address the key issues from Ngāti Ruanui's perspective in respect of water quality, water allocation and in particular recognition of iwi rights and interests. Further detail is required to confirm how certain of the proposals will work in a practical sense, and we encourage the Ministry for the Environment to engage with the Rūnanga in respect of Ngāti Ruanui's views.
- 2.5. This submission addresses the specific proposals in the Consultation Document, as well as Ngāti Ruanui's perspectives on freshwater matters that are not covered by the Consultation Document.

3. NGĀTI RUANUI SUBMISSIONS

Matters not covered by the Consultation Document

National bottom line should be 'swimmable'

- 3.1 The Rūnanga does not support the current national bottom lines in the National Objectives Framework under the NPS-FM. In particular, we do not support “wadeable” as the appropriate national bottom line for rivers and lakes. Accordingly, we consider the exemptions to the current national bottomlines highly inappropriate.
- 3.2 We wish to see the minimum standard of fresh water lifted from wadeable to swimmable. At present the national bottom lines do not even contain an aspiration of swimmability. This is not acceptable to Ngāti Ruanui.

Matauranga Māori Cultural Health Indicators

- 3.3 The Government is yet to provide national direction to measure the cultural health of freshwater by mātauranga Māori. This is a failing of the current freshwater management framework. Mātauranga Māori in respect of waterways and the surrounding environment has been held by iwi for centuries.
- 3.4 Mātauranga Māori should be included as an indicator to measure the cultural health of waterways and should form part of the mandatory monitoring directed at a national level, but defined by reference to local traditions and practices. Directing that the cultural health of waterways is measured by matauranga Māori will ensure relevant authorities are giving effect to Te Mana o Te Wai and that the relationship of iwi and hapū with, and value for, particular freshwater bodies is recognised.

Proposals in the Consultation Document

Proposal 1.1 Amend Objective A2 of the National Policy Statement for Freshwater Management so that it applies within a freshwater management unit, rather than across a region.

- 3.5 The Rūnanga supports Proposal 1.1. The Rūnanga has always opposed the interpretation of Objective A2 that allowed water quality to be ‘averaged’ within a region, allowing some water bodies to become more polluted provided this was offset by improvements elsewhere in the region. In that respect it is disappointing to see the Government advocate for the ‘unders and overs’ approach that was expressly rejected in *Ngāti Kahungunu Iwi Inc v The Hawkes Bay Regional Council* [2015] NZEnvC 50.
- 3.6 Focusing on FMUs should address the scale at which water quality can be averaged. What will now become important is how FMUs are defined. The Rūnanga considers that the creation of broad-scale FMUs will undermine the very justification for the revised focus of Objective A2 toward FMUs, and therefore be inappropriate. It is important that Ngāti Ruanui is involved in the setting of FMUs within our rohe in order to ensure that the right scale of FMU is set.

Proposal 1.2 Clarify 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.

3.7 The Rūnanga does not support Proposal 1.2 for two main reasons:

- (a) First, many of the bands established by the National Objectives Framework (**NOF**) are very broad. Allowing councils to 'maintain' water quality within a NOF band allows significant scope for water quality in an FMU to be degraded while still complying with Proposal 1.2.
- (b) Second, Proposal 1.2 appears in direct conflict with, and to undermine, the requirement to set limits for each FMU under Policy A1 of the NPS-FM. If councils are only required to maintain water quality within an attribute band this will undermine a limit set higher than the bottom of the relevant band, and effectively create a default limit that is at the bottom end of any attribute band.

3.8 The Rūnanga submits that Proposal 1.2 should not be advanced.

Proposal 1.3 Require the use of Macroinvertebrate Community Index as a measure of water quality in the National Policy Statement for Freshwater Management by making it a mandatory method of monitoring ecosystem health.

Proposal 1.4 Work with the Land and Water Forum on the potential benefits of a macroinvertebrate measure for potential inclusion into the National Objectives Framework as an attribute.

3.9 The Rūnanga supports Proposals 1.3 and 1.4.

3.10 We also reiterate our comments at paragraphs 3.3 and 3.4 that Mātauranga Māori should be included as an indicator to measure the cultural health of waterways and should form part of the mandatory monitoring directed at a national level, but defined by reference to local traditions and practices.

Proposal 1.5 Provide further direction on providing evidence when councils or infrastructure owners request that the Government include specific significant infrastructure in Appendix 3 of the National Policy Statement for Freshwater Management.

3.11 The Rūnanga has never supported the exceptions to compliance in the NPS-FM, including Policy CA3 and Appendix 3 of the NPS-FM, on the basis that any regional council or owner of significant infrastructure should be well resourced to comply with national bottom lines within a reasonable timeframe.

3.12 In the alternative, the Rūnanga supports the proposal that evidence be gathered by regional councils or owners of significant infrastructure as part of a process to seek an exception to the national bottom lines. If an exception is to be sought, it should be limited to a temporary while the regional council or owner of the significant structure work to meet the national bottom line requirements. The Rūnanga also supports that any exceptions be subject to public consultation. The Rūnanga further submits that iwi should be included as a specific party with whom consultation must first take place. Any consultation process must be robust and meaningful and must involve the iwi within the specific rohe in the existing infrastructure is located. Iwi views must be included as a criterion against which assessment of the exception application is measured, rather than simply gathered as a box-ticking exercise.

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| Proposal 1.6 | Amend the attribute tables in Appendix 2 of the National Policy Statement for Freshwater Management so that attributes clearly apply to intermittently closing and opening lakes and lagoons, with the same band thresholds and national bottom lines as lakes. |
| Proposal 1.7 | Provide direction to councils on how to request that, after meeting evidential thresholds, a freshwater management unit be allowed to use a transitional objective under Appendix 4 of the National Policy Statement for Freshwater Management. |

3.13 The Rūnanga notes that the intermittently closing and opening lakes and lagoons (**ICOLLS**) that are managed as fresh water identified in the Consultation Document are located in the South Island and on the Chatham Islands. While there are no apparent ICOLLS within the Ngāti Ruanui rohe, the Rūnanga supports Proposal 1.6 which is consistent with management of fresh water in an integrated holistic manner and recognises that ICOLLS often pay the price for upstream water uses and discharges.

3.14 The Rūnanga also submits that the local iwi of the rohe within which an ICOLL is located must be involved in determining how an ICOLL should be managed, including whether it should have a separate FMU.

3.15 In respect of Proposal 1.7, we assume that it is intended to relate to how an FMU that includes an *ICOLL* be allowed to use a transitional objective under Appendix 4 of the NPS-FM, although we note this is not expressly stated in the proposal. In light of our position as to exceptions to compliance as set out earlier in this submission, the Rūnanga is not comfortable supporting transitional contraventions of national bottom lines until the periods of time for transgression are confirmed. In regard to the Runanga's discomfort on this point, we note that Appendix 4 of the NPS-FM, which should include those timeframes, is currently empty.

Proposal 1.8 Create a national regulation that requires exclusion of dairy cattle (on milking platforms) from water bodies by 1 July 2017, and other stock types at later dates (see table 2).

- 3.16 The Rūnanga supports and welcomes the Government's approach to stock exclusions in waterways. We have consistently advocated for the use of riparian fencing and planting to prevent stock from fouling waterways.²
- 3.17 In relation to the proposed staggered introduction of waterway exclusion based on stock types and by reference to the stock types identified in the Consultation Document at page 20, we submit that 'Dairy Support (owned by dairy farmer)' and 'Dairy Support (third party grazing)' should be required to be excluded by 1 July 2017 as well as 'Dairy cattle n milking platform'. Beef also should be excluded from waterways by 2020.
- 3.18 Ngāti Ruanui makes this submission because a significant number of waterways within the Ngāti Ruanui rohe are under extreme pressure, particularly in the lower reaches of our rohe. For example, the lower reaches of the Tangahoe and Patea Rivers, both statutory acknowledged waterways, have a mix of farming activities related to dairy production and grazing. Such activities occur side by side albeit in different land parcels throughout the lower catchment areas. Further, these two waterways are under extreme pressure from a variety of pollution resources including nitrogen loading. In this context, a simple measure requiring the fencing of stock from waterways is a positive step in the right direction. Ngāti Ruanui believes that requiring one land owner to exclude stock by one date and the neighbouring land owner by another date is illogical if protection of waterways from stock is the aim of the proposal.
- 3.19 A recent review of these waterways by the Rūnanga has shown just how prevalent mixed grazing uses are with a high proportion of stock still being able to graze right to the water's edge. We consider that landowners will be more inclined to comply with any fencing requirement if it is universally applied in the manner we have suggested. Ngāti Ruanui seeks a fair and logically based approach which will achieve the maximum protection for our awa resources. Ngāti Ruanui also believes that most responsible landowners will be prepared to meet this requirement if applied consistently.

Economic use of fresh water

Proposal 2.1 Require councils to apply technical efficiency standards in catchments that are at, or approaching, full allocation of water.

Proposal 2.2 Where councils have elected to allocate discharge allowances, require them to apply good management practice standards in catchments that are at, or approaching, full allocation of contaminants.

² Ngati Ruanui Environmental Management Plan, pages 21 and 23.

Proposal 2.3 Require councils to apply these standards at defined times, for example, at initial limit setting, on consent expiry, and/or on application to permanently transfer consents for water or discharge allowances.

General comment

- 3.20 Ngāti Ruanui welcomes attempts to address the freshwater and contaminant allocation issues arising from the first in-first serve approach to water and contaminant discharge allocation under the existing resource management framework.
- 3.21 Water take or abstraction in particular, is a significant issue for Ngāti Ruanui. According to anecdotal evidence from Ngāti Ruanui Pahake, the levels of awa and streams of central and south Taranaki, and the water flow of puna, have decreased over the years. In the Ngāti Ruanui rohe, catchment areas, rivers, streams and underground aquifers are under ever increasing pressure from industry, urban populations and intensive farming practices.
- 3.22 We therefore welcome technical efficiency (**TE**) standards and good management practice standards (**GMP**) across different types of end uses and in respect of a range of specific factors including climate and soil types. (Our specific comments on how those standards are proposed to be applied set out below.)
- 3.23 However, this does not go far enough. In order to create a sustainable water take and discharge management system, we must address the issues associated with the first in-first served allocation method. To that extent, we note that the measures in Proposals 2.1 – 2.3, while positive, do not address fundamental allocation issues, so will not solve the allocation problems facing Aotearoa / New Zealand.

When standards are to be applied

- 3.24 Proposals 2.1 and 2.2 propose that technical efficiency standards and good management practice standards shall be applied:
- (a) “in catchments that are at, or approaching, full allocation”; and
 - (b) At “defined times”, for example, at initial limit setting, on consent expiry, and/or on application to permanently transfer consents for water or discharge allowances.
- 3.25 The Rūnanga submits that technical efficiency standards and good management practice standards need to be applied across the board. It does not make sense to apply the standards only when catchments are at or approaching full allocation. Instead they should be applied across the board to promote best practice and *avoid* allocation issues.
- 3.26 There is clearly more work to be completed to confirm at which “defined times” these standards will apply. As a minimum, the standards should be applied at initial limit

setting, on consent review and expiry, and on application to permanently transfer consents for water or discharge allowances.

Proposal 2.4 Investigate a package of measures to better enable transfers between users so allocated water and discharge allowances can move to higher valued uses, such as:

- standardising consent specifications to better enable transfer, such as separating 'take and use' components of a consent
- making information available, including public registers of consented and used water and discharge allowances
- model plan provisions specifying where and in what circumstances transfers are permitted
- enabling water user groups and nutrient user groups to provide for low cost transfers.

3.27 Proposal 2.4 refers to investigating a package of measures to better enable transfers between users.

3.28 While the Rūnanga understands that there is some efficiency and environmental gains to be made through enabling transfers between users, this should only be progressed once both over-allocation and iwi rights and interests been addressed.

Proposal 2.5 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.

3.29 The Rūnanga supports guidance on methods of addressing over-allocation of water and contaminant discharges. However, this cannot be the default approach if technical efficiency standards and good management practice standards are insufficient. As we identified at paragraph 3.23, the Rūnanga is already of the clear position that the implementation of standards alone to improve efficiency will not be sufficient in freeing up access to water.

3.30 Furthermore, just as the government has discovered with stock exclusion (for which voluntary arrangements have existed for some time), voluntary 'guidance' based approaches are not sufficient to compel a change in behaviour – regulatory measures are required. We therefore reiterate our general comments at paragraph 3.23 concerning the need to develop a sustainable water take and discharge management system.

3.31 That said, to the extent that guidance is created, Ngāti Ruanui and other iwi must be involved in its development.

Proposal 2.6 Increase the ability of councils to recover costs from water users for monitoring, enforcement, research and management.

3.32 Ngāti Ruanui supports Proposal 2.6.

Iwi rights and interests

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| Proposal 3.1 | Include a purpose statement in the National Policy Statement for Freshwater Management which 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. |
| Proposal 3.2 | Require regional councils to reflect Te Mana o Te Wai in their implementation of all relevant policies in the National Policy Statement for Freshwater Management. |

3.33 The Rūnanga supports Proposal 3.1 regarding the inclusion of a purpose statement in the NPS-FM to provide context and status to Te Mana o Te Wai.

3.34 Proposal 3.2 states that regional councils will be required to 'reflect' Te Mana o Te Wai in their implementation of all relevant policies in the NPS-FM. However, the statutory requirement on Councils with respect to national policy statements (**NPS**) is that they 'give effect to' an NPS.³

3.35 The Rūnanga submits that the requirement on Regional Councils should be that they "give effect to" Te Mana o Te Wai.

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| Proposal 3.3 | Councils must, at the outset of their freshwater planning process, engage with iwi and hapū to ensure all iwi and hapū relationships with water bodies in the region are identified in regional planning documents. |
| Proposal 3.4 | Councils must, when identifying values and setting objectives for particular freshwater management units, engage with any iwi and hapū that have relationships with water bodies in the freshwater management unit. |

3.36 Ngāti Ruanui supports proposals 3.3 and 3.4 but notes that they appear to be a re-statement of obligations that already exist on Councils with respect to iwi engagement. To that end, what additional requirements will be placed on councils by this proposal that are not already required under existing obligations is unclear to Ngāti Ruanui.

3.37 Ngāti Ruanui requests clarification as to these proposals will be implemented, and in particular, will add to existing obligations in a manner that will enhance existing iwi and Council engagement in freshwater planning processes.

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| Proposal 3.5 | The Government will amend the Resource Management Act to establish provisions for a new rohe (region or catchment)-based agreement between iwi and councils for natural resource management – a 'mana whakahono a rohe' agreement. The mana whakahono a rohe will: |
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³ Resource Management Act 1991, section 55(2)(b).

- be initiated by iwi through notice to the councils
- be available to all iwi but will not override or replace existing arrangements for natural resource management in Treaty of Waitangi settlements nor preclude agreement of different arrangements under a Treaty settlement
- provide for multiple iwi involvement where appropriate and agreed
- set out how iwi and council(s) will work together in relation to plan-making, consenting, appointment of committees, monitoring and enforcement, bylaws, regulations and other council statutory responsibilities
- include review and dispute processes.

3.38 Ngāti Ruanui notes that Proposal 3.5 appears to identify, in the context of freshwater management, an alternative to the proposed iwi participation arrangements under the Resource Legislation Amendment Bill with two major differences:

- (a) mana whakahono a rohe arrangements are iwi initiated; and
- (b) mana whakahono a rohe arrangements, appropriately, cover a broader range of resource management processes for iwi engagement.

3.39 The Rūnanga supports these enhancements on Iwi Participation Arrangements and consider that they should not be limited only to engagement on freshwater management for reasons including that having two options to cover the same issue – ensuring iwi and hapu participation – is unnecessarily complex.

3.40 It is therefore the Rūnanga's preference, in light of Proposal 3.5, to have mana whakahono a rohe arrangements replace the iwi participation arrangements and deal with all natural resources, as opposed to only freshwater.

Proposal 3.6 The Government will amend the Resource Management Act to:

- require water conservation order (WCO) applications to provide evidence of consultation with relevant iwi and have one person nominated by the relevant iwi represented on the Special Tribunal convened to hear the application
- require the Special Tribunal for a WCO (and, where relevant, the Environment Court) to consider the needs of iwi/tāngata whenua
- require WCO applications to consider any planning processes already underway
- allow the Minister for the Environment to delay an application if there will be a conflict with a regional planning process

- allow councils to recommend to the Minister for the Environment that a WCO be created over an outstanding water body that has been identified through regional planning, and allow the Minister to consider recommendations under a streamlined procedure.

3.41 The Rūnanga supports Proposal 3.6. However, we note that the last three bullets under Proposal 3.6 have no specific relevance to iwi.

Proposal 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.

3.42 The Rūnanga supports Proposal 3.7. However, facilitating and resourcing programmes is not sufficient to support effective iwi engagement. Participating in the Proposals in this Consultation Document will come at a cost, which some iwi and hapu are not in a position to meet. For any participation to be meaningful, iwi and hapu will need to be funded to participate.

Proposal 3.8 The Government will consider if additional funding is required to develop or improve water infrastructure at marae and papakāinga.

3.43 The Rūnanga supports Proposal 3.8. Ngāti Ruanui has 10 marae within our takiwā, nine of which are rurally based with standalone water supplies. Compliance costs and the costs to update and upgrade these water systems are expensive and difficult for struggling marae committees to maintain. Marae in rural communities are often the focal point for the wider community, and even act as a point of assembly for civil defence events. Support to improve water systems and supplies is therefore an investment not in marae but in the whole of the rural based community.

Freshwater Funding

Proposal 4.1 The Government proposes to fund eligible projects that meet specific criteria

3.44 The Rūnanga supports freshwater funding but notes that the criteria for this funding appear, at least in part, to be designed to support existing water users adjust to comply with water quality and quantity limits. It is not appropriate that freshwater funding is effectively used to compensate existing users to meet new rules. The requirement that “only projects that support users to move to managing within quality and quantity limits will be considered” should be deleted.

3.45 We also note that the minimum government contribution of \$250,000 along with a maximum 50% government contribution rule means the minimum size of any project will be \$500,000. This will limit the ability of many iwi, and especially hapū to access this fund. A portion of the fund should be set aside and used specifically to support iwi and hapū to achieve the fund objectives.

4. NEXT STEPS

- 4.1 The Rūnanga seeks specific engagement with the relevant Crown officials on the matters set out in this submission.
- 4.2 Please direct all communications in this matter to [REDACTED].

Nāku noa,

Debbie Ngarewa-Packer

[REDACTED]