



FOMA Submission on Clean Water Consultation 2017

Submitter: Anaru Smiler, Acting Chief Operating Officer (on behalf of FOMA)

Address: Level 7 BERL House, 108 The Terrace, Wellington

Telephone: 022 043 6107

Email: admin@foma.org.nz

Purpose:

1. The purpose of this paper is to provide a submission as part of the 2017 Clean Water Consultation, on the key strategic areas of importance to the Federation of Maori Authorities ("FOMA) with respect to NZ's freshwater management regime, its impact on the growth and development of Maori land and business interests, and the potential impact on Maori customary rights.

Background/Introduction:

2. FOMA represents the largest voluntary collaboration of Maori land owner groups and businesses in the country. With a collective asset base of circa NZ \$9b and significant land interests spread throughout the country, the impact of NZ's freshwater management regime on our members is significant, affecting the ability of our members to continue to grow and develop their land interests for future generations.
3. Access to freshwater within sustainable limits and managing water quality levels for future generations is a crucial enabler for the growth and development of Maori land and economic interests.

4. The Land and Water Forum (LAWF) was established by the government to enable major interest groups from across the community to discuss and collaborate on key issues involved in NZ's freshwater management regime. The key focus of the forum has been to discuss NZ's policy with respects to water quality and quantity (allocation) issues. Much of the debate regarding Maori rights and interests has been in respects to:
 - a. water ownership;
 - b. participation of whanau and hapu in decision-making; and
 - c. implementing the *Te Mana o te Wai* framework.
5. FOMA has identified as a key priority, the impact the current freshwater management regime is having on our members' ability to access freshwater and hence grow and develop our land and commercial interests.
6. FOMA has established a technical reference group to start looking into the issues from our member's perspective and has embarked on determining what the key areas of strategic importance are in respects to our member's interests in freshwater management, and are still in the process of developing a position:
 - Looking at how/what minor changes to the current water management regime can be made to address things, and/or
 - Looking at what bolder reform and water management regime change is required.

Key strategic issues:

7. Highlighted below are a number of areas of strategic importance we have identified, which the FOMA technical group are interested in exploring further:

Kaitiakitanga

- Supporting whanau, hapu and iwi to ensure that environment flow provisions and allocation regime recognises the multiple interests of whanau, hapu and iwi.

Ownership

- Negotiating water ownership rights between Maori and the Crown, and then legislating a settlement.
- Using aspects of the fisheries settlement as a model.

Planning and Investment

- Maori individually/collectively planning and acting more strategically for the long-term to position and capture future value from water, as it becomes more of a tradable commodity/resource.
- Maori individually/collectively investing in water storage on our lands for short-term management/development needs **and** positioning to capture longer term value opportunities in being able to trade water.
- Addressing the need for greater education of Maori landowners/governors/managers **and** their advisors on the importance to secure water resources for growth beyond the traditional on-farm use of water?
- Ensuring rules do not reinforce the status quo where the lack of water/nutrient allocation to Maori hinders the ability to invest in further land development and/or to diversify into higher value (but more water intensive) land options such as horticulture or land based aquaculture
- Ensuring rules do not place Maori in a position whereby their allocations are used to achieve environmental outcomes (e.g. augmenting minimum flows or taking nutrients out of a system) rather than economic.
- Ensuring rules are not based on allocations to status quo land uses applying “unders and overs” approach whereby Maori subsidise other resource users.

Access, Allocation and Decision-making

- Addressing the lack of Maori landowner representation/participation at a regional and local level decision-making level in regards to water/nutrient allocation?

- Ensuring decision-making promotes the “best use of water” to be practiced under the management regime to minimise the amount of over-allocated/under-utilised water resources?
- Ensuring rules enable equitable access/treatment for Maori landowners to freshwater **and** nutrient allocations/mitigation rules?
- Variability of rules across catchments creates difficulties/complexities to those invested across different regions/catchments – should current rules/regimes be standardized or does this risk the lowest common denominator?
- Establishing/clarifying allocation rights between landowners and leasees?

Waitangi Tribunal Case:

- Legally addressing the fact, the current reform proposals are inadequate in that:
 - Exclude effective consultation/partnership with Maori groups with an interest in Maori freehold land pre/post settlement land holdings.
 - Exclude the issues over Maori property rights.
 - Exclude dealing with ongoing issues relating to the degradation of freshwater.
 - Exclude dealing with issues regarding Maori involvement/participation in freshwater resource decision-making.
 - The timing of the reform is too slow in dealing with these issues.
 - Do not encourage local solutions at whanau, hapu or landowner level.
 - Exclude key issues such as grand-parenting allocations to arguable unsustainable uses.

Comments specific to the 2017 Clean Water Consultation Document:

8. In addition to FOMA’s overall strategic issues relating to NZ’s freshwater management regime, we also have a number of comments relating to the 2017 Clean Water consultation document (“consultation document”):

Targeting 90% of rivers and lakes to be “swimmable” by 2040

9. In principle, FOMA supports the governments intent to ensure 90% of NZ's rivers and lake are “swimmable” by 2040 and acknowledges this standard recognises there are costs and choices to be balanced to achieve this.
10. FOMA is however concerned that the integrity of this stated objective is dependent on the definition of “swimmable” and suggests that its definition be subject to peer review over the next five years by international experts, while also taking account of stakeholders’ views as to their expectations to its meaning.
11. Further, FOMA is unclear as to how this standard ensures that freshwater species can continue to grow and thrive under this new standard, so that rivers and lakes can be safely fished and used for the collection of food. While the use of freshwater for land and commercial development is important, it is equally important that our freshwater sources can still be used for the safe collection of food important to Maori for social and cultural reasons, as well as that of the wider community.

Better information on water quality for swimming

12. FOMA supports the intent of the government to work more closely with local authorities and communities, in order to gather more robust information and data to inform better decision-making with respects to NZ's freshwater management.
13. Data collected needs to be accessible to landowners and the wider public so that informed decisions can be made. Further, FOMA is of the view that ad-hoc monitoring by multiple parties may undermine the value of the data collected.
14. FOMA firmly believes that better data, information and robust scientific research is required to inform decision-makers and the development of further policies, if NZ's freshwater management regime is to be affective in meeting the wider NZ communities’ goals of protecting and enhancing NZ's waterways.
15. We note at page 19 of the consultation document the discussion on the management of excessive nitrogen and phosphorus nutrients as critical to ensuring NZ's waterways are kept clean and safe. FOMA agrees this is a critical issue while accepting this poses

a challenge to many of our members with respects to their on-farm growth and development.

16. A number of our members are leading the way in managing the impact of nutrient discharge from their farming interests, which forms an integral part of managing their interests in surrounding waterways to best effect for future generations. FOMA therefore supports, encourages and promotes any practice or policy in this regard, accepting that this will pose a continuing challenge for some of our members and the wider farming community.
17. FOMA further submits that it will be prudent and necessary to support regional authorities to put more emphasis on *non-regulatory mechanisms* for the agricultural sectors to reduce nutrient emissions into freshwater. This will require regional authorities and industry to design *incentive based structures* that encourage producers to change their production systems, which has been successfully achieved by regional councils in the past who have been willing to work with industry in this regard.
18. As noted earlier in our submission, FOMA supports the implementation of *Te Mana o te Wai* and supports any further clarification of this initiative to ensure it is implemented meaningfully and with greater effect.

Funding to improve fresh water:

19. FOMA notes the *Freshwater Improvement Fund* and supports funding initiatives to help communities invest in local solutions for water management, and would encourage an increase in funding to support the change in rules and polices being outlined in the consultation document.

Keeping stock out of our waterways

20. We note at point 5 of the consultation document the *exclusion of more farm stock from waterways* and agree with this in principle, noting that greater support from government and industry will need to be given to help farmers achieve this – balancing the needs of the environment and wider community with the need to continue the sustainable growth of NZ's agricultural sectors, which form the backbone of the NZ economy.

21. FOMA further supports the *alternative option* at page 29 of the consultation document to enable landowners to develop “stock exclusion plans” with their regional council, where it may not be practicable nor viable for total exclusion of their stock to occur.
22. While FOMA agrees in principle with regional council discretion to set more stringent requirements than outlined in the consultation document, care must be taken to ensure this discretion is exercised based on good information and that appropriate resources are provided to help farmers and the wider community manage to a higher standard than the rest of the country.

Future Work Programme

23. FOMA notes at page 31 of the consultation document, reference to LAWF and the Iwi Leaders Group on the progress still to be made with respects to addressing freshwater allocation to maximise economic opportunity. As noted earlier in this submission, water allocation is a key focus of FOMA's freshwater policy development, and presents a significant challenge to Maori land development.
24. Much greater effort is therefore required to ensure Maori landowners are given equitable access to freshwater resources to support the continuing growth and development of their land interests.
25. FOMA strongly supports expediting any initiative that will provide greater access and certainty of freshwater supply to Maori landowners to grow these interests, and further notes that where Maori landowners currently have access to freshwater - it is managed sustainably and with great focus on ensuring their land and waterways are managed sustainably for future generations.
26. Therefore, as a matter of priority, there needs to be government commitment to develop a process to “claw-back” water in over-allocated catchments. If the government is committed to environmental flows and sustainable allocation, then issues relating to over-allocation and the impact this is having on Maori landowner groups, needs to be addressed urgently.
27. FOMA also supports greater collaboration between government, local authorities and the wider community to adopt good management practices both in the rural and urban environments.

28. We however note that greater efforts need to be made to engage *Maori landowners* specifically in these efforts - as being the actual land and resource owners among their community. While we support engagement at the local Iwi level, there is a need to engage more effectively with local Maori landowners – who have direct ownership, responsibility and accountability as landowners in their own right.
29. Further to this point, FOMA supports the *Mana Whakahono* mechanism proposed in both the NPS and RMA Bill, but again strongly stresses that engagement with Maori must include ***all affected Maori landowner groups***, not just community based Iwi and Hapu. The *Mana Whakahono* structure formalises the requirements for regional authorities to engage with Maori on rule and regulation changes, which will lead to better overall outcomes for the whole community. For instance, water allocation rules are good example where the lack of accurate data on water sources and volumes, coupled with poor policy frameworks and engagement with Maori, has led to the over-allocation of catchments to the detriment of Maori landowner groups within those catchments.
30. Not enough effort is made to understand the dynamics of Maori land ownership by central and local government, therefore impacting on the ability of government and Maori resource owners to collaborate more effectively in the freshwater management space.
31. FOMA is a great supporter of the *National Science Challenge – Our Land and Water* and actively encourages our members to participate in the initiatives and projects funded by the challenge. FOMA encourages greater efforts by those leading the projects to engage Maori landowner groups more effectively, and to take up a greater opportunity to learn from Maori landowner groups leading the way in more innovative approaches to sustainably growing and managing their land interests.

Closing comments:

32. FOMA welcomes the opportunity to provide a submission on the 2017 Clean Water consultation and acknowledges that much work is required to reach a balanced approach to managing NZ's freshwater resources more effectively and for best effect for future generations.

33. Maori interests in freshwater are as dynamic and complex as the wider communities, and therefore greater effort by central and local government is required to understand the complexity of Maori interests in this space – and to therefore engage more effectively with the wider Maori community looking out for these interests.

34. FOMA is happy for this submission to be made publicly available and welcomes the opportunity to discuss the issues in greater detail.

Me Uru Kahikatea,

Federation of Maori Authorities