SUBMISSION ON
ACTION FOR HEALTHY WATERWAYS

TO: Ministry for the Environment
BY EMAIL: consultation.freshwater@mfe.govt.nz
SUBMISSION TO: Action for Healthy Waterways
NAME OF SUBMITTER: Upper Waiau Independent Irrigators Group
ADDRESS FOR SERVICE: Personal details removed (Chair of the Upper Waiau Independent Irrigators Group)

1. This submission is made to the Action for Healthy Waterways package, that was released by the Ministers for the Environment, Agriculture and Local Government\(^1\) in September 2019 and includes the documents:
   a) Action for healthy waterways: A discussion document on national direction for our essential freshwater;
   b) Draft National Policy Statement for Freshwater Management;
   c) Proposed National Environmental Standards for Freshwater\(^2\); and
   d) Draft Stock Exclusion Section 360 Regulations.

2. This submission has been prepared by the Upper Waiau Independent Irrigators Group\(^3\).

3. The UWII seeks the relief set out in this submission, including such other additional, alternative or consequential relief as may be necessary to give effect to the changes sought.

Signed for and on behalf of the UWII by
Duncan Rutherford

Chair of the UWII

31\(^\text{st}\) of October 2019

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\(^1\) Hereafter referred to as ‘the Ministers’
\(^2\) Hereafter referred to as ‘the pNES-Freshwater’
\(^3\) Hereafter referred to as ‘the UWII’
1. **Upper Waiau Independent Irrigators Group**

4. The UWII is an Incorporated Society and consists of 21 farmers in the upper Waiau area of the Hurunui District in Canterbury. Their farms include a mix of sheep and beef, cropping, deer, dairy, and dairy support activities.

5. While they are not shareholders of Amuri Irrigation Company Limited\(^4\), AIC manages the process of developing, auditing and reporting on Farm Environment Plans for these farms. This reflects the farmers’ and AIC’s proactive approach to assisting the delivery of improved water quality in the Hurunui and Waiau River catchments.

6. The UWII farmers hold water permits for the take and use of water for irrigation purposes. These permits specify the total area on which the water can be used for irrigation purposes (amongst other conditions). While most have fully utilised their water permits, some are still in the process of fully implementing their authorised take and use for irrigation.

7. The UWII farmers do not hold land use consents for their farming activities since these activities are authorised, as a permitted activity, under the Hurunui Waiau River Regional Plan\(^5\) (Rules 10.1). This authorisation is due to the farms not increasing their nitrogen leaching by more than 10 percent; the farms being part of AIC’s Irrigation Scheme Management Plan that ensures Farm Environment Plans are in place and are audited; and the prescribed concentration of nitrate-nitrogen in the mainstem or tributaries of the Hurunui and Waiau Rivers is being met (amongst other matters).

2. **Concerns with Clause 34 of the pNES-Freshwater**

8. UWII are concerned that the implications of Clause 34 (1) and (2) are unclear and could lead some farmers to unnecessarily be required to apply for a resource consent. This situation is explained as follows.

9. We understand that section 43B(6) Resource Management Act 1991\(^6\) provides that the following permits and consents prevail over a national environmental standard\(^7\):

   (a) a coastal, water, or discharge permit:
   (b) a land use consent granted in relation to a regional rule.

10. In this regard, Clause 34 of the pNES-Freshwater provides for an increase in the amount of land used on a farm for irrigated production (other than production from effluent irrigation) as a permitted activity provided the increase since the commencement date is 10 hectares or less. An increase of more than 10 hectares in the amount of land used on a farm for irrigated production is a discretionary activity and will require a resource consent. Based on the current drafting of Clause 34, we understand that this would be a land use consent as it

\(^4\) Hereafter referred to as ‘AIC’
\(^5\) Hereafter referred to as ‘the HWRRP’
\(^6\) Hereafter referred to as ‘the Act’
\(^7\) For completeness, the relevant permit/consent must have been granted before the date on which the national environmental standard is notified in the Gazette, and the exemption applies until a review of conditions is undertaken under section 128(1)(ba) of the Act.
would be a consent to do something that otherwise would contravene section 9 or section 13 of the Act.

11. As previously discussed, UWII farmers are currently authorised to increase their irrigated area via a water permit (that is a consent to do something that otherwise would contravene section 14 of the Act). UWII farmers do not hold a land use consent to increase their irrigated area, since their land use (that is ‘farming’) is authorised by a permitted activity rule in the HWRRP.

12. The uncertainty is whether a water permit can prevail over a land use requirement in the pNES-Freshwater. It is not clear from section 43B(6) of the Act, or Clause 34 of the pNES-Freshwater, whether this is the case.

13. Accordingly, UWII seeks amendments to Part 3, Subpart 2 of the pNES-Freshwater to clarify that Clause 34 does not apply where a land use consent, water permit or discharge permit is held (at the time that the pNES-Freshwater is notified in the Gazette) that authorises an increase in the irrigated area of a property.

14. On this basis, we seek the addition of the following words to Clause 34 of the pNES-Freshwater (or words of similar effect):

“(5) The requirements of sub clauses 34(1) to 34(4) do not apply where a land use consent, water permit or discharge permit is held (at the time that this Standard is notified in the Gazette) that authorises an increase in the irrigated area of a property”.

3. Support for the Submission of Amuri Irrigation Company Limited

15. With the exception of the matters set out in the preceding section of this submission, in all other respects the UWII supports the submissions of AIC.

The UWII thanks the Ministers for affording them the time to lodge this submission.

Chair of the UWII

31st of October 2019