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: Central Plains Water Limited

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 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
   d) Draft Stock Exclusion Section 360 Regulations.

2. This submission has been prepared by Central Plains Water Limited.

3. CPW 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.

4. CPW seeks the opportunity to meet with officials to discuss the contents of this submission and to provide further information.

Signed for and on behalf of CPW by

CPW, General Manager
31 October 2019

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1 Hereafter referred to as ‘the Ministers’
2 Hereafter referred to as ‘the discussion document’
3 Hereafter referred to as ‘the dNPS-FM’
4 Hereafter referred to as ‘the pNES-Freshwater’
5 Hereafter referred to as ‘CPW’
1. Executive Summary

5. CPW recognises the importance of freshwater to New Zealand’s environmental, economic, social and cultural health and wellbeing. Given this, we work to ensure that the Central Plains Water Enhancement Scheme contributes lasting benefits to the community and the environment.

6. We support the Government’s commitment to stop the degradation of New Zealand’s waterways, however we have concerns about the pace of improvement that is proposed (materially improving within five years and being restored to a healthy state within a generation), particularly given the economic consequences of such improvements in some exceptionally challenged catchments. Notwithstanding this, we support the momentum that the proposed Action for Healthy Waterways package will bring, subject to some key changes. The following summarises the key submissions within this document, including the changes referred to in the preceding sentence.

   a) The following advice note (or words of similar effect) be added to the pNES-Freshwater, after Clause 19; and to the dNPS-FM, after Clause 3.17:

   “These provisions do not extend to providing fish passage to any artificial watercourse (including an irrigation canal, water supply race, canal for the supply of water for electricity power generation, and farm drainage canal) or pipeline.”;

   b) The following amendments to the pNES-Freshwater be made:

      i. Subpart 1, Clause 7 be amended by including the following activity as a discretionary activity:

      “f) for the purpose of building, maintaining, or operating a lawfully established or consented structure”

      ii. Subpart 1, Clause 10(1) be amended by including the following activity as a discretionary activity:

      “e) for the purpose of building, maintaining, or operating a lawfully established or consented structure”;

   c) Clause 3.9(5) of the dNPS-FM, which relates to the timeframes for achieving water quality targets, be retained;

   d) The proposed dNPS-FM be amended, in terms of the application of bottom lines in Appendix 2A, to provide for exceptional circumstances (such as in the Selwyn – Waihora subregion) by setting bottom lines for the indicators of Ecosystem Health that are specific to the particular area. This would not mean that the requirement for improvement would be any less, rather it would allow for more tailored recognition of the particular indicators of ecosystem health that are most relevant to the particular area and associated waterbodies (see Section 5 of this submission for further explanation of this matter);
e) That Clause 38(3) of the pNES-Freshwater be amended by adding the following activity:

“j) management of intensive winter grazing”;

f) That Subpart 4 of the pNES-Freshwater be amended to provide an alternative method for calculating the ‘baseline nitrogen loss figure’, and the ‘nitrogen loss figure’ when it can be shown that OVERSEER is not able to provide reasonable modelled nitrogen loss figures for any particular farm;

g) That provision for an exemption and extension be retained in the Stock Exclusion Regulations as ‘General Requirement’ c);

h) That the Stock Exclusion Regulations retain the minimum 1 metre setback distance, while leaving anything more than this to be set by the water module of the farm plans;

i) That the Stock Exclusion Regulations retain the transition timeframes proposed in the Stock Exclusion Regulations as ‘General Requirement’ b);

j) That the Stock Exclusion Regulation should not extend to setting planting or weed control requirements; and

k) That with respect to controlling intensive winter grazing, that Option 2 in the discussion document (that is, adoption of industry set standards) be adopted in the pNES-Freshwater.

2. Central Plains Water Limited

7. The Central Plains Water Enhancement Scheme\(^6\) utilises run-of-river water from both the Rakaia, and Waimakariri rivers and is supported by stored water from Lake Coleridge and a storage pond near Sheffield. This scheme has the capacity to provide water to an irrigable area of 60,000 hectares within a command area of over 100,000 hectares. This command area sits within the Canterbury Plains between the Southern Alps to the west, State Highway 1 to the east, the Waimakariri River to the north and the Rakaia River to the south. The total establishment cost of the scheme is in the order of $450 million (excluding on farm-costs). The scale of investment, and the increased productivity as a result of access to water, make the scheme regionally significant to Canterbury, and arguably, nationally significant.

8. The Central Plains Water Trust\(^7\) was established jointly in 2003 by Christchurch City Council and Selwyn District Council to implement the Scheme. In July 2012, the Trust was granted resource consents from Environment Canterbury and Selwyn District Council to construct and operate the Scheme. The consents enable the Trust to take and use water for irrigation purposes as well as to construct and operate the Scheme. CPW was subsequently established and is responsible for constructing and operating the Scheme, and for all consent

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\(^6\) Hereafter referred to as “the Scheme”  
\(^7\) Hereafter referred to as “the Trust”
compliance and reporting. For the purposes of this document, hereon the Trust and CPW are referred to collectively as CPW.

9. CPW is committed to creating sustainable value for its shareholders, employees, contractors, suppliers, business partners and local communities. To achieve this, CPW strives to be leaders in sustainable irrigation performance in New Zealand.

10. CPW works to ensure a net gain to the cultural and ecological health of the receiving environment, Lake Ellesmere/Te Waihora and its catchment. We work to achieve effective integrated management of land and water; and to develop, implement and maintain systems for sustainable management that drive continual improvement. With this we:
   a) Meet or exceed applicable legal requirements;
   b) Understand, uphold and respect cultural heritage, in particular respecting Ngai Tahu values in relation to water, the natural environment and other taonga;
   c) Promote efficient use of natural resources, including reducing and preventing pollution;
   d) Enhance biodiversity protection by assessing and considering ecological values;
   e) Engage regularly, openly and honestly with people affected by the Scheme and take their views into account in decision making;
   f) Develop partnerships that foster sustainability in the local communities and enhance economic benefits;
   g) Regularly review the Scheme’s performance and report to shareholders, the Trust and others.

11. For CPW, sustainability is about ensuring that the Scheme is viable and contributes lasting benefits to society through consideration of social, environmental, ethical and economic aspects in all that it does.

12. Accordingly, CPW has a direct interest in management of water in New Zealand and the Action for Healthy Waterways package.

13. CPW welcomes the opportunity to make a submission on the Action for Healthy Waterways package. We acknowledge the work undertaken by officials and by Te Kahui Wai Māori, the Freshwater Leaders Group, the Science and Technical Advisory Group and the Essential Freshwater Regional Sector Water Group that has informed this package.

14. For ease of use, we have structured our primary submissions in the order that the topic appears within the discussion document. Accordingly, these submissions are structured as follows:

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3. **Aquatic Life - Providing for Fish Passage**

15. CPW acknowledges the importance of New Zealand’s native freshwater fish having access to the sea. Provision for fish passage has been proposed in both the pNES-Freshwater (Subpart 3) and the dNPS-FM (Clause 3.17). These provisions rightly focus on ensuring that there is in-river passage of fish.

16. For clarity, we understand that these provisions do not extend to providing fish access to artificial water courses such as irrigation supply infrastructure; however, they would include ensuring that fish are not damaged or prevented from in-river passage as a consequence of any in-river structure. We support this scope for the regulation.

17. Notwithstanding the preceding comments, CPW seeks that this distinction be further clarified by adding an advice note to clarify the scope of the provisions in the pNES-Freshwater (Subpart 3) and the dNPS-FM (Clause 3.17), as set out below.

**Relief Sought**

18. CPW requests that the following advice note (or words of similar effect) be added to the pNES-Freshwater, after Clause 19; and to the dNPS-FM, after Clause 3.17:

> “These provisions do not extend to structures that prevent fish passage into any artificial watercourse (including an irrigation canal, water supply race, canal for the supply of water for electricity power generation, and farm drainage canal) or pipeline.”

4. **Habitat - No Further Loss of Wetlands**

19. CPW acknowledges that wetlands are fundamentally valuable ecosystems in New Zealand, and that New Zealand has lost large portions of these resources as a result of the many forms of land development that have taken place. We support the protection of the remaining natural wetlands and tighter controls on activities that have the potential to adversely impact them.

20. However, with respect to the pNES-Freshwater, Subpart 1, CPW is concerned that the version that has been proposed contains omissions.
21. Using CPW’s existing (and lawfully established) Sheffield intake at the Waimakariri River as an example, we note the following. The intake’s infrastructure is located immediately beside a wetland area as shown in Figure 1 of this submission. The area of non-pasture land immediately adjoining the intake canal and pond (seen as scrub and trees in Figure 1) is considered to be a wetland. While CPW does not undertake works within the wetland area, they do undertake earthworks to maintain the banks of the intake canal and pond that immediately bound the wetland.

22. Assessing CPW’s maintenance of the intake canal and pond structures against the provisions in the pNES-Freshwater, Subpart 1, we note that the works are not for the purposes of restoring or maintaining a wetland; they are not for education or recreation purposes; they are not for the purpose of maintaining or operating an existing hydro scheme; it is probable that the CPW scheme is not considered to be a new or existing nationally significant infrastructure; and the works are not for flood control or drainage purposes. Accordingly, CPW’s maintenance of the canal is not expected to be a discretionary activity under Clause 10.

![Figure 1, CPW’s Sheffield Intake](image)

23. While such works are currently authorised by consents held by CPW, when these expire, they will need to apply for a new consent. If the works are not a discretionary activity under Clause 10, then we would look to Clause 11. Clause 11 provides for earth disturbance within 10 metres of a natural wetland as a non-complying activity if it is done for a purpose that is not otherwise provided for in Clause 10 and results in the reclamation of land, or infilling, or damage to or destruction of the natural wetland’s natural hydrological regime, form, function, ecosystem services, amenity values or ecological values. CPW’s works do not result in such effects, therefore it cannot be authorised under Clause 11.

24. CPW’s works are not for drainage purposes, therefore they cannot be authorised under Clauses 12 and 13; and they are not prohibited under Clause 14. This leaves the works unregulated by Subpart 1, and therefore, they would only be subject to regional rules.

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8 Clause 10(1) of the pNES Freshwater
We believe the preceding outcome is not the Ministers’ intent. We consider that there is merit in providing protection to natural wetlands, and that activities that have the potential to adversely impact a wetland need to have some scrutiny applied to them to ensure that the potential effects are mitigated, and that the mitigations adopted are fit-for-purpose and implemented as intended. We consider that the disturbance of vegetation or earth, within 10 metres of a natural wetland, that results from the maintenance of lawfully established structures, should be afforded the same level of scrutiny as the activities set out in Clause 10(1).

Relief Sought

Based on the preceding assessment, CPW requests the following amendments to the pNES-Freshwater:

a) Subpart 1, Clause 7 be amended by including the following activity as a discretionary activity:

“f) For the purpose of building, maintaining, or operating a lawfully established or consented structure”

b) Subpart 1, Clause 10(1) be amended by including the following activity as a discretionary activity:

“e) For the purpose of building, maintaining, or operating a lawfully established or consented structure”

Water Quality – New Bottom Line for Nutrient Pollution

The dNPS-FM adopts new in-river national bottom lines of 1.0 milligram per litre for dissolved inorganic nitrogen\(^9\) (as a medium), and 0.018 milligram per litre for dissolved reactive phosphorus\(^10\) (as a medium). CPW accepts that DIN and DRP concentrations are a key indicator of the health of freshwater ecosystems, however they are not the only indicators; and when elevated to being compulsory bottom lines through regulation, unexpected outcomes can result.

CPW is located in the Selwyn - Waihora subregion, within Canterbury. This area is known to have the toughest farming rules in place in the country. To achieve the proposed new national bottom line for DIN, significant further reductions in nitrogen losses will be needed in this area.

A number of experts have considered the potential impacts of achieving the proposed new national bottom line for DIN in the subregion. For example, the assessment of available data undertaken by John Bright of Aqualinc Research Limited\(^11\) indicates that median DIN concentrations in groundwater have exceeded 1.0 milligram per litre for the past 60 years (if not longer); and adopting an assumption that in groundwater dependent streams, surface

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\(^9\) Hereafter referred to as ‘DIN’

\(^10\) Hereafter referred to as ‘DRP’

\(^11\) Memorandum prepared by John Bright of Aqualinc for CPW, dated 23rd of October 2019
water concentrations are 50% of groundwater concentrations, then it can be inferred that DIN has exceeded 1.0 milligram per litre in such streams since the 1970’s. Further to this, given that in the Canterbury region the travel time of water between the recharge zone and the Canterbury Plains (also known as lag time) has been estimated to be in the order of 20 to 40 years, the land uses that led to the data collected in the 1970’s were being undertaken in the 1930’s to 1950’s. Considerable changes in farming systems in the subregion have occurred since the 1930’s, predominantly changing the dominant land uses of fattening of lambs (involving substantial areas of fodder crops) and cereal-based mixed cropping, to large portions now being in intensive dairying and other farm systems.

30. Similar to the preceding assessment, Simon Harris and Tim Davie (of LandWaterPeople Limited) have also undertaken an assessment of the implications of meeting the proposed new national bottom lines for lake environments in Te Waihora. Mr Harris and Mr Davie have concluded that to achieve the dNPS-FM’s bottom lines for total phosphorus and total nitrogen for lakes, a reduction of 76% of nitrogen load and 50% of phosphorus load would be needed in the Selwyn – Waihora subregion. To achieve this, all intensive land use would need to cease and be replaced with dryland sheep and beef grazing and forestry. The 2017 report of Mr Harris and Mr Davie indicated that such changes would result in a reduction in operating surplus returns from the catchment of 80% (that is a reduction from $348 million to $45 million per annum). Widespread loss of equity and change of landownership would likely result, and rural communities would experience significant loss of services and depopulation. To achieve the change in phosphorus loss, large constructed wetlands would need to be established at the bottom of the catchment, at an estimated cost of $373 million (a 2017 estimate).

31. In CPW’s opinion, these are clearly costs that the community of Selwyn-Waihora cannot impose on a single generation, rather achieving the required changes in nitrogen and phosphorus loadings will take a significant period of time. While we appreciate that the dNPS-FM allows for timeframes “of any length or period” to achieve the bottom lines (Clause 3.9(5)), we are concerned that it is misleading (and can be counterproductive) to set bottom lines that a single generation may consider are unattainable and thereby lose the commitment to address. In combination with this, we are concerned that single attributes are being seen as a pass or fail, in terms of improving ecosystem health. CPW understands that it is possible to improve the overall ecosystem health of a waterbody when a single attribute may not have improved. For example, it is possible that macroinvertebrate communities can improve even where DIN is higher in concentration than the national bottom line and has not improved. CPW considers that the attributes contained in Appendix 2B of the dNPS-FM are more helpful indicators of improvements in water quality than those contained in Appendix 2A.

Relief Sought

32. CPW requests that:

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12 Report titled “Selwyn Te Waihora Zone, Memorandum on the Implications of Meeting the National Policy Statement for Freshwater Management Objectives for Lake Environments in Te Waihora” dated June 2017, and prepared by Simon Harris and Tim Davie
a) Clause 3.9(5) of the dNPS-FM be retained, and

b) The proposed dNPS-FM be amended, in terms of the application of bottom lines in Appendix 2A, to provide for exceptional circumstances (such as in the Selwyn – Waihora subregion) by setting bottom lines for the indicators of health that are specific to the particular area. This would not mean that the requirement for improvement would be any less, rather it would allow for more tailored recognition of the particular indicators of health that are most relevant to the particular area and associated waterbodies.

6. Improving Farm Practices – Through Farm Planning

33. CPW supports the proposal to require all farms to have a farm plan with a freshwater module within the plan. We consider that farming, like any other activity, should assess their potential effects and adopt practices to minimise them. Given the potential for farming activities to adversely impact water quality, we support a requirement to have a specific water module in each farm plan.

34. A key challenge in ensuring that all farms have a quality farm plan and are implementing them appropriately is the quantity and quality of professionals preparing and certifying the plans, and auditing their implementation. The discussion document advises that work is underway on development of a certification scheme for assessing the competencies and knowledge of rural professionals working in this area. CPW supports this work, and considers this will assist with achieving a consistent approach to farm plan content and quality expectations across the country.

35. Access to certified farm planners will be a limiting factor to achieving the timeframes set in proposed Clause 37 of the pNES-Freshwater. Accordingly, CPW recommends that priority be given to ensuring that there are sufficient certified farm planners to service the catchments identified in Schedule 1 of the pNES-Freshwater in the first instance.

36. With respect to the content of the mandatory freshwater module of the farm plans, CPW considers that intensive winter grazing should be explicitly added to the activities listed in Clause 38(3) of the pNES-Freshwater, that is as a matter for which an assessment of the risk of contaminant losses from the farm must be completed to inform the content of the farm plan.

37. With respect to development of the farm plans, we understand that the proposal does not constrain who can prepare a farm plan; rather it requires the freshwater module to be certified by an approved farm environment planner, be provided to the relevant regional council upon request, and be audited by an auditor (who has been approved for the role by the Minister for the Environment and Minister of Agriculture) every 2 to 3 years (where the timeframe is dependent on the audit outcome). CPW supports this approach.

Relief Sought

38. CPW requests that Clause 38(3) of the pNES-Freshwater be amended by adding the following activity:
7. **Improving Farm Practices – Immediate Action to Reduce Nitrogen Loss**

39. CPW supports the need for greater immediate action to reduce the loss of nitrogen from farming activities around the country. At the same time, we consider that it is important to recognise that Canterbury Regional Council has set some of the most stringent requirements for reductions in nitrogen loss in the country, and that Canterbury land owners have invested in changing on farm practices to ensure that they can comply with these requirements.

40. With respect to Subpart 4 of the pNES-Freshwater, we are concerned about the limitation of OVERSEER being the only means for calculating nitrogen loss. OVERSEER does not yet have the capability to robustly model all farming types and all farm management actions. It is for this reason that submitters to the Canterbury Land and Water Regional Plan13 sought an alternative approach in the rules for the calculation of nitrogen loss where it could be shown that OVERSEER was not a suitable model. This led to adoption of the “equivalent baseline GMP loss rate” and the “equivalent GMP loss rate” in the CLWRP. CPW recommends adoption of a similar “equivalent” approach in Subpart 4 of the pNES-Freshwater.

**Relief Sought**

41. CPW requests that Subpart 4 of the pNES-Freshwater be amended to provide an alternative method for calculating the ‘baseline nitrogen loss figure’, and the ‘nitrogen loss figure’ when it can be shown that OVERSEER is not able to provide reasonable modelled nitrogen loss figures for any particular farm.

8. **Improving Farm Practices – Excluding Stock from Waterways**

**Overview**

42. CPW agrees that keeping stock out of waterways is a key step in preventing faecal contamination, high nutrient levels and harmful levels of sedimentation entering our waterways, and we acknowledge the significant efforts that the dairy sector and other landowners have made in this regard. At the same time, we agree that regulating for stock exclusion from waterways will ensure quicker action than may otherwise be achieved by industry programmes alone.

43. We support the combined approach of national regulation for stock exclusion, and use of farm plans to improve identification of environmental risks and mitigations that are tailored to individual farm sites.

44. We consider that the challenge in designing stock exclusion regulations primarily stems from the varied types of waterbodies and topography adjoining the waterways. This means that a one-size-fits all approach to the regulation will likely be unnecessarily onerous in some situations, and in-effective in other situations. Accordingly, while we support regulating for stock exclusion, we believe that the risk assessment that informs the content of farm plans

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13 Hereafter referred to as “the CLWRP”
is the appropriate process for determining fit-for-purpose setback distances between waterways and fences. On this basis, we have provided the following submissions.

**Exemption and Extensions**

45. In the Draft Stock Exclusion Section 360 Regulations\(^\text{14}\), ‘General Requirement’ c) states that landowners may seek an exemption from the stock exclusion requirements, or an extension of the phase in times. CPW supports provision for exemptions and/or extensions of the phase-in timeframes. We consider this reflects the breadth of topographic, biological and economic constraints that impact the business of farming; and allows ‘good-sense’ to be applied based on circumstances.

**Relief Sought**

46. CPW requests that ‘General Requirement’ c) provisions for exemptions and extensions be retained in the Stock Exclusion Regulations.

**Setback Distances**

47. In the Stock Exclusion Regulations, the two tables (un-numbered) set the setback distance at “5 metres on average across a property (with a minimum width of 1m)”\(^\text{14}\). Any setback, when established along the length of a waterway, ‘locks up’ productive land and impacts the profitability of a farming business. For example, a kilometre of a 5-metre setback equates to a loss of half a hectare of productive land. Accordingly, it is critical that there is a sufficient setback to reduce run-off from paddocks to waterways while at the same time ensuring that the setback required is not more than what is needed.

48. While accepting adoption of a minimum setback width of 1 metre in the regulations, CPW considers that it is not appropriate to regulate for an average setback distance. Rather, and as discussed previously, CPW considers that the required size of the setback is best set through the risk assessment that informs the content of the farm plans. This will ensure a site-by-site assessment and selection of fit-for-purpose setback distances. As the ‘water module’ in the farm plans are to be independently audited (both in terms of certifying the plan itself and its implementation), there is limited potential for ‘undersized’ setbacks.

**Relief Sought**

49. CPW requests that the Stock Exclusion Regulations retain the minimum 1 metre setback distance, while leaving anything more than this to be set by the water module of the farm plans.

**Existing Fences**

50. ‘General Requirement’ b) provides transition timeframes for fences that already exist but that have not provided a sufficient setback. CPW supports inclusion of such a provision. Farmers have, over recent years, experienced ‘shifting’ requirements in regional plans, industry best practice guidelines and requirements of companies such as Fonterra. If a farmer has already invested in a fence to exclude stock from waterways, and now finds that

\(^{14}\) Hereafter referred to as ‘the Stock Exclusion Regulations’
it is not meeting the requirements of the regulation, they need time to budget for and shift
the fence.

Relief Sought

51. CPW requests that the Stock Exclusion Regulations retain the transition timeframes
proposed in the Stock Exclusion Regulations as ‘General Requirement’ b).

Management of Setback Areas

52. The Stock Exclusion Regulations and the ‘Action for Healthy Waterways’ document do not
refer to planting or weed control requirements in the area between the fence and the
waterbody. CPW supports no direct requirements of this nature within the regulation.
Planting requirements would be costly for landowners, while such planting may provide little
additional benefit (in terms of water quality outcomes) over the filtering of nutrients by
grasses and scrub species that may populate the setback areas.

53. While we acknowledge that weed control may be needed to avoid the spread of weed
species within productive areas and to avoid the proliferation of problem weeds, we believe
that weed management within the setback area should be at the discretion of the
landowner, as it is in any other part of their farm.

Relief Sought

54. CPW requests that the Stock Exclusion Regulation does not extend to setting planting or
weed control requirements.

9. Improving Farm Practices – Controlling Intensive Winter Grazing

55. CPW understands that intensive winter grazing has the potential to result in increased
nutrient losses, soil compaction and animal welfare issues when too many animals are kept
on too small an area for too long. As identified within the discussion document, there are
many guides and industry standards available to farmers that help prevent the potential for
such adverse effects. Most farmers apply good winter grazing methods, since not to do so
will impact the profitability of the farming business; however, there are also some who
choose not to apply the standards, guidelines and advice available to them. CPW supports
requiring basic good management for winter grazing through regulations.

56. The Ministers are considering whether to regulate for compliance with nationally-set
standards (Option 1), or to regulate for compliance with industry-set standards (Option 2).
CPW supports Option 2, primarily because the industry bodies are in the best position to
understand the issues and to set standards to prevent the potential effects of poor practices.
Further to this, Option 2 recognises the importance of the industry-bodies continuing to
provide guidance material on how to comply with the standards, and what should be
included within the farm plans in terms of tailoring winter grazing practices to site specific
risks. CPWL has concerns around implementation of the pugging rules however in general
supports the industry standards identified in the discussion document\textsuperscript{15}, beyond which a resource consent for winter grazing would be needed.

\textit{Relief Sought}

57. CPW requests, with respect to controlling intensive winter grazing, that Option 2 in the discussion document (that is, adoption of industry set standards) be adopted in the pNES-Freshwater.

10. \textbf{Improving Farm Practices – Irrigated Farming}

58. CPW 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. CPW understand that section 43B(6) Resource Management Act 1991 provides that the following permits and consents prevail over a national environmental standard\textsuperscript{16}:

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

59. 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 would be a consent to do something that otherwise would contravene section 9 or section 13 of the Act.

60. CPW farmers are currently able to increase their irrigated area through the provisions in CPW’s existing water permit and discharge permit, and for completeness Rule 11.5.15 of the Canterbury Land and Water Regional Plan permits the use of land for a farming activity in the Selwyn Te Waihora sub-region when the property is irrigated with water from an Irrigation Scheme and the Irrigation Scheme holds a discharge consent. Accordingly, CPW farmers do not individually hold a land use consent to increase their irrigated area.

61. The uncertainty is whether water permits and discharge permits 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.

62. Accordingly, CPW 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.

\textsuperscript{15}The standards referred to are: slopes of less than 20 degrees, a 5-metre setback between winter grazing and the edge of a waterway, and no pugging beyond the depth of the ankle joint of stock.

\textsuperscript{16}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.
Relief Sought

63. 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”.

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