

Improvements to the national direction for freshwater: Submission to the Ministry for the Environment

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Submitter details

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1. Introduction

- 1.1 On 5 September 2019, the Government released its discussion document “Action for healthy waterways – A discussion document on national direction for our essential freshwater”, Publication Number ME 1427 (Discussion Document).
- 1.2 To address declining water health, the Discussion Document outlines three objectives that the Government proposes to partially address in the near-term using a range of policy mechanisms including a revised National Policy Statement on Freshwater Management and a new set of National Environmental Standards. The three objectives are:
 1. **Stop further degradation** of New Zealand’s freshwater resources and start making immediate improvements so that water quality is materially improving within five years.
 2. **Reverse past damage** to bring New Zealand’s freshwater resources, waterways, and ecosystems to a healthy state within a generation.
 3. **Address water allocation issues** having regard to all interests including Māori and existing and potential new users.
- 1.3 This is a submission on the ability of the four supporting sections of the Discussion Document, the consultation draft of the National Policy Statement on Freshwater Management (NPS-FM), the proposed National Environmental

Standards for Freshwater (NES-FW), the updated National Environmental Standards for Sources of Human Drinking Water (NES-SHDW), and the draft Stock Exclusion Regulations (SER), to facilitate the achievement of these objectives.

- 1.4 The submission is prepared by Dr. Julia Talbot-Jones, a Lecturer at the School of Government, Victoria University of Wellington, and an affiliate of Motu Economic and Public Policy Research.
- 1.5 My research expertise traverse economics, ecology, and resource management. I have a BSc (Ecology, Zoology) and a BAppSc(Hons-I) (Natural Resource Management) from Massey University. I hold an MA (Economics) from the University of California, Santa Barbara, which was completed on a Fulbright Scholarship. My PhD from the Australian National University examined the socio-economic implications of granting the Whanganui River legal rights. My PhD dissertation, *The Institutional Economics of Granting a River Legal Standing*, was conferred in 2017.
- 1.6 Victoria University of Wellington is New Zealand's leading research university, while Motu is New Zealand's top-ranked economics research organisation and is among the top ten economic think tanks globally. As an independent research institute operating as a charitable trust, Motu does not advocate for an organisational view or position.
- 1.7 For this reason, this submission is provided in my individual capacity.

2. Overview:

- 2.1 The state of freshwater in New Zealand is in decline. This is increasingly well-documented in Ministry reports and other government documents.¹
- 2.2 For this reason, I am generally supportive of the more comprehensive direction proposed for freshwater management in the Discussion Document. However, the current proposal is far from the significant reforms initially promised in the political discourse. Instead the updated NPS-FM and proposed NES-FW represent marginal changes to existing policies – the new NES essentially providing a stop-gap until the NPS-FM becomes operative in 2025-2030.

¹ Ministry for the Environment and Stats NZ. 2019. New Zealand's Environmental Reporting Series: *Environment Aotearoa 2019*. Available from www.mfe.govt.nz and www.stats.govt.nz. Parliamentary Commissioner for the Environment. 2018. *Overseer and regulatory oversight: Models, uncertainty, and cleaning up our waterways*. Available from www.pce.parliament.nz.

- 2.3 In saying that, I recognise the complexity associated with freshwater reform in New Zealand and applaud the Government's commitment to improving the quality of New Zealand's water systems.
- 2.4 I particularly support the decision to place the health and wellbeing of the water at the centre of decision-making (Te Mana o te Wai), the moratorium on further wetland clearance, and the implementation of standards that help avoid further environmental degradation.
- 2.5 I also support the decision to create exceptions for five of the largest hydro-electricity schemes, but do not recommend creating exceptions for the Tongariro Power Development due to mana and mauri of both the Whanganui and Waikato river systems that feed into the Tongariro Scheme.
- 2.6 I strongly support the establishment of an independent water commission.
- 2.7 I do express some concern about the lack of economic analysis accompanying this suite of proposals. Economics can help shine a light on the relative social, cultural, environmental, and economic impacts of various policy options to ensure that what is being proposed is efficient, cost-effective, and equitable. The absence of any economic analysis suggests that some of the potential impacts of the proposed changes have not yet been considered or quantified, which could lead to unintended consequences.
- 2.8 The remainder of the submission will expand on this overview and indicate where both the evident strengths of the new proposal lie, as well as outlining recommendations for improvement. Both the strengths and opportunities will be examined using a water economics and policy lens.

3. National Policy Statement on Freshwater Management

Clear and enforceable baselines and targets

- 3.1 I support the recommendations regarding inland wetlands, streams, fish passage, and attributes made by the Science and Technical Advisory Group (STAG).
- 3.2 Under the Resource Management Act 1991 (RMA), National Policy Statements provide local governments with direction for implementing (giving effect to) particular activities relating to resource management and governance.²

² Environmental Defence Society Inc. v. The New Zealand King Salmon Company Ltd and Others. 2014. NZSC 38, 1 NZLR 593.

- 3.3 Although there is some value in providing local government with flexibility through the use of loose language in a NPS (principally through providing opportunities for possible efficiency gains), there is also the potential for unintended consequences to result from poor implementation choices.
- 3.4 The result of loose language choices in the previous three NPS-FW (2011, 2014, 2017) have contributed to the failure of local governments to adequately address the decline in water quality or combat issues around over-allocation.
- 3.5 I recommend the baselines and targets recommended by STAG are clear, indisputable, and enforceable.

Te Mana o te Wai

- 3.6 I also support the emphasis placed on Te Mana o te Wai as the korowai for future water governance decisions. When the health and wellbeing of the water system is placed at the centre of decision-making, the policy framing is forced to shift and subsequently so are the incentives of users and managers.
- 3.7 I consider that claiming Te Mana o te Wai is a governance framework is an over-reach and would contend that there is no clear governance framework outlined in the Discussion Document beyond the specific policy documents.
- 3.8 Frameworks identify universal rules and actors and map the relationships between these rules and actors.³ Te Mana o te Wai provides a values frame, and the specific policy documents provide detail, but Te Mana o te Wai does not provide a map of interactions between actors and rules. This is a weakness of the NPS-FM and the Discussion Document as a whole.
- 3.9 Further, there are inconsistencies in the proposed approach to protecting Te Mana o te Wai. To properly uphold Te Mana o te Wai would require the adoption of a policy framework that centres on care and respect for our waterways in their entirety – both in terms of quality and quantity. It would require Government to engage directly with iwi and hapū about their proprietary rights and interests, and to be bold in the level of structural reform.⁴
- 3.10 Instead, the NPS-FM only provides a guide for addressing water quality and does not engage in the pressing matter of proprietary rights and interests to water. Because matters of allocation and ownership are closely entwined with issues of

³ Ostrom, E. 2011. Background on the Institutional Analysis and Development Framework. *Policy Studies Journal*, 39(1): 7–27.

⁴ Taylor, L. et al. 2019. Nga puna aroha: Towards an Indigenous-centred freshwater allocation framework for Aotearoa New Zealand. Working paper.

quality, not addressing either matter in the NPS-FM risks failing to optimise the net marginal benefits that could be achieved through taking an integrated approach to governance.

- 3.11 The Government should be aware of this tension when requiring local governments to “consider and recognise” – or better to “recognise and provide for” – Te Mana o te Wai under the NPS-FM.
- 3.12 I recommend revisiting the recommendations made by Kahui Wai Māori in their report as well as the recent report of the Waitangi Tribunal on Wai 2358 to help guide a deeper integration of Te Mana o te Wai into decision-making.

Independent water commission

- 3.13 I strongly (strongly) support the idea of establishing an independent water commission.
- 3.14 An independent water commission could be one way to help navigate some of the complexities identified above. The challenges experienced by local government with regards to implementing previous NPS-FMs are unlikely to be avoided with the most recent NPS-FM, so the more non-partisan support available for policy makers, the better.
- 3.15 A water commission would provide users and managers with continuity beyond the political cycle by providing independent scientific and institutional advice and supporting funding across jurisdictional boundaries. Overseas water governance examples point to the complications that arise when politics gets involved with water policy (see. the Murray-Darling for a recent example⁵). The more mechanisms that can be put in place to mitigate this risk from the outset, the more robust the new governance framework is likely to be over the long-term.
- 3.16 I recommend the independent water commission be modelled on the independent climate change commission.

Facilitating integrated management

- 3.17 The current NPS-FM does not facilitate integrated governance of New Zealand’s water systems. Ecosystem health (and the usability of water) depends on having water of a quality that is suitable for the desired use, as well as having sufficient quantity.⁶

⁵ Quiggin, J. 2019, July 9. The Murray Darling Basin scandal: Economists have seen it coming for decades. *The Conversation*. Available at www.theconversation.com.

⁶ van Vliet, M. et al. 2017. Quality matters for water scarcity. *Nature Geoscience*, 10: 800-802.

- 3.18 A comprehensive understanding of water quality needs to take into account not only water scarcity, but also the cost-effectiveness of adaptation policies.
- 3.19 I recommend changes to the draft NPS-FM so that it provides for both quality and quantity, and to set out a timeline for addressing iwi and hapū concerns around their rights and responsibilities to waterways. If sufficient changes to the NPS-FM cannot be made, at least some clear timeline requirements for local governments to meet allocation limits should be outlined in the NPS-FM.

Water allocation

- 3.20 Section 3.19 of the NPS-FM indicates that regional councils need to start developing criteria for addressing water allocation.
- 3.21 I recommend that this process involve scientists (to set minimum flows), economists (to establish the most efficient and cost-effective policy frameworks given the biophysical and legal constraints), legal experts (to establish constraints), and iwi/hapū (to ensure representation of te ao Māori).
- 3.22 I also recommend requiring local governments to analyse the data they collect on use patterns, rather than just collect it. The requirements stipulated under the Resource Management (Measurement and Reporting of Water Takes) Regulations 2010 are commendable, but monitoring without evaluation is inefficient.
- 3.23 I recommend that the minimum flow levels are jointly finalised by iwi/hapū and local government in an agreement modelled on elements of the Te Awa Tupua decision-making framework.⁷

Exclusions for major hydro schemes

- 3.24 I understand the motivation for excluding major hydro schemes from the NPS-FM – every policy decision involves trade-offs and more often than not, you end up with a second-best outcome. In saying that, excluding the Tongariro Power Development from the NPS-FM is likely to cause tension with Whanganui Iwi and will prohibit the underlying principles embedded in the Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 from being upheld.
- 3.25 For this reason, I recommend that the Tongariro Power Development is not included in the list of major hydro schemes for which exceptions are granted.

⁷ Te Awa Tupua (Whanganui River Claims Settlement) Act 2017.

4. Proposed National Environmental Standard for Freshwater

- 4.1 The new NES-FW seeks to prevent water quality from deteriorating further and to facilitate water quality improvements over the next five years as local governments review their legislation to give effect to the NPS-FM.
- 4.2 I generally support a tightening of standards that helps achieve these goals and avoids activities that impose adverse effects on the environment. It is recommended that advice from STAG is sought for all scientific questions, and economists are consulted on the extent of possible social, cultural, and economic impacts of the new standards.
- 4.3 Some blanket standards, such as restricting further intensification, could impose unnecessary costs on some landowners. Not all regions are experiencing the same levels of degradation. In some regions it may actually be more efficient for some landowners to intensify land use on part of their title – an option which will be unavailable to them under the proposed NES-FW.
- 4.4 The proposal to make Farm Plans compulsory and to create a new organisation of certifiers and auditors also risks imposing efficiency losses on both landowners and government through raising transaction costs and creating unnecessary red-tape.
- 4.5 In saying that, it is worth emphasising the importance of supporting local government to enforce the standards proposed. Rules are only effective when they are enforced and although self-enforcing institutions can emerge under the right conditions, the historical patterns of self-regulation indicate that this has not occurred in New Zealand. Providing support and monitoring local government performance could be a further role and responsibility of an independent water commission.
- 4.6 I do express some concern that there does not appear to be any assessment of the economic costs or benefits of implementing these new standards. Blanket standards are rarely efficient or cost-effective, so it would be useful to consider whether there would be a broader suite of policy tools that could achieve the desired outcomes more efficiently and effectively.

5. Updated National Environmental Standard for Sources of Human Drinking Water

5.1 I support amendments to the National Environmental Standard for Sources of Human Drinking Water to ensure that drinking water is not contaminated by land use activities.

6. Draft stock exclusion regulation

6.1 The proposed s.360 regulations seek to exclude stock from waterways over one metre wide and impose standards that will be enforced by regional councils.

6.2 Given that 77% of the national contaminant load comes from low-order small streams (less than one metre wide, 30cm deep, and in flat catchments dominated by pasture)⁸, excluding small streams from the regulation could be reducing regulatory efficacy.

6.3 However, consideration needs to be given to the costs imposed on landowners required to fence large sections of their property to meet the new set-back requirements. Potentially compensation should be provided for landowners who lose a certain proportion of their grazing or arable land to fencing.

7. Conclusion

7.1 Finally, it will be important to consider the costs of delivering this new governance initiative and to ensure that the benefits of implementing these changes outweigh the costs over the long-term. The costs will not be distributed evenly, and consideration of who should bear the burden, and when, needs to be carefully accounted for.

7.2 New Zealand is currently at a crossroads where sensible decisions could bring long-term benefits. Rushing through proposals without sufficient consideration of social, cultural, environmental, and economic costs and benefits are unlikely to deliver on the Government's desired objectives over the coming decades.

⁸ McDowell, R. et al. 2017. Assessing the yield and load of contaminants with stream order: Would policy requiring livestock to be fenced out of high-order streams decrease catchment contaminant loads? *Journal of Environmental Quality*, 46(95): 1038-1047.