

Submission

By



to the

Ministry for the Environment

on the

**proposed National Policy Statement (NPS) on
Fresh Water Management**

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NATIONAL POLICY STATEMENT ON FRESH WATER MANAGEMENT SUBMISSION BY BUSINESS NEW ZEALAND¹

1.0 INTRODUCTION

- 1.1 Business NZ welcomes the opportunity to comment on the proposal to develop a National Policy Statement (NPS) on Fresh Water Management. Water plays a vital role in sustaining life and is a crucial input to New Zealand's economic base with respect to industrial and agricultural use. However, water is not unique in respect to national importance. There are many other network utilities and activities that can be described as nationally important, but this does not necessarily justify the widespread adoption of National Policy Statements (NPS).
- 1.2 Water use can be divided into at least four categories. These include:
1. Surface abstraction for direct use
 2. Groundwater abstractions for direct use
 3. Storage from lakes and in-stream or off-stream storage for later use;
 4. In-stream uses of surface water, including recreation.
- 1.3 Water can be consumed or used for a variety of purposes. In no priority ranking, the specific uses of water include:
1. Drinking water
 2. Sanitation water
 3. Stock water
 4. Industrial production
 5. Irrigation, including agriculture and amenity (golf courses and parks)
 6. In-stream recreational activities (fishing, boating and water sports)
 7. Power generation
 8. Environmental, including both in and out of stream habitats, flora and fauna, and ecosystem health.
- 1.4 In a number of cases water can be used and reused for different purposes (e.g power generation) and subsequently for irrigation and/or for recreation/environmental purposes.
- 1.5 Business NZ generally does not support the establishment of NPSs, with the possible exception of matters that can be shown to be equally applicable to all environments. This is generally not the case for water as the effects on land use and landscapes etc differ with geographical features, land-based activities and population density.

¹ Background information on Business New Zealand is attached as Appendix 1.

- 1.6 Notwithstanding the above, Business NZ would support the development of an NPS if, after the adoption of the recommendations contained within this submission, it was proved that an NPS could add value in respect to providing clear, meaningful, useful and constructive guidance to local authorities on matters of national significance concerning fresh water. Moreover, an NPS would need to be flexible enough to take account of the different economic and environmental differences within and between regions in New Zealand.
- 1.7 There are significant issues in respect to water management which need to be urgently addressed including allocation regimes, security of tenure and the ability to transfer (trade) water permits in a timely and efficient manner to their most highly valued uses. These issues are all fundamental, yet they are likely to be outside the scope of what an NPS can provide for, hence our concern that an NPS is likely to add little, if any, value but is instead likely to cause even greater confusion amongst allocating bodies (currently regional councils). Weaknesses in the Resource Management Act (RMA) and in particular, the need to refocus the RMA on achieving a better balance of benefits and costs rather than on particular environmental outcomes, need to be addressed to ensure that economic growth and development are not subservient to environmental outcomes, resulting in overall economic loss to the economy.
- 1.8 Despite the Government's so-called "Water Programme of Action", there has been little, if any, progress on the above issues, including the question of ownership and Maori guardianship of water resources. Increasingly, water management is being undertaken in an ad hoc manner with reduced certainty for current and would-be users and investors. While complex, it is important that all the above issues are worked through in a systematic manner to ensure that water is used efficiently and businesses and individuals have the confidence to invest in what are often large sunk cost investments. In the absence of soundly based property rights to water and land use, business investment is likely to be stifled with obvious flow-on effects for both economic and employment growth and ultimately, New Zealanders' living standards.

RECOMMENDATIONS

Business NZ **recommends** that:

If the proposed NPS on Fresh Water Management does proceed then it needs to adequately take account of the economic and environmental differences within and between regions in NZ.

Business NZ **recommends** that:

amendments are made to the Resource Management Act (or other appropriate Act(s)) to clearly address important issues in respect to fresh water management as outlined in this submission. These include:

- (a) Resolving issues surrounding “ownership” of freshwater (p.6);**
- (b) Ensuring water is used efficiently (p.6-7) by ensuring users have clear tenure and specification about water use (p.7-8);**
- (c) The ability to readily trade in water rights to ensure water flows to its most valued uses (p.8-9); and**
- (d) The payment of compensation to those whose water rights may be reduced (p.9-11).**

Business NZ **recommends** that:

The RMA be refocused on achieving a better balance of benefits and costs rather than on particular environmental outcomes, to ensure economic growth and development are not subservient to environmental outcomes resulting in overall economic loss to the economy.

2.0 DISCUSSION

- 2.1 Before any move towards the adoption of an NPS is considered desirable, it is important to fully understand the nature of any problem (or perceived problem) which an NPS is intended to address. Business NZ considers it is unlikely that an NPS can address many, if any, of the key issues in respect to water management mentioned earlier.
- 2.2 Before coming to any decisions as to the merits or otherwise of the proposed NPS it is crucial that policymakers take a step back and ask some fundamental questions. These include, but are not limited to:
- Is there a problem with current water management systems that an NPS can adequately address?
 - Are there alternative options to address the problem in a more transparent manner which would minimise the risk of future uncertainty?
 - What are the costs and benefits (including unintended costs) of the NPS proposed?
 - Will an NPS achieve the outcomes desired and at what cost?
- 2.3 Only after clearly going through these questions would policy makers be in a position to determine the merits or otherwise of an NPS on fresh water management. As stated earlier in this submission, issues surrounding water are often unique to particular areas (certainly a “one-size fits all” approach is unlikely to be helpful), while the fundamental concerns with current fresh water management cannot arguably be addressed within an NPS. It would be virtually impossible to draft an NPS to address the many different issues associated with the range of water uses and projects and the many different circumstances and environments in which water is used.
- 2.4 Any potential benefits from an NPS are likely to be outweighed by the risks associated with:
- (a) Unintended consequences (i.e. the uncertainty as to the effects the policy could have and concerns that it could have an effect not anticipated or desired); and
 - (b) The potential for regulatory creep (i.e. the process of developing an NPS could result in moves from high level principles to detailed prescriptions on resource use which could lead to reduced opportunities for economic growth).

Issues needing to be addressed within fresh water management framework

- 2.5 Business NZ considers that the following issues need to be addressed in respect to management of fresh water. The list is by no means exhaustive and there will no doubt be other issues which also need to be addressed. The list of issues is in no particular order of importance as they are all important issues in their own right.

Ownership

- 2.6 Probably the most contentious issue in respect to water, but nevertheless fundamental to determining who can use, or perhaps more importantly, allocate water, is the vexed question of, “whose water is it anyway?” Currently the role of allocating water is given to the regional councils who generally allocate it on a “first come first served” basis. It is noted that the Resource Management Act (RMA) has been strengthened slightly to give preference to current users when their water use permits come up for renewal by taking into account a number of issues including the amount of investment made in a project.
- 2.7 Business NZ is aware of the various arguments in respect to potential Treaty rights which might need to be addressed within policy development. While difficult to work through, it is important that clear ownership rights (or guardianship) are agreed upon and clearly understood by all parties, in order to make progress in respect to allocation of water rights and ultimately, the transferability (tradability) of such rights.

Water Allocation Principles should encourage efficient use of resources

- 2.8 There are many ways of allocating water, however, mechanisms for allocating water can generally be categorised into three broad options:
- a) regulatory approaches;
 - b) voluntary approaches; and
 - c) market approaches.
- 2.9 It should be noted at the outset that these options are not necessarily in isolation from each other. For example, in order for a market based approach to operate, it is crucial that regulatory policies underpin the efficient function of such markets. It should also be noted that most allocation mechanisms operating around the world are neither purely administrative nor purely market based but are some combination of the two.

- 2.10 Water allocation can be developed according to any number of principles but ideally, the underlying principles should encourage an efficient allocation of resources (i.e. encouragement of water use to gravitate to its most highly valued use).
- 2.11 In economic terms, three specific components of efficiency are relevant in this sense. Ideally, true efficiency implies that all measures of efficiency are achieved simultaneously; however, strictly speaking, these components are individually unique and can be achieved independently of one another.
- (i) *Productive efficiency*
Productive efficiency means output at the least cost to the producer. Generally speaking, in this scenario, producers put water to use in such a way that they themselves accrue the most benefit from it.
 - (ii) *Allocative efficiency*
Allocative efficiency refers to allocating resources to production that is most valued by society. This could mean weighing the relative importance of hydro-electricity generation and crop production against each other in times of water scarcity.
 - (iii) *Dynamic efficiency*
Dynamic efficiency is sometimes called innovative efficiency. In this case, technological change is encouraged to produce productivity gains over time. Decisions regarding allocation of the resource are based on the likely potential for production capacity and likely future requirements.
- 2.12 Achieving the above outcomes and encouraging businesses and individuals to invest requires the existence of some fundamental structures in respect to water management. While the following are closely embedded in the notion of ownership (or property rights), they are all critically important in their own right. These include:
1. Secure tenure and clear specification surrounding water use;
 2. The ability to transfer (trade) in water rights/permits; and
 3. Compensation for mandatory taking of water rights.

Secure tenure and clear specification

- 2.13 Regardless of what water allocation mechanism is in place, individuals need a high degree of certainty that their right to take water will not be unduly jeopardised.

2.14 In short this means **(i) Secure Tenure** and **(ii) Clear Specification**.

- (i) **Secure Tenure:** the duration of a water permit is for 35 years (in other words, the maximum time allowed under the RMA), or alternatively, that a renewal of the consent can generally be presumed by the holder. This will ensure confident investment. Also, secure tenure means that the entitlement is secure during its term and cannot be revoked (unless new information comes to light which shows that current allocations are unsustainable or the entitlement itself contains language permitting it to be revoked with the promise of compensation).
- (ii) **Clear specification:** any constraints on water use are well-defined, publicly known, and not subject to arbitrary change. In addition, clear specification means that rights and responsibilities of the entitlement holder are transparent and recorded so that public confidence in the process is sustained over time.

Tradable Water Rights

2.15 While the RMA allows water taking permits to be transferred among users in the same catchment area (Section 136), and some transfers do occur, this practice is not widespread. Reasons for this include:

- In many catchments, water has not been fully allocated and a new consent is likely to be less expensive than one purchased from an existing user.
- Because a right to take water is often reflected in business values, a permit to take water can be a valuable asset and worth retaining.
- In some cases it may be impractical to move surface or 'run of the river' water to a neighbouring business.

2.16 Notwithstanding the above, the ability to transfer (or trade) in the right to take water can be considered a fundamental objective in ensuring an efficient allocation of resources over the longer term. In other words, hypothetically speaking, those who most value the water will generally be happy to purchase rights to use it, and those who value the water less will generally be happy to sell or lease any rights to it they may have. Such a market can only exist in an environment where water rights are certain and secure.

2.17 In many respects, the initial method of allocating water may not be so important provided that users have the ability to move water to higher value uses over time through transfer/trading options.

- 2.18 In a number of jurisdictions throughout the world, markets have been established to facilitate the distribution of water rights. As indicated earlier, legislation already exists in New Zealand allowing the trading of water taking permits, although this is not widely practised.
- 2.19 To ensure public confidence in a market system, a number of conditions would need to be present. These are briefly outlined below:
- 1) The amount of water available for allocation would need to be clearly determined. This is no easy task, given that groundwater resources and linkages throughout New Zealand are not necessarily well understood.
 - 2) Individuals and companies would need to ensure that they had secure tenure and clear specification of water rights so that existing users and potential users are certain that those rights exist.
 - 3) A central registry of available water rights and permit holders would be required, including mechanisms for recording transactions via a water trading registry.
 - 4) Monitoring of water use would be required to ensure that individuals and companies took only what they were entitled to. Enforcement would also be required.

Compensation for loss of water use (property) rights

- 2.20 One of the fundamental principles on which a market economy (such as New Zealand) is based is that property owners (including businesses) have relative security of their property rights and have the right to use their property in the manner they choose (with respect to the same rights of other property owners).
- 2.21 Investors must also have confidence that any assets they purchase or improve upon will be safe from confiscation and unreasonable restrictions, or alternatively, that they will be compensated for any erosion of their property rights. If this is not the case, then there is limited incentive for anyone to undertake long-term investment.
- 2.22 Although the RMA stipulates that the maximum consent period for a single water taking permit is 35 years, this is often challenged as being too long. However, in general, a single permit which lasts only 15 years is unlikely to be long enough for businesses to gain acceptable returns on investment in equipment and associated infrastructure development. In addition, regional councils have the opportunity to review consent conditions and minimum flow levels with the acquisition of new knowledge.

- 2.23 While issues concerning over-allocation have generally not been significant to most catchments in New Zealand, there are a number of catchments that are considered to be fully allocated, or indeed over-allocated in some cases. This may make it necessary to determine how water use can be reduced without unnecessarily interfering with the property rights of existing users, or alternatively, examining ways of improving channel water storage to boost water supply.
- 2.24 While Regional Councils have the power to annul or reduce permitted water taking rights at their own discretion and without compensation, this could arguably raise significant issues if authorities exercised this power frequently. For one thing, if investors saw themselves as being at the mercy of the regional council with little guarantee of long term security in their investment, they would likely have little incentive to invest in projects that require significant quantities of water. Secondly, there might be little discipline for councils to fully investigate the availability of water resources, or to adequately monitor resource use.
- 2.25 In terms of compensation for the loss of one's permitted take, at least two opposing arguments can be made. On the one hand, it could be argued that those individuals or parties wanting the reduction in water usage (private individuals, interest groups, or government) should compensate current users who have had their allowable take reduced or land owners whose land use options are constrained. This can be seen as consistent with the idea that all parties should be at least as well off after the exchange as they would have been had the exchange not taken place. On the other hand, it could be argued that under the Resource Management Act, individuals who have been granted consents to use water for a specific period do not own the water and therefore should not be entitled to compensation. However, it should be noted that property rights can still be held in the absence of formal ownership of a resource.
- 2.26 Providing compensation for loss of rights to those who suffer restrictions or reductions in water use would encourage more rational decision-making in respect to making what some people might view as economic and environmental trade-offs.
- 2.27 Examples from other jurisdictions with respect to the loss of water property rights may serve as an indication of the range of options available. In Australia, for example, in cases where water has been over-allocated with significant environmental implications, some voluntary cost sharing arrangements have been made between users (generally farmers) and Federal and State Governments.

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APPENDIX 1

BACKGROUND INFORMATION ON BUSINESS NEW ZEALAND

Business New Zealand is New Zealand's largest business advocacy organisation.

Through its four founding member organisations – EMA Northern, EMA Central, Canterbury Employers' Chamber of Commerce and the Otago-Southland Employers' Association – and 70 affiliated trade and industry associations, Business NZ represents the views of over 76,000 employers and businesses, ranging from the smallest to the largest and reflecting the make-up of the New Zealand economy.

In addition to advocacy on behalf of enterprise, Business NZ contributes to Governmental and tripartite working parties and international bodies including the International Labour Organisation, the International Organisation of Employers and the Business and Industry Advisory Council to the Organisation for Economic Cooperation and Development.

It should be noted that the New Zealand Forest Owners Association does not concur with a number of points made in this submission.