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Freshwater Consultation 2016
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Ngāti Kahungunu Iwi
INCORPORATED

Submission to Ministry for the Environment on
Next Steps for Fresh Water - Consultation Document

NGĀTI KAHUNGUNU IWI INCORPORATED

“To enhance the mana and well-being of Ngāti Kahungunu”

Act in the beneficial interests of all descendants of Kahungunu, particularly where the interests and rights of Ngāti Kahungunu tāngata whenua, hapū and whānau have been unfairly subjugated.

Introduction

1. Ngāti Kahungunu waterways are not in a healthy state; their water quality has and continues to deteriorate with little sign for improvement. The over-allocation of water creates further negligent resource management that compounds the water quality issues creating further problems. Ngāti Kahungunu marae and communities have had the access to, and use of their traditional waterways limited or ceased entirely. *'Next steps to fresh water – consultation document'* does not go far enough to alleviate the major problems and has the potential to create or exacerbate existing problems. While, many logical and valid recommendations from iwi and hapū have not been actioned.
2. The consultation document notes that its proposals are a 'product of intensive and ongoing dialogue with the Iwi Leaders Group (ILG)' however, the ILG have opposed use of Te Reo Māori terms for Additional National Values and have not requested any proposal related to Water Conservation orders. Ngāti Kahungunu look forward to meaningful dialogue and outcomes regarding 'Mana whakahono a rohe'. The consultation document also notes, the reports provided by LAWF have formed the basis for a number of reforms to the freshwater management regime. However many of the recommendations from LAWF have not been progressed.
3. The overarching purpose of the current resource management act is sustainable resource management given their relationship the National Policy Statement on Freshwater Management would logically share the same overarching purpose. The Iwi is committed to ensure central and local government agencies and policy appropriately reflect our interests as they relate to sustainable resource management.

Background

4. **Ngāti Kahungunu Iwi Incorporated** (the Iwi / Iwi authority) is a mandated iwi organisation. Ngāti Kahungunu has the third largest iwi population (62,000¹) and the second largest tribal rohe and coastline, from Paritu and extending inland across the Wharerata ranges in the north to Turakirae in southern Wairarapa.
5. The Iwi authority maintains an independent position to advocate for the interests and rights, including values, beliefs and practices of all Ngāti Kahungunu tāngata whenua, whanau and hapū. Tāngata whenua hold significant cultural, economic and spiritual connections to the natural environment and have rights and interests to its resources. As kaitiaki, Ngāti Kahungunu have an obligation to protect and restore the mauri, and the physical and spiritual well-being of natural environment for future generations.
6. Ngāti Kahungunu Iwi Incorporated invests a significant amount of time, resources and energies in drawing together and considering the views and aspirations of Ngāti Kahungunu tāngata whenua mai Paritu ki Turakirae. Maintaining these networks and appreciating all perspectives is vital for a holistic over view and progressing towards enduring outcomes and solutions.
7. The Iwi has held or been privy to many hui for tāngata whenua that have had a focus on the natural environment and water in particular. Discussions have reiterated common values and interests and also highlighted the reoccurring adverse environmental impacts on them.

¹ 2013 Census of Population and Dwellings, New Zealand Kahungunu population only.

The National Objectives Framework

8. The National Objectives Framework (NOF) bottom lines are significantly lower than current water quality in the Ngāti Kahungunu rohe, even for degraded rivers such as the Manawatu. The NOF bottom lines or minimum acceptable state for compulsory values relating to ecosystem and human health are so low and the bands so wide they are of no use in supporting the health of the waterways within the rohe of Ngāti Kahungunu.
9. Because the bottom lines are set low they are effectively being used to justify a 'hands off' approach to appropriate freshwater management that is, councils have/may choose to go no further in terms of enhancing water quality or worse, actively allow freshwater quality to degrade, as long as it is deemed above the national "bottom line".
10. The National Policy Statement for Freshwater Management (NPS FM) should refrain from misappropriating te ao Māori terms and concepts to align with western terms and concepts. This can easily go wrong and risks minimising and misinterpreting our indigenous uniqueness and identity. In addition, it fails to do justice to our cultural knowledge or mātauranga Māori which helps form the basis of our cultural and traditional relationships with freshwater, one of the matters that regional councils as statutory water managers are meant to protect. The current NPS FM demonstrates this faux pas - for example 'wai māori' has a different meaning than 'municipal and domestic water supply'.
11. The NPS FM must provide direction and include further attributes to measure and prevent the adverse effects of excessive amounts of nitrogen and phosphorus. These contaminants entering our waterways due to land uses have increased markedly and as a result have had a significant and detrimental effect on water quality. Failure to adequately measure their adverse effects is tantamount to negligence. Ngāti Kahungunu requests that the following attributes be added to the NOF for human health purposes - benthic cyanobacteria, water clarity and periphyton cover.
12. The NOF should re-emphasise the 'maintain or enhance' approach of the NPS FM Objective A2 and equivalent RMA function, and the policy framework should be sufficiently robust to ensure that no water body should be allowed to degrade. Caution must be taken to ensure the NOF attributes and bottom lines give effect to the RMA and its purpose, to promote sustainable resource management.

Swimmable - Immersion

13. Tāngata whenua have and will never view total immersion in their awa as being unrealistic. The significance for tāngata whenua in being immersed and 'cleansed' by their awa is far greater than the commonly used western recreational thinking and term 'swimmable'. In effect this is a total disregard and does not provide for the relationship of Māori our culture and traditions with our ancestral waters.
14. Tāngata whenua have never knowingly consented to the degradation of the waterways to a point that they are no longer swimmable; it contravenes our spiritual values and section 6e of the RMA.
15. Three Regional Councils exist in the rohe of Ngāti Kahungunu, Hawke's Bay Regional Council, Horizons Regional Council and Greater Wellington Regional Council each of their respective 'resource management plans' have *E. coli limits* that are set higher than the NOF, reflecting

wide-scale recognition of primary contact recreation as a bottom line, rather than secondary contact as in the NPS-FM. The Ngāti Kahungunu Iwi authority is relatively pragmatic in regards to waterways that require 'a lot of work' to become 'swimmable', enhancement is simply relative to time.

Tāngata whenua values

- Minimising tāngata whenua interests to certain 'special areas or rivers' and a 'certain times of the year' does not reflect the holistic Te Ao Māori world view. This disregard is a worrying and growing attempt to coerce non-indigenous values on tāngata whenua. It cannot be said that tāngata whenua values are new or unknown; they have existed for centuries and are well documented – what is lacking is the will and provision.

Maintain or improve overall water quality

16. The proposed changes to "maintain or improve overall water quality" within a region to within a FMU, still perpetuates an unlawful approach to the requirement to maintain water quality. The Environment Court has ruled that an "unders and overs" or "averaging" approach to maintaining water quality is inconsistent with the unqualified function in section 30(2)(c)(iii) of the RMA to maintain and enhance water quality - *Ngāti Kahungunu Iwi Inc v Hawke's Bay Regional Council [2015] NZEnvC 50*.
17. The National Policy Statement on Fresh Water Management must promote the purpose of the RMA and cannot change this requirement. Retaining an unlawful statement in the NPS FM can confuse some councils and contravenes the purpose of a National Policy Statement, to provide clarity. The logical recommendation is to remove the word "overall" as it creates the confusion and ambiguity which can lead to interpretations contrary to the law as noted by the Environment Court.
18. The Environment Court also commented on the practical difficulties in implementing such an approach, including the monitoring and enforcement:

"...what kinds of contaminant in one water body could be offset against others, in a different waterbody? ... What sort of beneficial effect would counterbalance an adverse effect when those effects are in different water bodies perhaps scores of kilometres apart?"
19. The Environment Court also ruled that an "overs and unders" averaging approach could not provide for section 6e of the RMA and contradicts 'Tāngata whenua roles and interests Objective D1 and Policy D1 of the NPS FM'. 'Allowing' parts of a catchment to degrade ignores the holistic world view of tāngata whenua.
20. The omission from the '*Next steps for fresh water*' consultation document of the Environment Courts comments was a missed opportunity to provide clarity and progress beyond 'illogical' freshwater management proposals.

Freshwater Management Unit (FMU)

21. Principles and criteria should be specified for selecting FMUs as in the absence of clarity inadequate management and monitoring could easily prevail.
22. Ngāti Kahungunu FMUs should enable different management frameworks between lowland rivers, upland streams, lakes and coastal/ estuarine waterbodies which would result in multiple

FMU's for catchments, including sub-catchment FMUs. Aquifers and ground water are often overlooked or an afterthought to surface water management, and considering their significance and functions, aquifers warrant their own FMU.

23. Enabling large FMUs with multiple characteristics, different hydrological boundaries, various hapū boundaries and interests, and differences in ground / surface water interaction would make it difficult to address land or freshwater mismanagement issues and ability to rectify problems in a timely manner.

Macrovertebrate Community Index as a measure of water quality

24. Ngāti Kahungunu support inclusion of the MCI in the NPS FM and as an attribute in NOF. The MCI is already used extensively to manage waterways across the country and supported by the New Zealand Freshwater Sciences Society; the government's proposal for inclusion is in effect "behind the eight ball".
25. The NOF has lacked a biological indicator, omitting the MCI was illogical and has only delayed the opportunity to provide stronger direction in terms of understanding ecosystem health of our waterways. We encourage the government to provide for ecosystem health by listening to the relevant most relevant scientists in particular Dr Russel Death, the New Zealand Freshwater Sciences Society and tāngata whenua.

Strategic approach

26. A strategic approach should be taken to prioritise action to focus on certain water bodies, including those that are especially vulnerable, or under particular pressure. Delaying action until the NPS can be fully implemented can make the requirement of improving water quality more difficult and costly or potentially impossible. This issue has been highlighted by Ministry for the Environment officials who advised that land use change "...may result in a worsening of water quality in the short to medium-term and make the job of maintaining or improving water quality much harder in the long-term ..." ²

Water quality and significant infrastructure exceptions

27. Exceptions to bottom lines that permit degradation below bottom lines can defeat the purpose of a 'bottom line', we recommend caution and very few exceptions. Not all infrastructures irrespective if it meets set criteria or not, would necessarily require exceptions to bottom lines, it must not be granted automatically.
28. Allowing a freshwater objective to be set below a national bottom line because water quality is already below the national bottom line (unless caused by a natural process) is nonsensical; the discussion document does not refer to 'natural processes' as the current NPS FM does.
29. Allowing infrastructure to degrade water quality beyond national bottom lines – provides a licence to pollute. Incentives and meaningful timelines for achieving environmental targets that promote sustainable management is a more sensible approach. Not doing so ignores future innovation and opportunity, and the potential for technological advances.

² Ministry for the Environment, 2014. *Report and recommendations on the proposed amendments to the National Policy statement for Freshwater Management and public submissions.*

30. Allowing corporations to seek exceptions to bottom lines places communities at an unfair disadvantage – why should tāngata whenua and communities accept and cover the environmental and cultural costs? There is no guarantee that community or locally set resource management bottom lines will not be over-turned via an infrastructure application to government. In effect the integrity of local decision making and any collaborative process (whether legislated or not) could be undermined.

Coastal lakes and lagoons

31. Including coastal lakes and lagoons in the NPS-FM is a welcomed addition and helps provide for a ki uta ki tai (mountains to the sea) integrated management approach. Because of the location and characteristics of these waterways they can be the most vulnerable in terms of water quality and ecosystem health, and therefore require specific management i.e. designation as a FMU.
32. Intermittently closing and opening coastal lakes and lagoons are also cultural important to Ngāti Kahungunu. They can provide an important interface not only between an awa and the moana but, also support the natural migration cycle for tuna (eels), and Māori wishing to conduct their traditional harvesting practices, for example Lake Onoke in the Wairarapa and Whakaki in Te Wairoa.
33. Estuaries are equally as vulnerable as coastal lakes and lagoons and are part of freshwater catchments, hence should be included in integrated management with rivers, lakes, wetland and groundwater. Freshwater management needs to encompass the effects of freshwater management on coastal waters and ecosystems.
34. The New Zealand Coastal Policy Statement does not contain a framework for setting objectives and quantitative limits or bottom lines. The NPS should be amended to include management of estuaries under the NOF.

Stock exclusion from water bodies

35. We support regulation excluding all stock from water bodies, as this would place greater responsibility on land users and the effects their practices have on water bodies.
36. Stock exclusion regulation should also include sheep from riparian buffers – sheep faeces contain more *E. coli* and *Campylobacter* per gram than cattle.
37. Timelines for Dairy support (third party grazing), Beef and Deer can be improved with 2025 being the absolute latest for compliance.

Economic use of fresh water

A better water management system

38. Given the poor health of many waterways within the Ngāti Kahungunu rohe and over-allocation, more efficient water use and reduction in discharges should not automatically create room for new users. Total water allocations are not always used, 'efficient use' could be viewed as using total allocation this has the potential to cause problems like earlier 'cut offs' and water shortages due to increased water use despite potentially unchanged allocations.
39. This scenario has had drastic effects on our marae and communities in the past

40. Ngāti Kahungunu support the concept of fairness and equity in relation to water use being firmly embedded in the NPS-FM, the loss or lack of water security for domestic water users should be remedied or not be permitted, for example the community of Bridge Pa.

Technical efficiency and good management practice standards

41. In line with Te Mana o te Wai - limits and targets should be set first, prior to water allocation to avoid allocation or over allocation driving limit-setting and policy.

Transferring consents to more efficient, higher valued uses

42. Limits and targets should be set first. In catchments that are not over allocated, water transfers would likely have limited interest or need. As water users could simply apply for a consent, it could in effect create a scenario where water users apply for greater takes than they actually need (on top of what already happens) in the interest of pecuniary gain or other benefit. Potentially creating a commodity and trade that doesn't actually add any extra value to the economy.
43. Where water is over allocated any potential transfers should be used first and foremost to remove over allocation. When a water user has excess water it would be illogical to allow them to transfer an allocation to 'use water' when over allocation exists.
44. Human health and well-being should be factored into the higher value equation and prioritised before out of stream use for commercial or economic gain. Market forces often determine what attains a "high value" and these values can fluctuate markedly. Full cost accounting needs to be used when evaluating a higher value use, and a more pragmatic "average" of economic value or return, with borrowings or farm debt included, as well as environmental costs.

Addressing over allocation and over-use at least cost

45. Primarily over allocation should be addressed by a meaningful regulatory approach that reduces allocation of water or discharge allowances to the extent necessary to achieve community objectives or targets within a defined timeframe.
46. Ngāti Kahungunu recommend implementing all the recommendations of the Land and Water Forum given the forum's inclusion of multiple sectors of the community.

Council funding for freshwater management

47. We support this proposal as, water users should pay for the cost of relevant, management, research, monitoring and enforcement. These operations of council should not be compromised due to lack of funds and the general public left to pay for all the calculated and uncalculated (e.g. ecosystem service) costs generated by water use. Costs should be equitable and proportional.

Iwi rights and interests in fresh water

48. An allocation to 'use water' is not a 'right' or property right; this specific wording was removed from legislation intentionally when the Resource Management Act 1991 was drafted and promulgated.
49. The Waitangi Tribunal have ruled that iwi have a 'right' and 'interest' to freshwater which by definition is greater than an allocation to 'use'.
50. Ngāti Kahungunu has never relinquished their rights and interests to freshwater.

Te Mana o te Wai in freshwater management

51. Te Mana o te Wai – should provide for and maintain the mana and mauri of water first and foremost. The current NPS FM interpretation does not do the concept justice.

Iwi and hapū relationships with, and values for, water bodies

52. Government and councils need to clearly identify record, recognise and provide for the relationships and values of hapū and iwi with their water bodies. The NPS FM has the opportunity to support this through the NOF.
53. This could include requesting iwi and hapū to spatially identify their area of interest, Councils would then be able to notify iwi and hapū on relevant resource management matters, at present tāngata whenua are not notified on matters that interest them. This process in itself could help identify for both parties the level of relevance on matters, as well as the capacities and capabilities of both parties to effectively engage with each other on resource management issues around fresh water. Each party can respectively assist each other to grow capacity and capability.
54. Recognition and provision has been in most instances slow coming and room for improvement exists – councils should fund relevant aspects of iwi and hapū management plans to be developed.

Participation in freshwater decision-making

55. At present Councils are required to provide iwi with ‘opportunities to contribute to’ decision making and this has manifested in a number of ways, but for a wide array of reasons in many respects the ‘opportunities’ are woeful. This is confirmed by the current proposal and the demand driving improvement.
56. For the iwi authority the best opportunity to participate in decision making is through enabling iwi and hapū into co-governance and co-management arrangements respectively.
57. Any reference in the NPS FM to improve the status quo should reflect stronger emphasis than the current RMA i.e. “opportunities to contribute to’ decision making.
58. Proposed arrangements should recognise iwi authorities.

Clean, safe drinking water for marae and papakainga

59. The availability of clean, reliable, safe drinking water for communities should be a mandatory objective nationally related to human health.
60. No need to isolate marae and papakainga and only focus on them, many of those with the most need (including Māori) are part of wider communities. Māori living near their marae but not on papakainga may not be provided for in the given proposal.
61. Government should reinstate the Capital Assistance Programme (CAP) or equivalent to provide those communities in need with clean, reliable, safe drinking water. Removing this **action** programme and replacing with a **statement** for a similar purpose doesn’t make sense.

Freshwater Improvement Fund

62. Support a fund to improve freshwater providing the fund does not undermine resource decision making processes. The fund should not subsidize the environmental costs of development or infrastructure like irrigation projects.

If there is the opportunity Ngāti Kahungunu Iwi Incorporated wish to be heard in relation to this submission, for any additional information, please contact Jonathan Dick Pouarataki – Te Taiao me ona Rawa (Director of Environment and Natural Resources), Jonathan@Kahungunu.iwi.nz

Nāku noa,



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