

Current issues in freshwater management and reform.

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David Randal

Introduction/structure

- Background to freshwater reforms
- Matters flagged for potential reform:
 - Clarifying the NPS for Freshwater Management
 - "maintain or improve" overall water quality
 - Iwi/hapū rights and interests in fresh water
 - Te Mana o te Wai
 - Iwi/hapū relationships with/values for water bodies
 - Participation in freshwater decision-making
 - Drinking water for marae/papakāinga
- What's missing from "Next steps for fresh water"?

Background – recent history

- Management of fresh water has been high on the political agenda for some time
 - New Start for Fresh Water – 2009
 - LAWF, Iwi Leaders Group
 - RM (Measurement/Reporting of Water Takes) Regs 2010
 - Fresh Start for Fresh Water – 2011
 - NPS-FM 2011
 - NPS-FM 2014 (National Objectives Framework)
- Iwi/hapū rights and interests – litigation in the Waitangi Tribunal and courts regarding Māori interests in water

"(...) Māori had rights and interests in their water bodies for which the closest English equivalent in 1840 was ownership rights, and that such rights were confirmed, guaranteed, and protected by the Treaty of Waitangi, save to the extent that there was an expectation in the Treaty that the waters would be shared with the incoming settlers."

Background – recent history

- Joint work plan agreed between the Crown and the ILG
- Four priority workstreams:
 - Recognition of whānau/hapū/iwi relationships
 - Hapū/iwi freshwater governance, management, and decision-making
 - Freshwater quality
 - Economic interests

"Next steps for fresh water"

- Clarifying Objective A2 of the NPS-FM
 - *"the overall quality of fresh water within a region is maintained or improved (...)"*
 - RCs identify FMUs, values, and attributes, assign attribute states, and establish freshwater objectives
 - Does Objective A2 allow an 'overs and unders' approach to water quality within a region?
 - *Ngāti Kahungunu Iwi Inc*
 - *Sustainable Matatā*

Ngāti Kahungunu Iwi Inc

- Objective A2 does not mandate 'overs and unders'
 - Inconsistent with regional council function to maintain and enhance
 - Inconsistent with section 69 – standards in a plan may not result in a reduction in water quality [unless consistent with the purpose of the RMA]
 - Objective A1 unequivocal – "safeguard"
 - Creates significant practical implementation issues
 - May be appropriate within the same waterbody but still significant implementation issues

Sustainable Matatā

- Designations and resource consents for a proposed new wastewater treatment plant and land application area to replace existing septic tanks in Matatā
- Objective A2 – 'overs and unders' argument rejected:
 - Contrary to Part 2 – especially s5(2)(a)-(c) – to allow individual catchments to fail to meet standards
 - Function of regional councils to maintain/enhance
 - Te Mana o te Wai – relationship required maintenance/enhancement

"If the suggestion is that the Freshwater Policy Statement provides some permit to drive to the bottom line, or a licence to pollute, then that concept is entirely rejected by the Court"

Next steps for fresh water:

"The first change is to the requirement to maintain and improve freshwater quality. Currently it applies over a region. There has been criticism that this lets a council allow a water body to have an ongoing decline in water quality. We are proposing to narrow the requirement to a Freshwater Management Unit"

Next steps for fresh water – Objective A2

- Government seeking feedback on:
 - The requirement to maintain and improve overall water quality applying to a FMU
 - Councils having flexibility in maintaining and improving water quality, including:
 - Ensuring attributes remain within current bands
 - If an attribute does not have a defined band then demonstrating that a value is no worse off
- Implementation will be a challenge

Next steps for fresh water – iwi/hapū rights/interests

- Te Mana o te Wai
 - Current reference inadequate/unclear
 - Proposals to:
 - include a purpose statement in the NPS
 - require regional councils to reflect Te Mana o te Wai in implementing the NPS

Next steps for fresh water – iwi/hapū rights/interests

- Iwi/hapū relationships with/values for water bodies
 - Onus on regional councils to engage with iwi/hapū and ensure that all relationships with water bodies are identified in regional planning documents
 - Councils must engage with relevant iwi/hapū when identifying values and setting objectives for FMUs

Next steps for fresh water – iwi/hapū rights/interests

- Participation in freshwater decision-making
 - Mana whakahono a rohe agreement – an alternative to 'iwi participation arrangements', but initiated by iwi
 - Available to all but don't override/replace existing arrangements or preclude others
 - Can be between multiple iwi and council
 - How iwi and council(s) will work together on plan-making, consenting, monitoring/enforcement, bylaws, regulations, and other council responsibilities
 - Review and dispute resolution processes
 - Water conservation orders
 - Implementation support – building capacity/capability

Next steps for fresh water – iwi/hapū rights/interests

- Funding to develop/improve drinking water infrastructure at marae and papakāinga

What's missing?

- Matters absent from "Next steps for fresh water"
 - Recognition
 - Ownership of Crown-owned river/lake beds and water column, or Awa Tupua approach
 - Title in fresh water
 - Mechanisms to enable iwi/hapū to access fresh water to foster economic development
- A continuing discussion?

