

Submission to Ministry for the Environment on
“PROPOSED AMENDMENTS TO THE NATIONAL POLICY
STATEMENT FOR FRESHWATER MANAGEMENT 2011 – A
DISCUSSION DOCUMENT” (FEBRUARY 2014)

INTRODUCTION

1. Straterra¹ welcomes the opportunity to submit on the discussion paper² entitled “Proposed amendments to the National Policy Statement for Freshwater Management 2011”.
2. The New Zealand minerals industry’s interest in freshwater is significant. Ground water will enter mining operations, as does rainfall. Water is used in the operation of drilling equipment and machinery, and in various processes such as ore crushing and chemical processing, tailings management, and cleaning of equipment. In all cases, water use and water discharges are managed, consistent with the Resource Management Act 1991.
3. Straterra was a member of the Land And Water Forum from an early stage, joining the consensus on the first two reports, and on the third with a reservation on collaborative planning process design where no consensus was reached. Straterra was subsequently invited to join a reconstituted, informal “Small Group” of the LAWF. Straterra has been represented also on a government-appointed reference group in respect of the National Objectives Framework.
4. In these groups, Straterra has participated both as an advocate for the minerals industry, and in the conviction that New Zealand is best served by a freshwater regime that serves the national interest.
5. In preparing this submission, we have consulted with NZ Coal & Carbon, Newmont Waihi Gold, OceanaGold, and legal and other consultancy members: Anderson Lloyd, Beca, Golder Associates, Merman, and Russell McVeagh.
6. The “Small Group” of the former LAWF has produced a submission on behalf of a broad cross-sector of freshwater stakeholders, as well as iwi, which we generally support. We also support

¹ Straterra represents more than 90 % by value of NZ minerals production, exploration, research, engineering and geotechnical services, and support <http://www.straterra.co.nz/About+Straterra>

² <http://www.mfe.govt.nz/publications/water/proposed-amendments-nps-freshwater-management/proposed-amendments-nps-freshwater-management.pdf>

the Business NZ submission, in particular the discussion on property rights, as a necessary consideration to provide certainty to investors.

7. We welcome the opportunity for further engagement with the Ministry for the Environment as the freshwater regime is developed and implemented.

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EXPLANATORY NOTE

8. This submission is in two parts: (1) an executive summary setting out the New Zealand minerals industry’s key interest and concerns, followed by a list of recommendations to the Ministry for the Environment, and (2) Straterra’s response to the questions posed in the discussion document (DD).

EXECUTIVE SUMMARY: HEADLINE ISSUES FOR THE NZ MINERALS INDUSTRY

General

9. The Government has put considerable thought into its proposals for amending the National Policy Statement for Freshwater Management (NPS-FM), and that is appreciated. The expansion of the set of values for which water can be managed, the inclusion of tangata whenua values, and the designation of compulsory values; and the provisions for a National Objectives Framework, an exceptions regime, and for managing competing demands on water in plans (choices or trade-offs), entail significant changes in the way water is to be managed in New Zealand. That is all generally supported.

Lack of clarity

10. The questions in the DD go into matters of detail that do not always address the overall substance of the proposed amendments to the NPS-FM.

11. Industry needs certainty and structure to the NPS-FM, to facilitate company-level discussions around investments. We are concerned that the NPS-FM, with or without the proposed amendments, does not provide that. It is not sufficiently clear to us how the NPS-FM is to be interpreted and applied. Part of the problem is we do not have an RMA Bill in front of us to provide context.

12. The NPS-FM would benefit from comprehensive guidance³. In writing this guidance, it will be important to apply technical expertise. Straterra has many experienced RMA practitioners within our membership, and we would be happy to receive an approach for assistance from officials.

NPS or NES?

13. The National Objectives Framework is, in essence, a set of tables with numbers in them or narrative descriptions, detailing bottom lines, or boundaries between bands in water quality, for those attributes where the science has been done, and a consensus achieved. We simply flag for officials' consideration whether or not the NOF is better suited to being incorporated into the NPS-FM, or being developed as a separate National Environmental Standard (NES).

³ The existence of an implementation guide for the NPS-FM is noted. We believe this document would benefit from a review.

Collaborative process for developing and reviewing freshwater plan provisions

14. It is noted that the DD does not address the freshwater planning process; that would be covered in the forthcoming RMA amendment Bill. Nonetheless, the underlying assumption throughout the DD is that a collaborative process will be followed. Based on our knowledge of the Government's developing thinking on collaborative process design, we consider it unlikely that such processes will be followed (except for Canterbury where this has been made compulsory). Schedule 1 (which provides for a standard process) will retain an important role, we believe.
15. Given the above, more circuit breakers will be needed as the planning process unfolds to enable the use of schedule 1, at any stage. As far as the collaborative process goes, it is unclear to Straterra how this process would be informed⁴, and who would pay for the process.
16. For the record, Straterra has proposed previously to government a collaborative process design⁵ that we consider would be more likely to be workable, and fair and reasonable, than the Government's proposals, or that proposed by the majority of the LAWF.

Trade-offs

17. The use of the word "choices" arose during meetings of the reference group on the NOF. While it sounded appropriate in that context, the meaning may not be apparent to a general audience. This is about managing a way through competing demands on freshwater, that will involve a "trade-off", or "compromise" (proposed Policy CA 1 (f) (iv) and (v) of the NPS-FM).
18. It is possible to propose a "biodiversity offset" on land; therefore, it should also be possible to do the same with freshwater, within the management unit. The Transmission Gully Environment Court decision provides a precedent.
19. A question arises over new entrants into the freshwater regime. Such would be seeking resource consents for water take, or discharges to water, and might not have been part of the planning process. If they have a proposal they believe meets the purpose of the RMA, and if the plan does not provide for a required use of water, that new entrant would have to apply for a plan change. If the plan had been developed via a collaborative process, the plan change also would have to be considered via a collaborative process, to respect the original process. The obstacles for the

⁴ For example, who would provide information or evidence to the planning process, how would it be provided, and who would exercise due diligence on that information or evidence?

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[http://www.straterra.co.nz/uploads/files/straterra_submission_freshwater_reform_2013_and_beyond_\(april_2013\).pdf](http://www.straterra.co.nz/uploads/files/straterra_submission_freshwater_reform_2013_and_beyond_(april_2013).pdf)

new entrant seem insurmountable. This issue has not been considered in the DD, and – we believe – is a serious flaw in the proposed amendments to the NPS-FM.

20. The above issue poses a strong incentive for some sectors and stakeholders to avoid a collaborative process, and seek, instead, a schedule 1 process.

Groundwater

21. All through the freshwater reform programme, the issue of groundwater has been kicked for touch, forgotten, or ignored. There is a risk of unintended consequences from this approach. The straightforward course is to explicitly exempt groundwater from the NPS-FM, or from the freshwater regime generally, and prescribe a case-by-case approach.

22. In explanation, the issue of competing demands on water contained in an aquifer is a very different issue to that of dewatering a mine, i.e., the removal, treatment and discharge of water that pools in mine workings, having migrated from bodies of groundwater. In the second instance, that groundwater may be naturally toxic or mineralised, unable to support life, and/or disconnected physically or geologically from groundwater systems that interact with surface water.

23. The Newmont Waihi Gold submission goes to some length on the subject of groundwater, and this material is supported by Straterra.

24. Notwithstanding the above, Straterra believes the issue of groundwater generally in New Zealand deserves serious consideration, and warrants dedicated policy development.

Spatial scale

25. No questions were asked in the DD on the definition of a “management unit”. We are aware of strenuous opposition from some quarters to the Government’s approach. For the record, we support the flexibility provided - not every catchment or region or waterway is the same.

26. We can imagine a management unit comprising more than one catchment in instances where those catchments are connected in some way, e.g., they all drain the same volcano (Mt Taranaki), or they take a short run to the sea, running parallel to each other along a mountain range (Westland). In other situations, it would be appropriate to assign m/u status to a single catchment, or part of one catchment.

27. The concern has been raised by others that it would be inappropriate to develop trade-offs or offsets (refer to paras 18-21 of this submission) across management units. Generally, we agree. If “ups” and “downs” in water quantity and/or quality were to be considered across catchments, as an example, those catchments would have to be classifiable on scientific grounds as forming part of the same m/u. If such a classification cannot be justified, then it would be difficult to justify a trade-off or offset that that situation.

Artificial water bodies

28. In the minerals industry, artificial waterbodies may be created when the mine closes and an open pit, recontoured or otherwise, fills with water to form a pond or lake, or wetland, and when waste empoundments or tailings dams are created, and managed post-mine closure.

29. At issue is that in some cases, it can be very difficult to meet bottom lines for water quality. For instance, tailings dams can become popular sites for nesting or roosting birds, including native birds, leading to faecal contamination of water, and elevated *E coli* levels. Going for a swim in that tailings dam would pose a risk to human health. The Newmont Waihi Gold submission goes to this issue.

30. The question is whether exceptions or exemptions should apply to that type of waterbody, and how that is addressed in the NPS-FM, or in the freshwater regime more broadly.

Mixing zones

31. The concept of “mixing zones” in relation to discharges to water has been a vexed issue in freshwater management in New Zealand. When a discharge to water is made, that discharge may have a load for a specific contaminant, e.g., nitrate or sediment concentration, and that load would normally decrease, often substantially, on mixing within the receiving water body.

32. At issue is whether the load is measured at the point of discharge, or at a point where a suitable amount of mixing has occurred. The former view is that expressed by, for example, those concerned about fish passage. The mixing zone, however limited in extent, may pose a physical barrier to fish moving upstream or downstream.

33. From an industry perspective, on the other hand, measurement at the point of discharge may be too harsh or unrealistic an approach. As well, it is difficult to measure diffuse discharges; some form of modelling is usually required.

34. Freshwater policy must provide for reconciling the two schools of thought. In the case where fish passage is at risk from a point source discharge to water, consideration could be given to ways of

mitigating the effect of that discharge, e.g., by creating an artificial fish passage. That would be consistent with the spirit and intent of the RMA. An analogy would be the mitigation of periphyton (algal slime on river beds) by planting shade trees along river banks to inhibit algal growth.

RECOMMENDATIONS

Straterra recommends the Ministry for the Environment to:

- a) Agree to develop **guidance** for interpretation and implementation of the NPS-FM, to provide clarity and certainty to freshwater users and other stakeholders;
- b) In relation to Rec. (a), note that Straterra would welcome an approach from officials for **technical assistance**;
- c) Agree to consider whether or not the National Objectives Framework would be better suited to incorporation into a **National Environmental Standard**, or into the NPS-FM, for ease of administration of the new regime;
- d) Agree to provide for consideration of **offsets** within a management unit (refer also to Rec. (h)) in freshwater planning, in the context of proposed Policy CA 1 (f) (iv) and (v) of the NPS-FM;
- e) Note Straterra's concern that the DD does not provide adequately for **new entrants** into a management unit if a collaborative process had been followed at the planning stage, because a collaborative process would also be required for any plan change, to respect the original process, and that could be onerous or impossible to achieve;
- f) Agree that a solution to the problem raised in Rec. (e) may lie in the council agreeing at its discretion, subject to principles or criteria, to lead the **plan change** in such circumstances, and follow a schedule 1 process;
- g) Agree to explicitly exempt or exclude **groundwater** from the NPS-FM, and prescribe a case-by-case approach to groundwater issues;
- h) Note Straterra's view that **groundwater** is a serious issue for New Zealand, and warrants separate treatment in policy development;

- i) Note Straterra’s support for the proposed definition of the “**management unit**”, which affords flexibility when managing freshwater in a region, and in meeting the objectives of the NPS-FM (subject to Rec. (c));
- j) Agree to consider the issues raised in the creation of **artificial water bodies** as a result of mining, and whether or not exceptions or exemptions should apply to these water bodies, generally, or under specified circumstances; and
- k) Agree to provide for consideration of proposals for mitigation of the effects of **mixing zones** on in-stream values for which objectives have been identified, in respect of discharges to waterways, in situations where such mixing zones, would compromise the achievement of that objectives.

COMMENTS ON QUESTIONS POSED IN THE DISCUSSION DOCUMENT

Q 1-2 – Why do we need to amend the NPS-FM?

In our experience, implementation of the NPS-FM has been less than straightforward. There is a dearth of adequate guidance, despite the existence of implementation guidance, and each council has taken its own approach. The current proposals do not solve this problem.

We suggest that the National Objectives Framework (NOF) would be better set out in a National Environmental Standard (NES) than bolted onto the NPS-FM. That is because the NOF resembles more a set of standards than a set of policies.

Q 3-5 – Options for providing further national direction

It is not clear from the material provided what is meant by “safeguarding life-supporting capacity”. More clarity would be helpful, accepting that the NOF is intended to help define this freshwater objective.

It is noted that some types of water have little or no life-supporting capacity naturally.

Q 6-9 - Accounting

The accounting requirement is already prescribed by the water measuring regulations, i.e., in the NES to do with water takes.

We understand that relevant sources of contamination, as opposed to all sources, would relate to the values that are being protected within a management unit (viz. Policy CC1 (b)).

There need to be *de minimis* provisions, thresholds of significance, for the system to be workable.

Q 10-24 – NOF, values, attributes, process

The lack of a framework for macro-invertebrates is noted. In the absence of that, regional councils will develop their own, and many already have done that.

Te Mana O Te Wai would be appropriate for inclusion in Treaty settlement legislation. But this does not look like something that can be specified nationally – we presume that every iwi/hapu would have a different view on what this is.

Many councils have put in more stringent standards for water than may be required under the NOF. What happens to this work, once the NOF is introduced?

It is understood the Government is moving away from Treaty settlement legislation provisions overriding other legislation in respect of freshwater, hence, the drive towards a NOF to satisfy iwi/hapu concerns. That is a logical and sensible approach.

Nonetheless, there is a question as to the future of freshwater provisions in existing settlements – will these be consistent with the new freshwater regime?

We believe it is useful to make a start with the NOF now, even if the tables are not fully populated.

Q 25-27 – Compulsory values in the NPS-FM

We agree with the proposals for compulsory values. It is clear that these do not prevent regions from managing other objectives that would demand higher standards of water quality.

It is noted that New Zealand already has an NES on drinking water, and there are already criteria under other legislation to do with human health and water standards. There is the potential for confusion here.

Groundwater issues are problematic, and should be addressed separately. We need to ensure groundwater stays out of the NPS-FM. The definition of freshwater management could exclude groundwater.

Q 28-31 – National bottom lines

Note that it can take 100 years for water quality to improve – think of contaminated groundwater systems and recharging to surface water. What is considered a “short time” (Q 31)?

Q 32-37 – Exceptions framework

It is noted that “trade-offs” within the management unit - above bottom lines for values for which the waterway is to be managed – are now to be considered as part of the NOF process. That is supported.

The proposed exceptions framework is generally fine. For instance, high sediment loads in rivers can be normal at times of the year, or in relation to normal weather events, and that needs to be factored into the management of that waterway.

In relation to historic activity, what is meant by “reversal”? How is this to be interpreted? (Policy CA2, pages 59-60 of the DD.)

Q 38-40 – Articulating tangata whenua values

It is understood iwi have expressed concern that the NPS does not reflect their values, hence the focus on Maori values. That approach is generally supported.

We are not clear from the material provided what is meant by Te Mana o Te Wai. We assume that every iwi/hapu would have their own interpretation of this concept. It is valid to ask whether or not this is worthwhile for inclusion in the NPS-FM as a national value. It may be better to have it as an optional value for consideration in each region or management unit.

Q 41 – Monitoring

Section 35 of the RMA already requires monitoring; therefore, the DD proposes a redundant requirement. Or is something else intended?