

Submission to Ministry for the Environment on “FRESHWATER REFORM 2013 AND BEYOND (APRIL 2013)”

INTRODUCTION

1. Straterra¹ welcomes the opportunity to submit on the discussion paper entitled “Freshwater reform 2013 and beyond”. We note the deadline for a response of 8 April 2013.
2. The minerals industry’s interest in freshwater is significant. Ground water will enter mining operations, as does rainfall; and 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 has been 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 (as one of a number of issues where no consensus was reached). Straterra has been represented also on a government-appointed reference group on developing 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, Straterra has consulted within its membership, in particular: Anderson Lloyd, Atkins Holm Majurey, Newmont Waihi Gold, NZ Coal and Carbon, NZ Steel Mining, Russell McVeagh, and Solid Energy NZ.
6. We welcome the opportunity for further engagement with the Ministry for the Environment as the freshwater regime is developed and implemented.

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

CONTENTS

INTRODUCTION.....	1
EXECUTIVE SUMMARY	2
General.....	2
Proposed planning process.....	2
National Objectives Framework and managing within limits.....	3
Groundwater.....	4
RECOMMENDATIONS	4
General.....	4
Proposed planning process.....	4
National Objectives Framework and managing within limits.....	5
DISCUSSION.....	5
General.....	5
Proposed planning process.....	6
National Objectives Framework	7
Managing within quantity and quality limits	8

EXECUTIVE SUMMARY

General

7. Straterra broadly supports the Ministry for the Environment discussion document “Freshwater reform 2013 and beyond”. The proposed approach strongly reflects the Land And Water Forum’s work. We make a number of recommendations for improvement.

Proposed planning process

8. The proposed collaborative freshwater planning process is largely supported, in particular, that the formulation of plans via collaboration is an optional alternative to the schedule 1 process. If collaboration is forced, it is not collaboration.
9. Great care will be needed in establishing collaborative stakeholder groups that are truly representative of communities. If a party that wishes to participate cannot be accommodated, then collaboration would not be an appropriate process. That is to say that everyone who wishes to be at the table in a collaborative process must have a place at the table, otherwise this would not be collaboration.
10. We believe that heightened council involvement in the collaborative process is necessary for it to be workable and to deliver quality outcomes; however, the council must accept some loss of

sovereignty to empower said process. We believe the council decision-making step should be removed, and with that there would be no need for appeals on merit to the Environment Court. This would be on the proviso that the hearings panel is replaced by a board of inquiry or the Environment Court. Appeals would be then appropriately limited to the High Court on points of law.

11. We believe our proposals for improving the planning process would lead to reduced costs and time requirements, accepting that these will still be considerable, and will need careful management. In effect, the collaborative process of plan formulation would replace the traditional first-instance council hearing.
12. We note differences between the proposed planning processes for water, and resource management generally. Careful attention to this disconnect is required because there are links between planning, e.g., for land use, and planning for water.
13. We support the enhanced provisions for iwi/Maori participation in freshwater planning, and suggest specifying in the Act that all members of hearings panels or replacement bodies are required to work in committee, and that statutory advice to the council or other decision-makers must be provided within the scope of, and to further the purpose of the Act, and that decision-makers must have regard to that advice when making decisions.

National Objectives Framework and managing within limits

14. The proposed National Objectives Framework on objectives for and limits to the use of water is generally supported. We agree that time should be taken to develop the detail of the framework.
15. We believe that “commercial use and development” should figure in the list of values for water for parity with irrigation, and stock water. Otherwise, New Zealand would be making an inappropriate value judgment that farming is a preferred economic activity to other economic activities.
16. The issues of permit duration, allocation of rights, transfers and trading of rights, incentives for efficiency and mitigation of effects, have in common that they are economic issues. As such, Straterra has an interest. We provide some discussion on these topics later in this submission (paras. 43-65). We would welcome further engagement with officials as policies and tools in this area are developed.

Groundwater

17. Straterra draws attention to Newmont Waihi Gold's submission, in which the issue of groundwater is canvassed in detail, and which we support.

RECOMMENDATIONS

18. Straterra recommends the Ministry for the Environment to:

General

- a) Note Straterra's general support for the discussion document "Freshwater reform 2013 and beyond", which outlines the Government's proposed framework for a new freshwater governance and management regime;

Proposed planning process

- b) Note Straterra's support for the collaborative process as an un-weighted alternative to schedule 1 of the RMA for the council when choosing a planning process, provided Recs. (c) – (j) are considered and upheld;
- c) Note Straterra's support for council involvement and assistance in the setting up of, and operation of a collaborative stakeholder group, including the writing of plan provisions;
- d) Note Straterra's view that great care will be needed in setting up the CSG, to ensure adequate representation, and, if this is unachievable - because all parties could not be accommodated - a schedule 1 process should be preferred;
- e) Agree to replace the hearings panel step with a Board of Inquiry, or the Environment Court, to provide the necessary rigor to this step of the process, and to strengthen the process as a whole;
- f) In relation to Recs. (b) – (e), agree to remove the council from having a decision-making role on the findings of the BOI or Environment Court, in order to empower the collaborative process, and avoid the need for appeals to the Environment Court;
- g) Provided Recs. (b) – (f) are adopted, agree that appeals on points of law to the High Court only would be appropriate;
- h) In relation to enhanced iwi/Maori participation in planning processes, agree to specify in the RMA that members of the BOI or the Environment Court must work in committee, and that

statutory advice provided by Maori must be within the scope of the Act, and to further the purpose of the Act, and that decision-makers must have regard to that advice;

- i) In relation to Recs. (b) – (h), note Straterra’s view that the costs of running a collaborative process could be considerable, in time and resources, and that careful consideration will need to be given to how these costs are managed;
- j) Note Straterra’s view that attention needs to be given to the differences between the proposed planning process outlined in the discussion document “Improving our resource management system”, and in this discussion document (including our proposed amendments);

National Objectives Framework and managing within limits

- k) Note Straterra’s support for the proposed National Objectives Framework, and for a stepwise approach to be taken to developing and implementing this framework;
- l) Agree to add “commercial use and development” to the list of values for which objectives and limits may be set, for parity with other economic uses of water;
- m) Note Straterra’s continued participation in the NOF reference group;
- n) Note Straterra’s interest in participating in the development of policies and tools, as appropriate, on economic issues, such as permit duration, initial allocation of rights, transfer and trading of rights, and incentives for efficiency, which are complex issues, and where resolution is likely to be complex (refer to the discussion below); and
- o) Note Straterra’s view that addressing the issue of over-allocation, once a framework and policies are in place, will take time, and that this needs to be factored into the regime.

DISCUSSION

General

19. Straterra agrees with the Government that water reform is a once-in-a-generation opportunity (page 9). The Government’s mandate to pursue the current path stems from the Land And Water Forum, which is a solid basis for achieving progress. Generally, the problem definition (pages 13-19), and the vision for the future (pages 20-22) are accepted.

Proposed planning process

20. In principle, the concept of council-assisted “collaboration” is supported, as is the lack of any presumption that collaboration should be the favoured option for the council to choose (pages 25-26). Collaboration must be a voluntary choice, otherwise it is not collaboration. Council involvement in the collaborative process will be essential to guide the work of the stakeholder group, and to ensure that notified plan provisions are written to an appropriate standard.
21. We have some observations, along the lines of those made in our submission to the Ministry for the Environment on “Improving our resource management system” but with some differences.
22. It will be crucial to ensure that the collaborative stakeholder group (CSG) is truly representative of all interests in a catchment or management unit. If this is not possible, and we can imagine situations where it would not be, the schedule 1 process should be followed. That is to say councils should not have the ability to “deselect” parties that wish to participate.
23. If the council does opt for setting up a CSG, and assisting the CSG in the way proposed, the council must accept a degree of loss of sovereignty, to empower the collaborative planning process.
24. Under the current proposal, the council, on seeking statutory advice from Maori, makes a decision on the independent hearings panel’s recommendations. That is appealable on merit to the Environment Court if the council disagrees with the panel. That is in line with the process being developed for the Auckland unitary plan, and with the proposed planning process in the earlier RMA reform discussion document, however, neither of these provide for the enhanced collaboration envisaged in the freshwater reforms.
25. We believe the hearings panel, or, preferably a Board of Inquiry or the Environment Court, should be the single, first-instance decision-maker on the CSG’s “notified plan”, and submissions from interests external to the CSG on that plan, without subsequent interference from the council. BOI or Environment Court status for this step in the process is essential to ensure rigor. This will be a first-instance hearing and decision-making process, providing for cross-examination, and raising complex issues in how participation is managed, and evidence is presented and discussed.
26. Accordingly, appeals would be limited on points of law to the High Court, which would be appropriate.

27. If a council is unhappy with our proposed process, there is always the schedule 1 alternative. The point is that the council cannot have its cake and eat it. Either: the council empowers the collaborative process; or it does not, and exercises its decision-making role as currently legislated.
28. An additional but significant issue is the resourcing, costs and time that the collaborative process is likely to require. Consider the number of steps: the CSG process, the hearings panel, the council's decision, appeal to the Environment Court, and, in addition or alternatively, appeal to the High Court on points of law. The Government should be under no illusion that savings in costs or time are likely, although our proposal may lead to some reduction of costs and time because there are already Boards of Inquiry and the Environment Court in existence.
29. We made the point in the executive summary that the proposed planning process for freshwater does not line up well with the planning process proposed in the "Improving our resource management system" discussion document, on which Straterra submitted. This is potentially a serious issue because it is difficult to imagine some aspects of resource management planning occurring in the absence of planning for freshwater.

Iwi/Maori participation

30. Much is made in the discussion document of "effective provisions" for iwi/Maori participation in freshwater planning (e.g., page 19, page 26). We observe that such participation could be done to everyone's advantage by having it explicit in the RMA that members of a hearings panel or the like must work in committee, and that statutory advice must be provided within the scope of, and to further the purpose of the Act (section 5), with decision-makers having regard to that advice. These reflections apply also to the RMA reforms generally.

National Objectives Framework

31. The proposed National Objectives Framework (page 28) to guide the setting of objectives and limits is sound, and is generally supported.
32. It is noted that different classes of waterbody would have different values of state, which would have to be taken into account when setting numeric limits, e.g., streams that permanently carry a suspended sediment load in their natural state.
33. It makes sense to have national bottom lines for human health for secondary contact, and for ecosystem health (page 29), noting that the latter concept is more difficult to define, and noting that greater definition would assist undoubtedly in its application. Having seen preliminary maps

showing waterways at risk for these values, there is clearly a link between the two values or objectives.

34. Missing from the list of values on pages 30 and 31 is “commercial use and development”. If irrigation and stock watering are legitimate values for water, then the use of water as an input into industries other than pastoral farming, horticulture and viticulture should also be recognised, to avoid discrimination in favour of some economic land and water uses over others.
35. It is noted that values listed in the Mana Atua Mana Tangata framework (page 31) are arguably identical to or similar to the values that New Zealanders generally hold for water, with a few exceptions. That consideration appears to be reflected in the table of values and related attributes.
36. It is crucial to provide for regionally-decided timetables for management (page 31).
37. Amendments to the National Policy Statement for Freshwater Management 2011 (page 32) are advisable to ensure consistency between the NOF and the NPS, and reduce the risk of confusion or ambiguity. Ditto for section 69 of the Act, and the removal of schedule 3. Accordingly, the proposed power in the RMA (page 33) for central government to provide for regulations is supported. Likewise, the proposed guidance and direction is supported.
38. Straterra looks forward to continuing to participate in the work of the NOF reference group.

Managing within quantity and quality limits

39. The principles for water quantity reforms (page 37) are supported. We agree that the system needs to be built in a stepwise fashion, and that this will take time.
40. We flag here an interest in engagement with officials on work to “address ... permit duration, alternative allocation tools, alternative mechanisms for facilitating transfers and trade” (page 38).
41. In terms of freshwater accounting systems, we reinforce the point that the good work some councils are doing should be shared and socialised with all councils.
42. In terms of dealing with over-allocation, we suggest a time element should be added to the list of bullet points of possible actions on page 41. Not all of these things would be implementable immediately, e.g., buying back freshwater permits.

Managing quantity: longer term issues

43. As flagged earlier, we have an interest in the approaches to be adopted for managing over-allocated waterways.
44. Arguably, permits should be awarded in perpetuity if there is to be a transfer and trading regime, otherwise the value of a permit would decline towards expiry, and place perverse incentives on permit holders, and potential buyers of permits (page 43). For example, the holder of a 20-year permit would, presumably, not consider selling the permit during the last 10 years of tenure at a price that a new entrant was willing to pay. (Naturally, permits could only be held long term if the permit holder maintained a good record of compliance.)
45. That said, we understand from our experience of the LAWF that there is opposition from some quarters to the idea of permits being awarded in perpetuity. To that, we would say that commercial fishing quotas are awarded in perpetuity, with no public outcry. They are tradable, like other property rights. Indeed, they have to be for the system to work.
46. The issue of initial allocation is complex and difficult (page 43). One approach would be to allocate percentages to existing users of the allocable quantum on the basis of history of water use. A similar approach was taken to commercial fisheries when the Quota Management System was introduced. Some existing users would not have enough water, and others would be willing, theoretically, to sell water at the right price. In an over-allocated catchment, new entrants would have to buy water off someone else. Under this scheme, allocable water would move eventually to the highest-value uses. Ideally, there would be also a smooth correspondence with land values, in the sense that any price on water would affect the price of relevant or related land.
47. This is not a perfect system, granted, but surely preferable to allocation via ballot, which could lead to windfall profits for some and the opposite for others, or a merit-based system that we consider likely to be highly contentious.
48. Auctions (page 44) are a credible alternative on the face of it, and there are various ways these could be done. The allocable quantum could be divided into many lots of equal amount, and auctioned sequentially, or all at once via, say, a clock auction. There are several potential complications.
49. One is that some bidders would pay too much for water, with others buying at a good price. There would be winners and losers. This outcome would be difficult to avoid.

50. Secondly, there may be bidders who are willing to take water at times of high flow only, or at specified times, and, therefore, may wish to bid for water of that type. An auction could end up being a blunt instrument for this category of water user.
51. Thirdly, there may be attempts to game an auction, with some bidders hogging the water market to sell later at their leisure at inflated prices, or not sell at all. Imagine water-starved farmers having to dispose of their land in a fire sale, to be picked up by the water owners, and sold at a profit with water permits attached. Safeguards would be needed to avoid such perverse outcomes.
52. In conclusion, careful attention will need to be given to the design and running of auctioning schemes.
53. On the issue of allocating permits on expiry (page 44), this makes little or no sense if there is a water transfer and trading regime, as discussed earlier. One can have one or the other but not both.
54. In this context, the discussion document states: “Should priority be given to fresh water going to its highest value use, or to protecting existing investment, or to providing for new uses”. These options are not mutually exclusive. For example, if a new user were of a higher value than an existing use, theoretically at least, the new user could buy the water off an existing investment.
55. In terms of transfer and trading, individual transfers between a willing seller and a willing buyer seem to be the most likely outcome, which would go a long way to resolving the need for external setting of priorities.
56. Trading implies some form of brokerage with allocable water in a “bank” from which water could be demanded or supplied at prices that would be open to fluctuation (read market forces). For its part, a water broker could try to buy water off incumbents, to be able to supply to would-be new entrants. This mechanism seems intuitively most applicable as a catchment nears the allocable quantum, in which a price would be assigned to water as competition occurs for the remaining allocable water. It would also encourage greater efficiency in the use of water – efficient users would be rewarded by having spare water to sell. As a downside, such a system would cost money to run; it would have to be worth it.
57. To conclude this section, the longer term issues are complex, and will require careful attention to their resolution. We would be interested in participating in any reference group convened to address these issues.

Managing quality

58. The general approach is supported. It is noted that not every actual or potential contaminant can be identified, let alone managed, and the discussion document appears to acknowledge this (page 48).
59. As discussed in the section on water quantity, a consent transfer (or trading) scheme is incompatible with limited durations on consents for water discharge.
60. We do see scope for offsetting or other compensatory mechanisms. In our industry, it is conceivable that a mining company could deliver a small discharge of sediment into part of a waterway, at certain times, e.g., during times of heavy rainfall. A permit to discharge this sediment could have as conditions attached to it a requirement to undertake some other activity that benefited the waterway in some way, however, not necessarily in respect of water clarity or sediment load. An example would be cleaning up of historic acid mine drainage – termed orphan discharges because no one owns them - by a mining company, which councils could not afford to do.
61. Where there are water quality issues for downstream users, officials could give some thought to the solution adopted by New York City. Instead of building a water treatment plant at a cost of billions of dollars, the city found it much cheaper to pay the upstream Catskill farmers and lifestyleurs to carry out riparian management to reduce nitrate and other contaminant loads in the river water.
62. Another example of such a deal was a French mineral water manufacturer that found it more cost-effective to pay upstream farmers to better manage their nutrients than treat the water.
63. It is accepted that the foregoing discussion implies a right to pollute, however, it must be acknowledged that it is difficult to address water contamination by diffuse polluters who cherish their existing-use rights to water. Controversy remains over the models in existence (e.g., page 49), and in development or evolution.
64. Questions also remain over the effectiveness of contaminant trading schemes. One designed for the Rotorua catchment would be potentially so expensive to administer that the council may be better off purchasing all nutrient-producing farms, removing the livestock, and planting pine trees on the land. Nonetheless, experience with these schemes is growing to society's advantage.

65. All of the above discussion reinforces the need for good planning for freshwater, and is a reminder that a mix of tools and approaches will be needed, on a catchment by catchment basis.