



**SUBMISSION: DISCUSSION DOCUMENT -
FRESHWATER REFORM 2013 AND BEYOND**

Date: 08/04/13
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A handwritten signature in black ink, appearing to read "Andrew Curtis", with a long horizontal stroke extending to the right.

(Andrew Curtis, CEO IrrigationNZ)

IrrigationNZ is happy to provide further comment as required.

OVERVIEW

1. IrrigationNZ (INZ) is a national body that promotes excellence in irrigation. INZ represents the interests of over 3,600 irrigators (irrigation schemes and individual irrigators) totaling over 350,000ha of irrigation (approximately 50% of NZ's irrigated area). It also represents the interests of the majority of irrigation service providers (over 140 researchers, suppliers, designers installers and consultants).
2. All INZ members businesses are founded on secure, on-going access to a reliable water supply for irrigation - they need certainty to enable investment and thus continually improve their productivity and resource use efficiency. Without certainty they and the considerable flow on benefits to regional economies, particularly in eastern regions, would be severely impacted. The national economy would also be significantly impacted upon given that NZ is predominantly an agricultural export based economy.
3. INZ actively engages with its members on planning issues, proactively facilitating a wider understanding of the relevant issues by all.

SUBMISSION OVERVIEW

4. INZ generally welcomes the content of the government's proposals for freshwater reform. INZ is committed to working with government in the further development, and importantly the implementation of them. Overview of the INZ submission -

Knowledge and Information

5. Knowledge and information gaps, particularly in spatial and temporal trends and the socio-economic significance of current resource use, are considerable in NZ. It is vital a national strategy (in partnership with local government and industry stakeholders) is developed and, more importantly, implemented to address these. The process of setting freshwater objectives and limits as mandated by the NPS is currently ill-informed. To date a 'values based' approach has become the driver. This not an intelligent pathway if we are to avoid future 'shocks' and/or 'perverse outcomes' for NZ Inc. It is vital that we understand the consequences and opportunities of future decision making.

National Objectives Framework

6. INZ broadly supports the proposed National Objectives Framework providing a robust cost-benefit analysis is applied to each national bottom line. INZ also agrees with a universal focus on general protection for indigenous species and human health for secondary contact with other factors then being able to be introduced as applicable. However INZ does not agree with flows being contained within the framework.

Planning as a Community

7. INZ rejects the proposed alternate planning pathway as it significantly restricts appeal provisions without providing sufficient incentives for front-end community engagement. An alternative process that provides for more robust community engagement while maintaining structural incentives to maximise consensus-building and minimise re-litigation, is included in this submission.
8. As per the LWF report, the potential solutions and opportunities that infrastructure provides (quantity and quality) should be recognised and incorporated into the reforms as an essential first step in the planning process.

Managing Quantity

9. INZ broadly supports the water quantity proposals. However -
 - For accounting and permit specification, to create an enabling environment for dynamic efficiency, it is important that there is specific detail as to the requirements, and a nationally consistent approach adopted. A regulatory pathway should replace the suggested 'guidance' approach. It is also important that the development pathway is in partnership with industry.
 - Dealing with unauthorised takes should be given a higher priority. There are a number of regions in which a laissez faire approach has predominated over the last twenty years. These issues need urgent resolution and so must be worked through in a timely manner.

Managing Quality

10. INZ strongly supports the priority given to development and implementation of a GMP approach for achieving water quality outcomes. To date the water quality management approached has focused on the allocation of nitrate at the farm scale using modeled outputs. INZ has many concerns with such an approach, particularly the preoccupation with nitrate when it is but one of many factors that impact water quality. The delivery of water quality outcomes requires a 'comprehensive' cause and effect issue based approach, combined with a focus on continuous improvement for all (urban and rural alike).

PROPOSED REFORMS - PLANNING AS A COMMUNITY

11. INZ welcomes the new focus on; facilitating inclusive community discussions on local issues and opportunities; the gathering of robust information; the intent to provide a collaborative planning process for freshwater, as an alternative to the existing RMA schedule one process.
12. The diagram to illustrate the proposed decision making pathway is extremely useful. The expectation of robust and inclusive community processes and the emphasis on the iterative processes are extremely important. Both are essential steps if community stakeholders and iwi are to set freshwater objectives and limits with a detailed understanding of the impacts of their decisions.
13. The collaborative planning process as per the LWF report, should have an upfront focus on the potential solutions and opportunities that infrastructure provides (quantity and quality). The provision of a solutions focused policy development approach is vital if NZ is to maintain and grow its socio-economic well-being.

Reform 1: Collaborative Planning for Regional Plans and Policy Statements

14. Within the context articulated above, it is of significant concern that the LWF recommendations for front-loading collaboration and incentivising honest engagement with restricted appeal rights have been reduced to:
 - *Councils will appoint at least one collaborative stakeholder group.*
 - *This group will give advice as the plan is developed.*
 - *The exact role of the group may differ but could involve advice to council on desired values, objectives and limits for particular waterbodies and / or a role working alongside a council to draft plan provisions.*
 - *The council will retain responsibility for approving a plan for notification that reflects the consensus views of stakeholder groups. The council will be required to demonstrate a high level of transparency and rigour of analysis.*
15. INZ recognises that a Council will always retain statutory responsibility for plans. However, the LWF report emphasised that the opportunity was to encourage a culture of joint responsibility for freshwater policy and planning. The description as contained in the reform is effectively business-as-usual, with a tack on

community advisory group, not an alternate pathway for seriously engaging the knowledge, energy and commitment of catchment stakeholders. To be blunt, why would community leaders want to give up their time for this?

16. INZ notes with concern that the process described above – *one or more groups advising council, perhaps some on values, others on methods* - is at odds with the core principle that values and objectives should be developed in an iterative process alongside consideration of the practicalities, costs and trade-offs of achieving them.
17. INZ acknowledge that moving from consultation to collaboration and from issues-based plans to integrated catchment management will require a significant shift in thinking and skill-sets across for all. We also acknowledge that such an approach may not be the necessary or preferred pathway in all catchments. However, if we are to find practicable solutions for resource use in NZ, it is well proven catchment-based collaboration delivers more enduring results than an “advice to council” approach will. The time is right to make provision for this as an alternate planning pathway.
18. The discussion document goes on to state that:
 - *An independent hearings panel with a majority of non-council commissioners will consider public submissions against the evidence and analysis underpinning the proposed plan, and make a recommendation to council on any changes arising. The panel would run mediation (if required) and conduct the hearing with Environment Court rigour (including cross-examination)*
 - *The council will remain responsible for making decisions on submissions and consequential changes to a proposed plan. It must give reasons for any changes to the notified plan and/or the recommendations of the hearing panel*
 - *Appeal rights would be available only when council deviates from the recommendations of the hearing panel.*
19. INZ notes that Hearing Panel deliberations will be significantly reduced with submissions invited on “*evidence and analysis*” sitting behind plan provisions, rather than on the substance of the plan itself.
20. INZ also notes it is proposed that appeal rights would be significantly diminished, i.e. available only where the council deviates from the Hearing Panel recommendations, and importantly not where council makes a decision to deviate from the consensus recommendations of the collaborative stakeholder groups!
21. Therefore stakeholders get one shot at the front end of the process to “*give advice*” to council prior to notification. From that point on there would be no opportunities for substantive submissions or appeals. INZ rejects this proposed alternate planning pathway; and make the following recommendations to provide for more robust community engagement, while maintaining structural incentives to maximise consensus-building and minimise re-litigation:

- **Plan partnership agreement:** councils will appoint catchment-based collaborative stakeholder groups to collaborate on the development, implementation, monitoring and review of catchment-based plans. The partnership agreement would form the basis for the relationship between council and the stakeholder group by conferring on them the duty to plan positively, and deal with differences in outlook, priority and intent through the plan development process. The emphasis would be solutions-focussed: working for win-win outcomes, making hard decisions as needed, and arriving at consensus agreements as far as possible before the plan is finalised for notification by the council.
- **Development of collaborative plan:** collaborative decision-making will be informed by the best available information within a disciplined decision-making framework. The process for agreeing values, objectives and limits should be undertaken in parallel with considering strategies, methods and timelines for achieving them. Reiterations between objectives and methods would be expected to inform clear understanding of achievability and costs, options and consequences. The collaborative stakeholder group would be expected to undertake the discipline of a section 32 evaluation before completing plan development.
- **Council approval of plan for notification:** the first presumption will be that Council will give strong weight to accepting consensus recommendations from the stakeholder group. In the event that Council notify a plan which deviates from consensus recommendations, Council will be required to demonstrate a high level of transparency of decision-making and rigour of analysis. It is critical that this discretion is bound by specific statutory tests and criteria for independent evaluation.
- **Hearing panel:** the Hearing Panel may hear public submissions against the evidence and analysis underpinning the proposed plan. It may also hear stakeholder submissions in respect of matters where no consensus agreements were reached; or where the notified plan deviates from the consensus recommendations of the group. The Hearing Panel will not be granted discretion to introduce matters outside the scope of submissions.
- **Council decision:** the council will remain responsible for making decisions on submissions and consequential changes to a proposed plan. It must give reasons for any changes to the notified plan and/or the recommendations of the hearing panel.
- **Appeal rights:** appeal rights would be available when council deviates from the recommendations of the hearing panel, and when council deviates from the consensus recommendations of the collaborative stakeholder groups.

22. A significant following has built up in support of the collaborative catchment planning framework and is already delivering in some regions, Canterbury, Auckland and Gisborne for examples. INZ believes middle NZ is currently freely investing its time in catchment-based forums to come up with solutions for freshwater. By 'watering down' this commitment with a token offering there is massive risk to good will.

23. Due to its involvement in the Canterbury Water Management Strategy processes and LWF, INZ has already made a considerable investment in collaborative processes. Ultimately we believe they are a better pathway for the development of solution and opportunity focused outcomes – the community is engaged to develop its future. There are two key learning's from experiences to date; all stakeholders must be given the opportunity to put their case forward (talk to their values and needs) as opposed to the Council give its views on each; the roles and responsibilities of all parties (including iwi) must be clearly mapped.

Reform 2: Effective provisions for iwi/maori involvement

24. INZ generally supports the intent to provide for iwi involvement as Treaty partners.

NATIONAL OBJECTIVES

Reform 3: National Objectives Framework

25. INZ supports the proposed National Objectives Frameworks clear focus on specified values and the assurance that the actual values chosen for each freshwater body would be through a local decision process.

26. INZ notes that two objectives would apply to all waterbodies:

- a. Human health: INZ is supportive of this and it being put in the context of secondary contact recreation
- b. Ecosystem health: INZ is generally supportive of this as it is consistent with the NPS requirement to safeguard indigenous species. However we make some further comments below in 26.

27. INZ also notes the intent to designate national “bottom-lines” for a range of key parameters. We support this in principle, however

- A socio-economic analysis must be applied to the selection of any “bottom-line” parameter. Consequences and opportunities have to be understood before an informed decision can be made.
- A number of the parameters listed impact through complex multi-factor interactions and this must be allowed for within the framework – increase in one providing there is a corresponding decrease in another.

28. Specifically, with regard to indigenous ecosystem health:

- INZ only supports the application of “minimum acceptable state” numbers” for those parameters where there is robust information and knowledge leading to certainty, for example nitrate toxicity.
- Otherwise INZ recommends the establishment of narrative for each of the indicators at the national level at the national level.

29. INZ questions how suitable a flows indicator is to be contained within in the national objectives framework? Flows are best dealt with through regulation and guidance material pertaining to the methodologies (processes) applied to derive them. The complications that catchment size, scale and the distribution of climatic

zones within which the catchment is contained mean flows are not suited to an indicator within the national objective framework.

30. INZ notes that the indicative list of attributes principally comprises of physical or chemical indicators. This is very much inconsistent with international moves towards the increased use of biotic indicators. Biotic indicators are extremely useful as they better reflect the actual freshwater values and objectives. For example it is possible to have a pristine water quality environment but due to a proliferation of pest species none of the freshwater values and objectives are met!
31. INZ agrees with the statement that *“it is important that all impacts – environmental, cultural, economic – of different choices are well understood before final decisions are made. For example, robust economic analysis is required during the regional planning process so that communities can balance the costs and benefits of the various choices”*. This statement is extremely applicable in the development of the National Objectives Framework. Further to this – and picking up on other points made above – INZ recommend an additional element is required in the reform package:

Knowledge and Information

32. INZ strongly recommend that the importance of excellent scientific and socio-economic information be clearly stated as a focus in relation to setting objectives. Key areas of work should include:
- The production of a national strategy to understand and fill gaps.
 - Robust analysis of the socio-economic implications of national bottomlines
 - Robust analysis of the current state of NZ waterbodies relative to the proposed new National Objectives Framework. This work should include analysis of regional and seasonal patterns and temporal trends; together with analysis of implications for informing policy and prioritising action
 - Research into flow regimes and the range of other factors impacting on the distribution and abundance of indigenous aquatic species
 - Further development of biotic indicators (indigenous fish and invertebrates) as indices for the quality and health of NZ waterways
 - Development of template to ensure consistent and robust socio-economic analysis.
33. The present concern is the majority of current policy making is not founded on a strong evidence base. Cause and effect must be clearly understood if enduring solutions are to be found. The future community debate must be informed by clear and careful analysis, policy making must well-founded on a strong evidence base; and the investment of public and private resources is clearly prioritised to deliver effective and cost-effective outcomes for New Zealand.

Reform 4: Further national direction objectives and limits

34. INZ supports the intent to develop a stronger suite of national guidelines, building off the platform established by the NPS Implementation Guide, and based on the LWF recommendations.

35. Central and regional government must engage with industry and stakeholder groups in the development of this national guidance. The direction is most appropriately expressed as guidance.
36. A key area where national direction may be required relates council planning documents, specifically water quality schedules as a result of the Freshwater Management NPS. A number of operative or notified regional plans and policy statements include water quality schedules comprising of values based on ANZECC reference values for un-modified catchments, Canadian Water Quality Standards for lake trout, or Biggs' default values for periphyton. While these regional water quality schedules may serve as "reference" points or "aspirations", these are not "objectives" as intended by the NPS, and are therefore not applicable as catchment limits.
37. INZ recommends that direction from central government is required to clarify that these "pre-NPS" water quality schedules do not meet the NPS requirements for setting values, objectives and limits; and that Councils must make provision for this work to be included as part of their implementation programme.

Reform 5: Water Conservation Orders

38. INZ supports the intent to review the Water Conservation Order (WCO) process. We have particular concern that without this reform WCO's will be used to gazump the collaborative community process in some catchments – particularly if the outcomes do not suit certain stakeholders. There has been concern expressed by other stakeholders that "symmetry" is required if WCO's are to be reformed. INZ struggles with this, for example planning for an irrigation scheme or water storage dam takes years, it is not something that is done overnight - if it was the consent application would be refused! Conversely, a WCO can be lodged as a blocking tactic in a relatively short time period and for very little initial cost.

MANAGING QUANTITY

Reform 6: Freshwater accounting systems

39. INZ supports the intent to develop an accounting system for freshwater takes. Accounting is extremely important as you "can't manage what you don't know". Lack of robust water use information has been a fundamental issue in NZ for decades. Importantly the accounting system must be nationally consistent, enabling national accounts and the performance of regions over time to be compared. When developing the accounting framework it is important a strategic approach is taken – an analysis of the opportunities the accounts could create for NZ. Providing a platform to better enable dynamic efficiency, for example. INZ would be keen to work with government to input into the strategic development of a national accounting framework for water quantity.

Reform 7: Efficient water use

40. INZ welcomes the proposal that central government will work with priority sectors and key stakeholders to develop and roll-out sector specific toolkits for good management practices for efficient use. INZ has already developed a framework for “Irrigation Good Management Practice” and is looking forward to further government engagement and support with its continued roll out.

41. This reform should also be linked to the allocation of freshwater at the property level - a nationally consistent “reasonable use” test need be developed and implemented. Currently there are a number of different methodologies used for this, differing from region to region, which is highly illogical. INZ would like to engage with government on the further development of a reasonable use test for irrigation – a working party between councils, government and industry to develop a freely accessible web based “reasonable use” test portal for consent holders and councils.

Reform 8: Specification of permits

42. INZ supports the development of standardised templates alongside measures to ensure that permit durations are not un-necessarily short. However the approach needs to be changed from guidance to a regulation. The unbundling and standardisation of permits is the other key component (alongside an accounting framework) for enabling dynamic efficiency. Providing councils with guidance does not ensure that NZ will get a national consistent approach to this – guidance is frequently ignored. Permit specification is mechanistic with no discernible reason for regional variations. For example, in the case of Australia a nationally consistent approach to permit specification was implemented and as a result they now have a world leading water quantity management system. NZ needs to take note of this.

Unauthorised takes

43. Dealing with unauthorised takes should be given an immediate priority. There are a number of regions in which a laissez faire approach has predominated over the last twenty years resulting. This has resulted in confusion as to what is required for certain water take activities. These issues need urgent resolution and so must be worked through in a timely manner. A head in the sand approach to this will benefit no one

Managing quantity: next steps

44. INZ generally supports the matters to be considered over the longer-term. INZ has a strong interest in future discussions relating to:
 - Over-allocation and transition
 - Initial allocation methods - although as continually stated this is of little consequence to NZ as the majority of the water has already been allocated!
 - Allocation on expiry
 - Consent duration
 - Compliance and enforcement

- Pricing tools – note these become largely redundant through a combination of the reasonable use test, the fact that Irrigation Good Management Practice requires “justification of use” and enabling dynamic efficiency through the accounting framework and permit specification.

MANAGING QUALITY

45. INZ notes that the reform proposals attempt to build on the LWF recommendations for a management “toolbox” with a range of regulatory, non-regulatory, and economic tools; and including catchment-scale infrastructure and attenuation methods. LWF recommended a role for central government to develop guidance across the range of methods; and INZ welcome this focus as part of the reform package.
46. INZ specifically welcomes the emphasis on the key role of “Good Management Practice”. INZ stresses that while allocation is appropriate for water quantity, due to the complex and interactive nature of water quality, its management demands a wide range of policy instruments and approaches.

Reform 9: Science, research, knowledge and information

47. INZ strongly supports the importance of good information, and the subsequent intent to review the Water Research Strategy. However, the current list of proposed research priorities is skewed towards models that underpin the water management system and INZ questions this focus?
48. Models certainly have a place in informing policy development and in finding solutions, however in reality they are only as good as the information entered into them. Alongside models INZ recommends that there needs to be a research focus upon:
- catchment scale monitoring, analysis and identification of an issues spatial and temporal patterns – honing in on the actual problem and solution
 - better understanding of catchment attenuation processes (understanding the fate of nutrients post the rooting zone)
 - the development and adoption of farm and catchment scale attenuation mitigations
 - the application of the 80:20 rule – identification of best bang for buck approaches
 - the linking of economic and environmental outcomes (most environmental solutions also provide economic gain over time – providing there is support through the change process)

Reform 10: Stronger government leadership

49. INZ supports the development of national good practice guidance for councils. Monitoring and reporting is the key and efforts should be focused on transparently informing communities as to how they are tracking against their agreed community objectives.

50. INZ agrees in principle with the intention to make regulations for water quality accounting. However there has been very little discussion as to the 'what' and 'how' to date. It is important that whatever is put in place, note INZ does agree that there needs to be some form of accounting framework as you 'can't manage what you don't know', minimises transaction cost and importantly the reporting outcomes are suitably managed so as they describe trends over time.

Reform 11: Development of GMP toolkits

51. INZ strongly support the development of GMP toolkits. As previously indicated the development of GMP is already well underway across the primary sector. Note: the Irrigation Good Management Practice approach is equally applicable to quality as it seeks to minimize drainage and run-off from irrigation.

Managing quality: Next steps

52. INZ supports the matters for consideration over the longer timeframe. However, we strongly recommend that the methods under discussion are extended to include a full range of industry, partnership and catchment based methods.

53. INZ signal a strong interest in any future discussions about use of models in the regulatory space (particularly given the current OVERSEER and irrigation fiasco), any proposed development of allocation regimes for water quality indicators and the subsequent use of cap-and-trade or resource tax instruments.

INZ SUBMISSION ENDS