

NEW ZEALAND MĀORI COUNCIL

DISCUSSION PAPER ON A WATER POLICY FRAMEWORK

12 December 2014.

Practice

1. The New Zealand Māori Council says national water policy should provide for the interests of the natural environment, the general public and Māori .
2. The Māori interest is based on prior use. An interest based on prior use is not presently recognised in national policy.
3. In addition all people should have free access to reasonable water supplies for personal domestic needs as a basic human right and reasonable access to natural water bodies for recreation.
4. Recognition of the environmental, general public and Māori interests should be founded on an ethic of responsibility in resource use, the concept of the common good and the preservation of natural resources for future generations.
5. Current policies do not balance the necessary responsibilities.
6. The utility of water has been appropriated from the traditional Māori custodians. It has been treated as a limitless, free resource for domestic use, waste disposal and commercial profit. This is inconsistent with the common good and Māori interests and has led to over-utilisation and pollution of water bodies, and losses for Māori communities.
7. As described below, the Council proposes an independent Commission to restore the balance. The Commission is to manage water allocation and fund its activities from a levy on commercial uses.

Theory

8. The Māori interest comprises:
 - proprietary interests in water resources derived from the customary use of water bodies; and
 - cultural interests in the preservation of healthy water bodies derived from the Māori spiritual comprehension of natural water resources and the associated ethic of responsible and constrained use.
9. The Māori interest derives from immemorial usage. Such interest is acknowledged and respected by the Treaty of Waitangi, the UN Declaration of the Rights of Indigenous Peoples and the common law.
10. The general public interest embodies the interest of all people in maintaining reasonable access to the land and waters of their country in appropriate condition for their physical and spiritual sustenance, for themselves and the coming generations.

11. The general public interest separate from the Māori interest, derives from the alienation of land for European settlement as envisaged in the Treaty of Waitangi with an implied sharing of access to associated water bodies.
12. The Māori proprietary and cultural interest in water has been recognised by the Waitangi Tribunal following an inquiry in which several hapu described their customary use of different water resources. How these interests might be provided for today is the subject of this paper and will be addressed in the second stage of the Tribunal's Inquiry.
13. Particular settlements in respect of the Whanganui and Waikato rivers have given imaginative effect to the cultural interest in those cases. However, other settlements on the same basis seem unlikely.
14. A number of water-use stakeholders meeting as the Land and Water Forum, have agreed on some necessary measures in water management. However, the Forum does not address the Māori status as indigenous peoples with pre-existing customary interests, and the respect lawfully due to such interests.

Proposals

15. To give practical effect to the interests today, the Māori Council supports proposals where:
 - a. water wastage is minimised
 - b. a price is paid for the commercial use of water to reflect its value to the community as a whole
 - c. ongoing pollution of water resources is progressively reduced
 - d. currently polluted water bodies are progressively cured and ecosystems re-established
 - e. the water take is assessed as follows:
 - LEVEL 1:* a sustainable natural flow or volume of water is maintained on environmental grounds
 - LEVEL 2:* domestic use water is allocated according to need
 - LEVEL 3:* commercial water use is capped at the volume of water available after allowing for levels 1 and 2 and commercial users are progressively required to pay a usage fee for water consumed, redirected or otherwise utilised
 - f. current consents for commercial usage are wound down to meet the level 3 volumes
 - g. a percentage of the level 3 allocation is reserved to Māori for water related Māori purposes or renting out to other commercial users
 - h. the revenue from commercial uses of water is paid to an independent commission managed on a regional basis and accountable to non-commercial users
 - i. the commission will monitor the water take levels, set water prices and allocate water use rights through a mechanism to be determined by it

- j. the commission will deal with all water bodies including aquifers and geothermal
- k. the commission shall use funds to reclaim water consents; undertake research; monitor water use; foster water storage and reticulation projects; and implement pollution reduction and environmental restoration programs
- l. the commission shall allocate a proportion of revenues to Māori in recognition of the Māori proprietary interest and taking account of previous non-recognition. The funds allocated to Māori shall be applied for the particular needs of Māori in relation to water supplies for marae, papakainga, and general Māori housing, to engage Māori in the restoration of customary waterways and to enable Māori to develop commercial operations utilising water.

Consultation

- 16. This paper has evolved through discussion within the Executive of the New Zealand Māori Council and with its advisers starting in 2013. The advisers are leading ongoing consultation with District Māori Councils, hapu and iwi and external experts. Papers have been presented at various hui and symposia. The primary purpose of the paper and the consultation around it is to inform the Council directly and through its legal team of any improvements to the paper sought by hapu and iwi and ultimately to gauge the strength of support for the proposals in the paper. The paper, in its final form, and the wider output from the consultation will form the basis of submissions to the Waitangi Tribunal when it commences Stage 2 hearings into the National Water Case, brought by the Council in 2012.
- 17. All feedback is welcome at info@mokoia.co.nz, including requests for direct consultation.