

BEFORE THE FRESHWATER HEARING PANEL

UNDER the Resource
Management Act
1991

AND

IN THE MATTER of the Proposed
Otago Regional
Policy Statement
2021 (Freshwater
Planning Instrument
parts)

**REBUTTAL EVIDENCE OF SANDRA JEAN MCINTYRE
ON BEHALF OF KĀI TAHU KI OTAGO, NGĀI TAHU KI MURIHIKU AND TE
RŪNANGA O NGĀI TAHU**

17 July 2023

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INTRODUCTION

1. My name is Sandra Jean McIntyre. My qualifications and experience are set out in my evidence-in-chief for Kāi Tahu, dated 28 June 2023.
2. My rebuttal evidence addresses the planning evidence of other parties that relates to Kāi Tahu values and interests and matters raised in the Kāi Tahu submissions, as follows:
 - (a) **Provision for indigenous species and habitats:** evidence of Claire Hunter for Oceana Gold and for Contact Energy (LF-FW-O1A, LF-FW-P9); John Kyle for Silver Fern Farms (LF-FW-P7, LF-FW-P9); Stephanie Styles for Manawa Energy (LF-FW-P9);
 - (b) **Provision for wetland protection and restoration:** evidence of Claire Hunter for Oceana Gold and for Contact Energy (LF-FW-O9, LF-FW-P10); Tim Ensor for Fulton Hogan (LF-FW-O9);
 - (c) **Request for a policy giving preference to methods requiring the least additional regulatory intervention:** Claire Perkins for OWRUG and Federated Farmers.
3. For the avoidance of doubt, failure to refer to a particular paragraph within the statements of the above witnesses, or to the evidence of other witnesses, should not be taken as my acceptance of its contents. Instead, I have focussed on the evidence that is of the most importance and significance to the position of Kāi Tahu, as set out in its submissions and evidence, where these raise matters additional to those addressed in my evidence-in-chief.

PROVISION FOR INDIGENOUS SPECIES AND HABITATS

4. The evidence of Mr Ellison discusses the value Kāi Tahu place on all indigenous species and the kaitiakitaka responsibility to protect the species and their habitats.¹ Mr Tipa and Ms Cook refer to the impact of loss of fish passage on the ability to harvest mahika kai.² The Kāi Tahu ki Otago vision statement includes protection of indigenous habitats and passage of indigenous species, and these matters are provided for in LF-FW-O1A(1) and

¹ Evidence of Edward Ellison at [49] – [51]

² Evidence of Justin Tipa at [12]; evidence of Evelyn Cook at [16]

(3).³ I oppose the following requests made by submitters that I consider would weaken the policy direction in the PORPS for the protection of indigenous species and their habitats.

LF-FW-O1A(3) - Claire Hunter (Oceana Gold; Contact Energy)

5. Ms Hunter requests rewriting of LF-FW-O1A(3) to make “appropriate provision” for fish passage in place of the section 42A recommendation that indigenous species migrate easily and as naturally as possible.
6. NPSFM 3.26 sets out requirements for fish passage, including that fish passage is maintained or improved by existing structures (except for “undesirable” species). It promotes remediation of existing structures to improve fish passage and requires regard to be had to provision for fish passage in consent applications for any instream structures. Considerations include:
 - (a) the extent to which the structure does not cause a greater impediment to fish movements than occurs in adjoining river reaches and receiving environments;⁴
 - (b) the extent to which it provides efficient and safe passage;⁵ and
 - (c) the extent to which it provides the physical and hydraulic conditions necessary for fish passage.⁶
7. In my opinion, these considerations point clearly towards achieving the outcome described in LF-FW-O1A(3) of making migration easy and as natural as possible. Replacing this outcome with reference to making appropriate provision for fish passage weakens the policy direction and makes the intended outcome more uncertain, as it is not clear how “appropriateness” would be defined. I consider that the wording proposed by Ms Hunter would be less effective in giving effect to Policy 9 and the specific provisions for fish passage in the NPSFM.

³ See my evidence-in-chief at [58]

⁴ NPSFM 3.26(4)(b)

⁵ NPSFM 3.26(4)(c)

⁶ NPSFM 3.26(4)(d)

LF-FW-P7(2) - John Kyle (Silver Fern Farms)

8. Mr Kyle requests that LF-FW-P7(2) be limited to the protection of “significant” habitats of indigenous freshwater species. In my opinion, this is inconsistent with NPSFM Policy 9, which does not include such a limitation.

LF-FW-P9 – Claire Hunter (Oceana Gold; Contact Energy); John Kyle (Silver Fern Farms); Stephanie Styles (Manawa Energy)

9. The submitters all seek deletion of reference to the indigenous biodiversity effects management hierarchy (which is set out in ECO-P6) in relation to the protection of natural wetlands. Reasons given for this include that requiring application of this mechanism in addition to the effects management hierarchy provided for in the NPSFM:
 - (a) would be inconsistent with the NPSFM;⁷ or
 - (b) would be “double-dipping”.⁸
10. In my evidence-in-chief I discuss the distinction between “indigenous freshwater species” “indigenous species associated with freshwater” and recommend that the latter wording be used in LF-FW-P7 to provide for species, such as many bird species, that are not aquatic species but rely on the health of water bodies for some part of their life stages.⁹
11. The effects management hierarchy provided for in the NPSFM addresses adverse effects on the extent and values of a wetland or river, but it is not clear how it would apply in respect to interconnections between terrestrial and aquatic components of the habitats of species that are not confined to the aquatic environment. I consider that reference to the ECO effects management hierarchy is appropriate to ensure that the full habitat needs of these species are provided for.

PROVISION FOR WETLAND PROTECTION AND RESTORATION

12. Tim Ensor (Fulton Hogan) and Claire Hunter (Oceana Gold; Contact Energy) seek amendments to LF-FW-O9 and / or LF-FW-P10 to add qualifiers to the direction to protect and restore natural wetlands:

⁷ Evidence of John Kyle for Silver Fern Farms at [62] – [69]

⁸ Evidence of Stephanie Styles for Manawa Energy at [8.30]

⁹ See my evidence-in-chief at [78]

- (a) Mr Ensor requests inclusion of reference to no net reduction at a regional level in LF-FW-O9(2) relating to the range and diversity of indigenous ecosystem types and habitats, and in LF-FW-O9(3) relating to ecosystem health, hydrological functioning, amenity values, extent or water quality; and
 - (b) Ms Hunter requests addition of the words “where appropriate” to LF-FW-O9(3) and the chapeau of LF-FW-P10.

- 13. The reason given for these requests is that they provide a better reflection of the provision of a consent pathway in the National Environmental Standards for Freshwater (**NESF**) for certain activities within wetlands, and the application of the effects management hierarchy to these activities. They point out that the effects management hierarchy in relation to natural wetlands and rivers allows for adverse effects on wetlands to be offset or compensated for.

- 14. In my evidence-in-chief I refer to the cultural evidence about the importance of wetlands to Kāi Tahu, and my support for the strong policy direction on wetland protection and restoration in the PORPS.¹⁰

- 15. I acknowledge that clause 3.22 of the National Policy Statement for Freshwater Management 2020 (**NPSFM**) and the related provisions of the NESF allow some exceptions to the requirement in NPSFM Policy 6 for no further loss of wetland extent and protection of wetland values. However, I consider that the amendments to LF-FW-O9 and / or LF-FW-P10 proposed by Mr Ensor and Ms Hunter would introduce a broader exception that would be inconsistent with NPSFM Policy 6:
 - (a) In my opinion, Mr Ensor’s proposal to make the requirement for no net reduction apply only at a region-wide level, rather than at a catchment or local level, allows more flexibility in respect to offsetting or compensation than is contemplated by the principles for these in NPSFM Appendices 6 and 7. In particular, principle 7 for both offsetting and compensation states that there is a preference for such action to be close to the impact site or within the same ecological district, and principle 3 of Appendix 6 requires at least equivalence in type, amount and condition of values in the offset provided. Reference to use of mātauraka Māori “at place” in both appendices¹¹ is also, in my view, likely to require application

¹⁰ See my evidence-in-chief at [77]

¹¹ Appendix 6, Principle 9; Appendix 7, Principle 11

of these mechanisms at a catchment, rather than regional, level because, as discussed by Mr Ellison, mauri is unique to each water body.¹²

- (b) I consider that the qualifier “where appropriate” that is sought by Ms Hunter would introduce significant uncertainty in respect to protection of wetland extent and values, as it is not clear how “appropriateness” would be defined.

POLICY GIVING PREFERENCE TO METHODS REQUIRING LEAST REGULATORY INTERVENTION

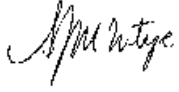
New policy: Claire Perkins (OWRUG and Federated Farmers)

16. Claire Perkins requests inclusion of a new policy LF-FW-P7C that would direct decision-makers to prefer management measures in the Land and Water Regional Plan (**LWRP**) which require the “least additional regulatory intervention” to enable progress towards the visions, including by relying on freshwater farm plans, avoiding rules for matters in the scope of the NESF and Regulations, and “leveraging existing catchment groups or community collectives”.
17. In my opinion, this policy would inappropriately constrain the decision-making process for development of the LWRP in a manner that is inconsistent with Otago Regional Council’s (**ORC**) obligations under subpart 3 of the RMA. An assessment of the benefits and costs of proposed policy approaches must be undertaken as part of the LWRP development process in accordance with section 32 of the RMA, together with an assessment of the efficiency and effectiveness of the provisions in achieving the objectives of the LWRP and giving effect to the higher order instruments, including the NPSFM. The NPSFM requires that limits on resource use are set to achieve the target attribute states and environmental outcomes and, for the compulsory values in NPSFM Appendix 2A, requires that these limits are included as rules in the regional plan.¹³
18. In addition to acting as an inappropriate constraint on the tools or options available to ORC in development of the LWRP, I consider that the policy sought by Ms Perkins would be inconsistent with the requirements of the NPSFM outlined above. I am also unsure what is meant by “leveraging existing catchment groups or community collectives”. The relationship between regional rules and action plans or catchment group activities, and

¹² Evidence of Edward Ellison at [21]

¹³ NPSFM 3.11 and 3.12

determination of the best mix of these to achieve environmental outcomes, is a matter for the regional plan process.

A handwritten signature in black ink, appearing to read 'Sandra McIntyre', written in a cursive style.

Sandra McIntyre