



# Tairāwhiti Regional Freshwater Planning Advisory Group – Hui 8

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Title of report: Water quantity management – allocation principles

Report no: **2**

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## Purpose of this report

This report provides information on methods of water allocation.

## Outcomes sought

- Members of the Advisory Group understand the current approach to water allocation and alternative options for water allocation.
- Members provide feedback on options for allocating water to inform policy development.

## Getting ready for the hui

Please consider the questions in this report ahead of the next hui. This will aid the discussion at the hui.

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# 1. Region-wide water allocation directions

## 1.1. What do we mean by water allocation?

The term “water allocation” is used in this context to describe the system of allocating water via permitted activity rules or resource consents to different water users. Once environmental flow levels and take limits are set to give effect to Te Mana o te Wai (as discussed in the previous report), there must be a system of administering resource consents to comply with those levels and limits.

The default position under the Resource Management Act 1991 (RMA), is that water will be allocated on a ‘first come, first served’ basis.<sup>1</sup> The RMA does not set out how, or for what purpose water will be allocated. However, Council can establish a regionally specific allocation framework for water in its regional plan.

Council has the responsibility to manage the allocation of water for use, where it is available, to water users. The RMA does not allow the taking or using of water unless it is:

- expressly authorised in national regulations or a rule in a regional plan;
- for an individual's reasonable domestic needs or the reasonable needs of a person's animals for drinking water so long as it does not have an adverse effect on the environment; or
- for fire-fighting purposes.

Where the taking or using of water is not authorised by national regulations or the regional plan, water users can apply for resource consents, sometimes referred to as water permits or water take consents.

## 1.2. Current approach to water allocation

This section looks at the current approach to how water is allocated under the Tairāwhiti Resource Management Plan (TRMP), provides detail on the need to better understand and respond to Māori rights and interests in freshwater management, and identifies alternative allocation options for the Advisory Group to consider. For the purposes of this paper and our discussion at the hui, we are focused on how we allocate the amount of water available for abstraction to meet the third priority uses (social, cultural and economic well-being).

Based on current water uses as described in Hui 7, most of the abstracted water in Tairāwhiti as a third priority is used for irrigation purposes in the agricultural/horticultural sector. Other uses include industrial use such as crop and gravel washing and irrigation for school fields and golf courses.

To address the issues we have discussed about the equity of allocation, we need to explore the fundamental principles of how water is allocated. The current system can be seen as unfair between existing and future users as it is rather inflexible to enable new water users, however existing users need certainty of access for their operations.

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<sup>1</sup> Section 30(4)(e) of the RMA

### 1.3. Te Tiriti o Waitangi

Te Tiriti o Waitangi and Te Mana o te Wai provide frameworks for recognising the rights, interests and responsibilities of Māori and all citizens of Aotearoa New Zealand to better own, govern, manage, use and care for water bodies.

The Waitangi Tribunal has heard two claims regarding Māori proprietary rights in freshwater bodies and geothermal resources.<sup>2</sup> The Tribunal specifically considered freshwater proprietary rights, and the RMA allocation regime, concluding that the current system under the RMA has not been consistent with the principles of Te Tiriti because:

- the first in-first served allocation system does not allow applications for water permits to be compared or prioritised so that Māori rights can be taken into account. It also was unfair, especially in catchments that have become over-allocated or fully allocated because of barriers that have prevented Māori landowners from participating in the system in the past.
- decisions about allocation and use have allowed Māori little or no say on outcomes.
- councils have very rarely provided an allocation to Māori in the absence of strong national direction.

In developing the NPS-FM 2020 and informing the implementation of Te Mana o te Wai, Kāhui Wai Māori<sup>3</sup> recommended:

- developing a new water allocation system which conforms with Te Mana o te Wai and iwi/hapu rights and obligations, including recognition of the long held exercise of ahi kā by Māori landowners.
- no allocation based on grandparenting and no perpetual rights.
- that solutions must be enduring and fit for purpose. Urgent attention is required to resolve iwi/hapu customary title, rights, interests and obligations, including an equitable share of allocable quantum, before an allocation system can be detailed.
- new allocation should:
  - respect that each iwi/hapu or Māori landowner maintains their own mana over their waterways.
  - ensure that the first consumptive takes and discharges are provided for iwi/hapu who have a customary right to access an equitable share of the allocable quantum in their area.
  - a certain percentage of the catchment based developmental allocation of water should be distributed exclusively for iwi/hapu landowners.

Despite recent updates to the NPS-FM and considerations by the Waitangi Tribunal, there is still a need to better understand and respond to Māori rights and interests and reflect these in freshwater management. In terms of the third obligation of Te Mana o te Wai, it does not specifically prioritise mana whenua use of freshwater over other social, economic, and cultural purposes.

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<sup>2</sup> WAI 2357 and WAI 2358.

<sup>3</sup> Kāhui Wai Māori is the Māori Freshwater Forum which worked collaboratively with the government on the development of policy options for the NPS-FM 2020.

The new Regional Freshwater Plan provides an opportunity to start to address mana whenua rights and interests in freshwater.

#### **Question for the Advisory Group**

- ❖ How should mana whenua rights and interests in water quantity be reflected in the new Regional Freshwater Plan?

## **1.4. Options for Water Allocation**

### **Current approach – First in, first served**

Under the TRMP there is no prioritisation of water uses; therefore, a first in, first served approach applies. This means that if sufficient water is available, the proposed use is reasonable and any other effects are appropriately managed, any person can receive a water permit.

Where allocations are full or exceeded, a waiting list of potential water users has been established. Again, there is no prioritisation of need or specific uses, so if water becomes available, the next person on the waiting list is able to apply for the allocation.

#### *Benefits:*

- administratively simple.
- well-developed case law on this approach to support decision making.

#### *Challenges:*

- limited ability to deal with situations where many applications are lodged in a short timeframe (i.e gold rush).
- encourages potential applicants to apply for consent before they have any intention of using allocation.
- often, no or limited potential to consider new water users if take limits are exceeded.

### **Alternatives**

Several possible alternatives to this current approach have been considered. This has been undertaken by “going back to the drawing board” and thinking about how the overall allocation system could be amended without considering the legal constraints within which the new Regional Freshwater Plan must be developed.

Some options identified are unlikely to be possible under the current RMA but are presented here to demonstrate this “back to basics” approach and to determine if there any elements of these methods the Advisory Group consider could warrant further investigation of their legality and practicality. Two alternatives are identified as more likely to be possible and feedback is sought on the benefits or challenges of these methods.

## ***Alternative methods less likely to be achievable within current legal frameworks.***

### Allocation by land area

Under this option, the available take limit for any catchment could be divided amongst landowners within the catchment or area the water is sourced. For example, all landowners within a surface water/river catchment. The assigned allocation would be based on the land area held by each landowner, with the take limit divided equally. This would likely result in a litres per hectare allocation.

#### *Benefits:*

- this approach does not pick winners or losers or grandfather existing use, therefore there is fairness in this method.

#### *Challenges:*

- there is uncertainty about how this may be achieved under the current law.
- would encourage transfers of water as not all landowners would require the allocation.
- does not address mana whenua rights and interests.
- likely to be an inefficient allocation method as some potential users will require more water than their allocation, while others may not require any. Water users may face difficulties obtaining access to the water they require.
- may drive inefficient use of water if landowners have more than they need.
- could encourage speculation, with landowners "banking" their allocation.
- administratively it could be complex to determine the land area for allocation and then manage any transferring of allocation.

### Market auction

Auctioning the rights to take water, either when first being allocated, or as a secondary allocation is another alternative to the first in, first served approach. A market auction would seek to allocate the rights to take water to its higher value use and is therefore suited where demand exceeds the available resource. To be successful, participants would need to pre-qualify (i.e. be genuine potential water users), have sufficient certainty about the rights they are purchasing, and the opportunity should be available to all sectors of water use.

To ensure any rights purchased are exercised there may be a requirement to utilise the water right within a fixed time period.

#### *Benefits:*

- manages a potential "gold-rush".
- more likely that water will be allocated to highest value uses (i.e. those that can pay should be those that obtain highest returns).

#### *Challenges:*

- not possible under current legislation.
- creates further "property rights".
- does not address mana whenua rights and interests.
- difficulty in determining who can pre-qualify. What are they assessed against and who undertakes this assessment?
- does not address non-monetary factors such as social and cultural wellbeing.
- raises questions about where paid money goes.

## **Alternative methods more likely to be achievable within current legal frameworks**

### Ballot

A ballot type system could be used to allocate water within the take-limit. This would involve potential water users registering interest to participate in the ballot. There would need to be some regulatory oversight of who can apply to ensure water is allocated to those who will utilise it efficiently. Applicants would likely need to pre-qualify for the ballot and be required to use the allocation within a certain timeframe to avoid tying up resources.

This type of approach is currently included in the Marlborough Environment Plan as a method to re-allocate water within a take limit to those on a waiting list if it becomes available.

#### *Benefits:*

- may be beneficial if allocating to one sector of use in a geographic area where demand exceeds available resources. For example, amongst irrigators.
- does not require the council, or community to identify winners and losers.

#### *Challenges:*

- outcome is random and is unlikely to optimise allocation outcomes between competing uses.
- may encourage speculation to obtain allocation so it could be transferred later.
- does not address mana whenua rights and interests.

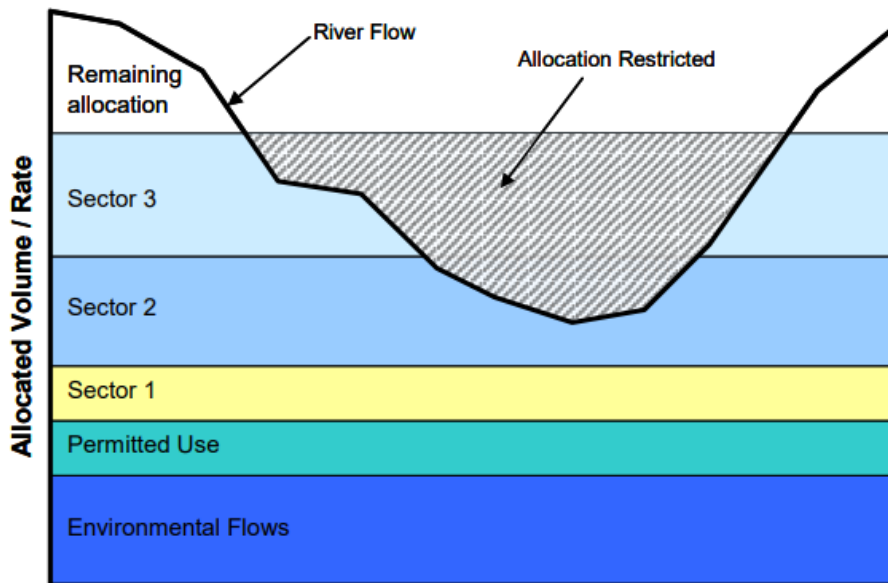
### Sector priority

The basic categories of water use can be divided into various “sectors” to reflect the ultimate use of water. The sectors present will differ catchment to catchment reflecting the various combinations of land use, urban and industrial development present. Examples of different sectors are:

- environmental, recreational and cultural
- power generation
- municipal/community water supply
- industrial and commercial
- agricultural and horticultural

Priority can be assigned for different sectors access to the available take limit. Decisions about which sectors have the highest priority could be based on highest economic benefits, reliability needs, geographic areas, current level of use, public interest (i.e. widest benefits) or technical water use efficiency.

This method of allocation can provide an opportunity to provide for growth in specific sectors. It may also be one way of providing for an allocation of water for mana whenua. An example of how this might look is shown below.



**Figure 1: Application of sector priorities for allocation (Source: Hughes 2010<sup>4</sup>)**

Figure 1 demonstrates that prioritised sectors have the greatest level of reliability, therefore the allocation provides the most benefits. As the level of priority reduces so too does the level of reliability. This approach to allocation has been undertaken for the Waitaki River in Canterbury.

*Benefits:*

- provides clear direction and certainty about water uses.
- enables community to input on clear decisions about how a public resource should be used.
- can provide for growth in specified sectors by factoring this into their sector allocation.
- could provide for a “mana whenua allocation”.

*Challenges:*

- lack of methods for determining the potential national or regional significance of water uses.
- inflexibility if the priority changes.
- difficulty transitioning from current first in, first served approach to sector priority.
- unused allocation within a sector may not be accessed by another. Transferring of allocation, on a temporary basis, could lessen this impact.
- may require some forecasting of future demand based on incomplete information, where current demand does not exceed allocation available.
- lack of case law to support decision-making.

Table 1 summarises the options described above.

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<sup>4</sup> Hughes, B. (2010) *Options to improve outcomes for water allocation (Draft)*. Ministry for the Environment, Wellington.



**Table 1: Summary of Water Allocation Options**

	Compatible with legal framework	Fair: New users can enter system	Addresses mana whenua rights & interests	Efficient allocation / optimises between users	Discourages transfers / speculation	Administratively simple	Flexibility to change prioritisation
<b>1. Status Quo: First in, first served</b>	Yes	Limited ability	No	No	No	Yes	No
<b>2. Allocation by land area</b>	Unsure	More ability	No	No	No	Likely complex	No
<b>3. Market auction</b>	No	Limited ability	No	More likely (monetary efficiency only)	Possibly	Likely complex	No
<b>4. Ballot</b>	More likely	Limited ability	No	No	No	More complex than status quo	No
<b>5. Sector priority</b>	More likely, but lack of case law	Depends on sector and level of use	More likely	More likely, community can input	No	More complex than status quo	No

### Questions for the Advisory Group

- ❖ Thinking about the alternative allocation options described above:
  - Are there any elements of an alternative framework that you support? What is it/are they? Why?
  - Are there any elements of an alternative framework that you particularly disagree with? What is it/are they? Why?
  - Do you have any suggestions for an alternative framework that is not identified above?
- ❖ Do you have any views on principles or frameworks to acknowledge and provide for Māori rights and interests in freshwater, particularly in relation to water allocation?
- ❖ Do you consider that the same approach to allocation should be taken across the region, or could different approaches apply in different circumstances? For example, where there is significant demand vs where there is little demand?

## 2. Conclusion and next steps

This paper has presented the information necessary to understand how to allocate water that is identified as being available for out of stream uses.

At the next meeting, we will be discussing options for managing water quantity to achieve limits.