

Seminar Series - April & May 2020

# The Value of Fresh Water Rights in New Zealand

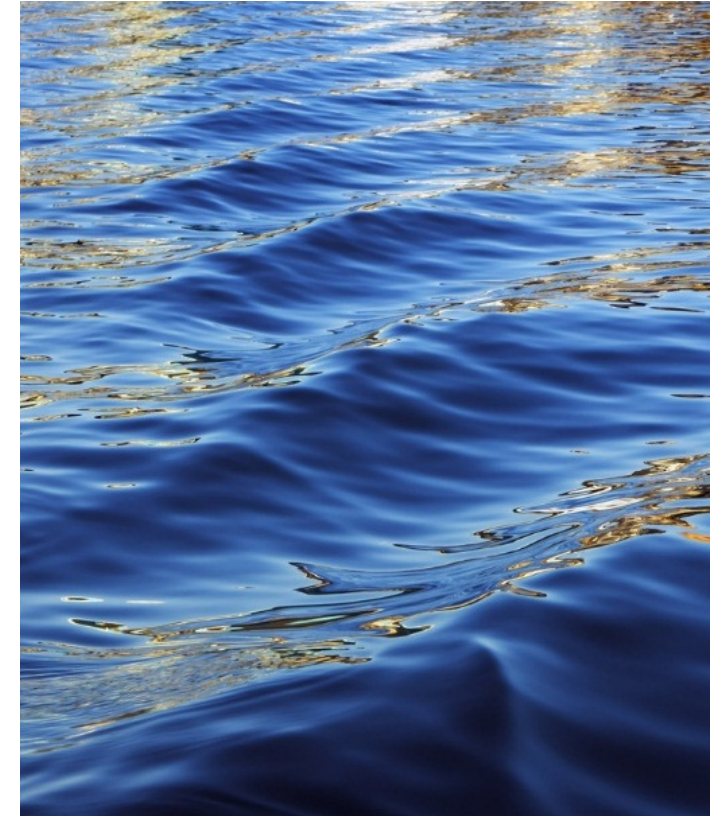
Considerations for property  
valuers and other related  
professions

Presented by



VALUER'S EDUCATION &  
INTEGRITY FOUNDATION

Te Tumu Ngakau Tapatahi Mātauranga mo te hunga Kaiwariu



Webinar 4

14 May, 2020 - 1:00pm

**Government  
Policy & Regulations**



VALUER'S EDUCATION &  
INTEGRITY FOUNDATION  
Te Taura Whiri i te Kaitiaki Take Kōwhiri

## A note from the VEIF Trustees

1. The National Freshwater Policy references the Treaty of Waitangi and acknowledges the Tangata Whenua and the connection to land, water and people that Iwi holds. This was well summarised last week in Dr Jamie Ataria's flow chart of Te Mana o Te Wai and the three hierarchal considerations of Tangata Whenua.
2. Valuers need to understand the implications of the Freshwater Policy and the principles of Te Mana o Te Wai as they are introduced and adopted. Water allocation as we currently know it will change: what will this mean to Resource Consents and the commercial activities reliant on those consents? What will happen to values as we know them? Land use systems are/will change.
3. While this is future focused some of that "future" is now and real in some TLA's

(Smiler et al., 2019)

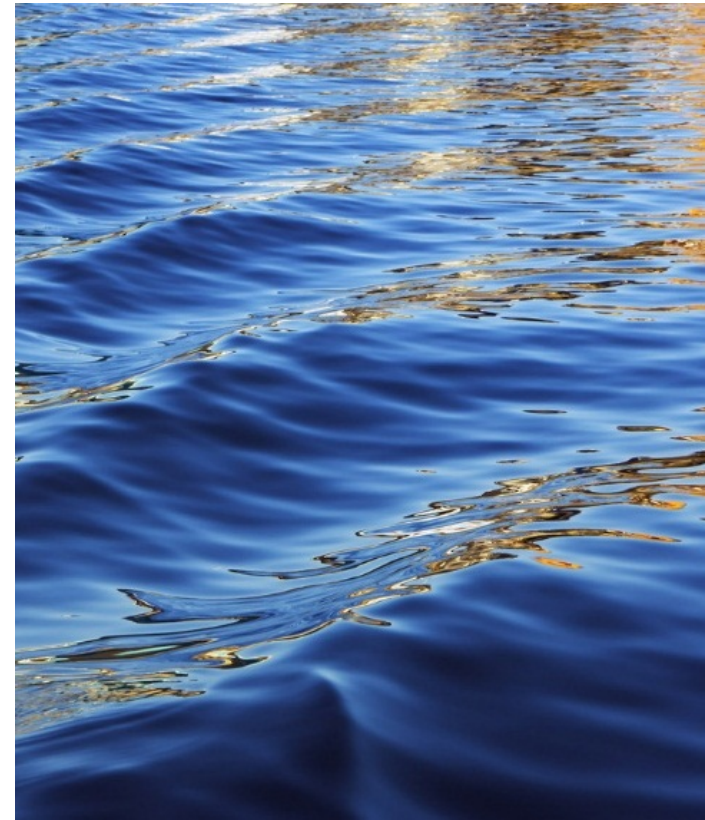
(Gross, 2020)

# Webinar 4



## Government Policy & Regulations

- The National Policy Statement for Freshwater Management
- The role of regional councils
- Orders, Consents and related factors



# Webinar Program

<b>Webinar 1</b>	<b>Introduction &amp; Overview: Water rights in NZ</b>	<b>23 April 2020</b>	<b>1:00pm</b>
<b>Webinar 2</b>	Legal Considerations	30 April 2020	1:00pm
<b>Webinar 3</b>	Matters relating to Māori	7 May 2020	1:00pm
<b>Webinar 4</b>	Government Policy & Regulations	14 May 2020	1:00pm
<b>Webinar 5</b>	Summary & Conclusions: Valuation principles & procedures	21 May 2020	1:00pm

# Government controls

## Webinar 4



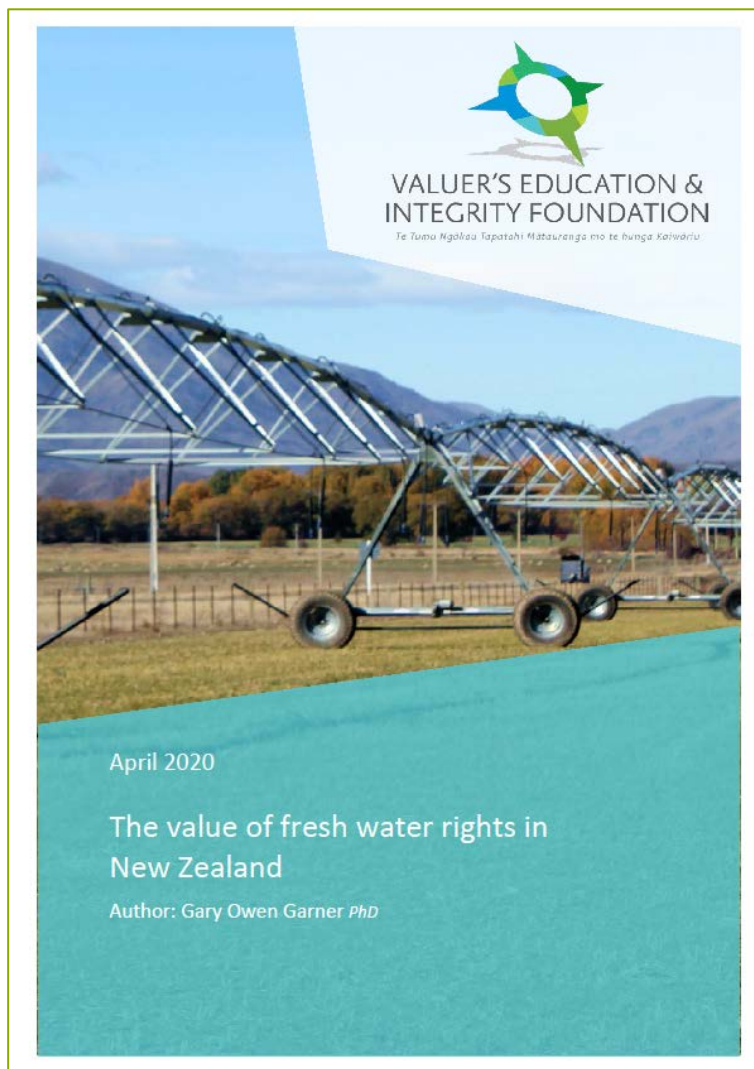
## Guest speakers - perspectives

- Elizabeth Soal  
Irrigation NZ

- Murray Doak  
Ministry for Primary Industries

- Commercial world  
Industry peak body

- National government  
legislation



## Briefing paper: The value of fresh water rights in New Zealand

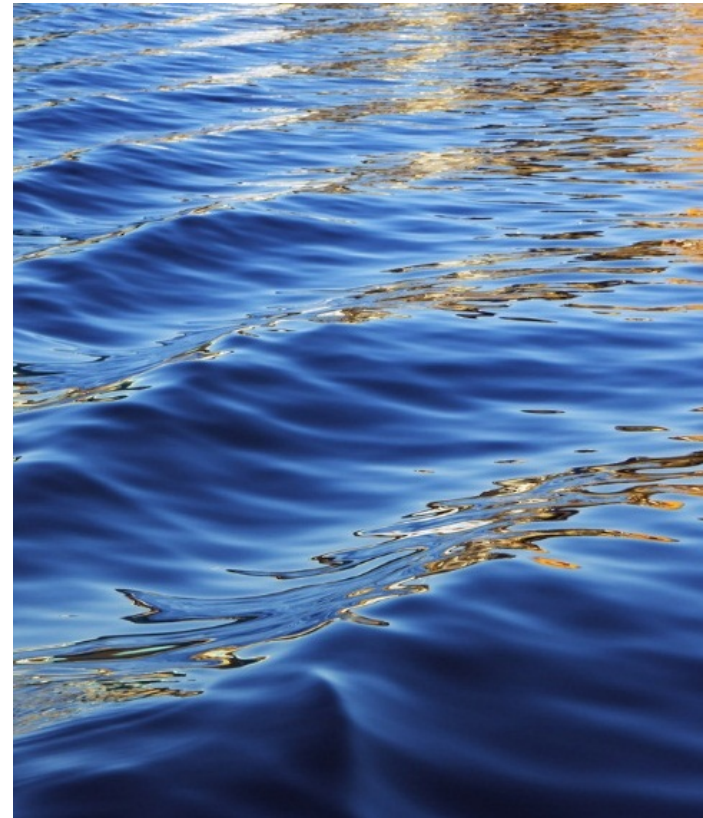
Considerations for property valuers  
and other related professions

[Located here](#)



# Matters arising

Questions from Webinar #3 – Matters related to Māori



# Feedback – last week's questions

Some questions remain unanswered

## 1. Use of “comparables” in valuation

“Historically we have used comparable to value, have we got examples or are we going to value in a different way?”

## Feedback... a viewpoint

- The matters raised guest speakers (last week) identify the attachment that Maori has to land and their origins is not fully understood by many people.
- Similarly, those of us who have an attachment to land also have a spiritual connection ... significant recognition is given to families who have been on and occupy the same land for over 100 years.
- The problem seems to arise from the confusion of property rights with the mix of rights that are not distinctive property rights. ... these are moral rights... connections of conscience and spirituality that exist in many communities.

(Armstrong, 2020)

## Feedback... a viewpoint (continued)

- the valuer who has to assess some property involved with issues other than property rights has no option other than to disregard the unresolved issues of moral or spiritual rights and prepare valuations on the basis of adherence to:


**“... the fundamental principles of valuation: a willing informed seller and the same willing informed purchaser acting without duress or any pressure on either side dealing with unencumbered property”**

- ... but it is still important for Valuers to be aware of what all these issues are as the landscape is changing
- if there are issues where no impact is to be given or weighting to be applied, but they are nevertheless relevant and important, then perhaps it behoves us to know why that is the case. And **we may need to explain this in our reports**. In other words:

**therefore, we need to have a good of understanding the all issues - including those matters related to Māori**

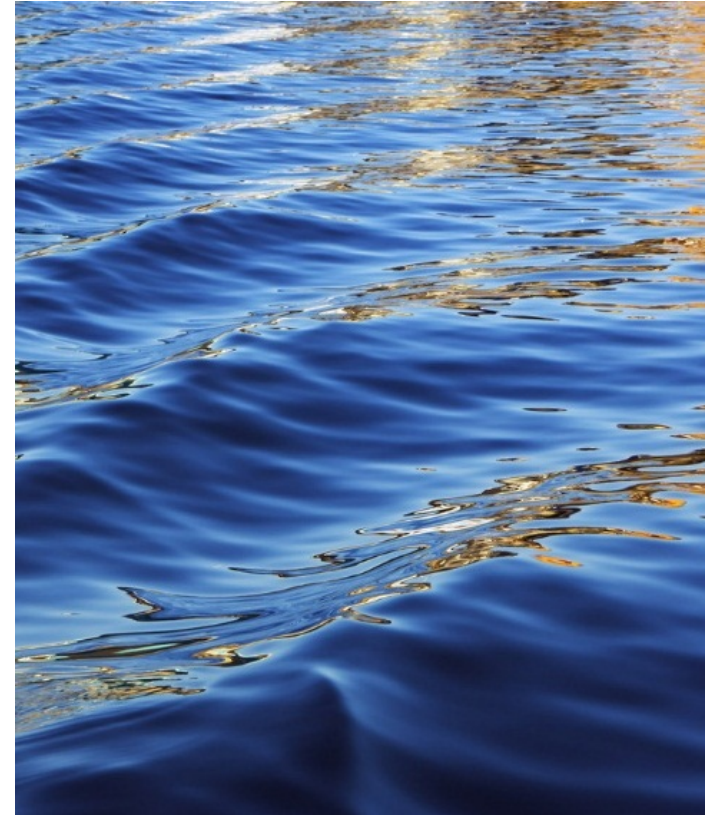
(Armstrong, 2020)

Once again, a poll will be conducted at end of  
todays session



# The National Policy Statement for Freshwater Management

Government Policy & Regulations





Video

## Freshwater

Dr Mike Joy

**Episode 1 – Freshwater**

[Newsroom.co.nz](http://Newsroom.co.nz)

(Lowe & Joy, 2020)

# The National Policy Statement for Freshwater Management (NPSFM)

- Serves to strengthen the RMA
- is the top planning instrument under the RMA.

“provides direction on how local authorities should carry out their responsibilities under the Resource Management Act 1991 for managing fresh water”

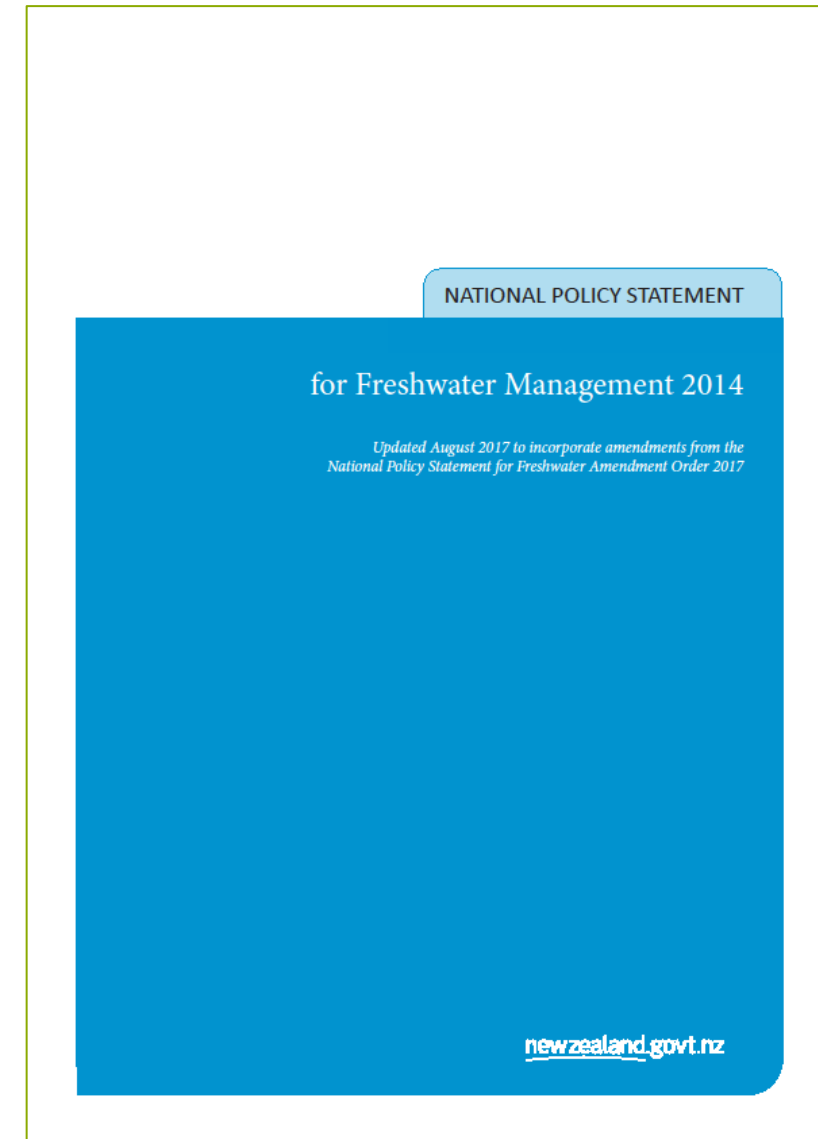
(Ministry for the Environment, 2020).

- Local authorities must give effect through their own regional policy statements and regional and district plans.
- RMA decision makers must also comply with NPSFM when considering **consent applications**.

# The National Policy Statement for Freshwater Management (NPSFM)

- first came into effect on 1 July **2011** after a draft in **2008**.
- Current NPSFM came into effect on 1 August **2014** & took effect on 7 September **2017**
  - sets out the objectives and policies for freshwater management under the Resource Management Act 1991.
- Current government has issued a Draft NPSFM for consultation September **2019**.
- Current NPSFM may only require regional councils to comply by **2025**, and with some exceptions by **2030**.

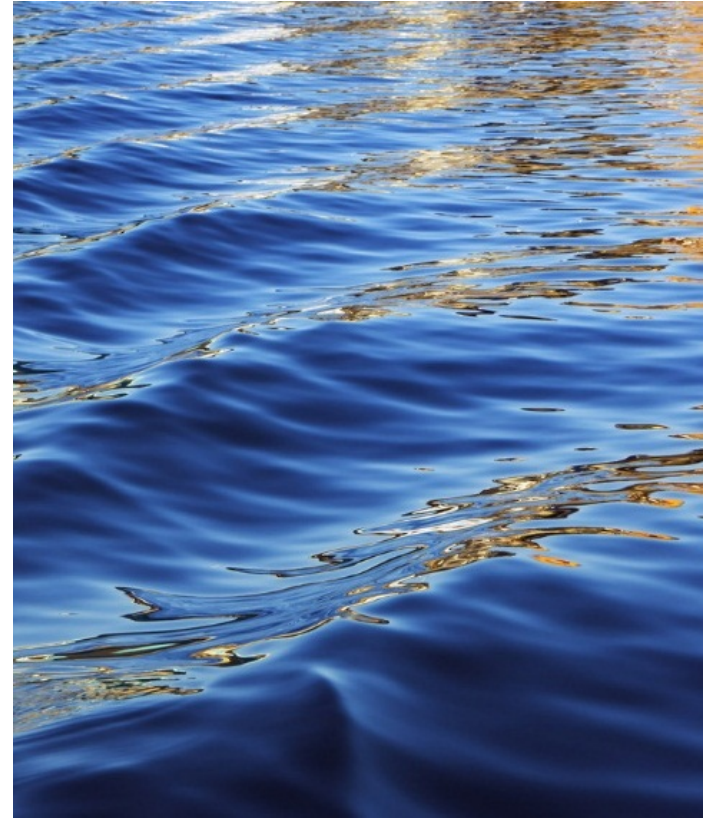
Barron and Sorensen (2015)





# The role of regional councils

Government Policy & Regulations



# Obligations of regional councils:

## The Regional Policy Statement

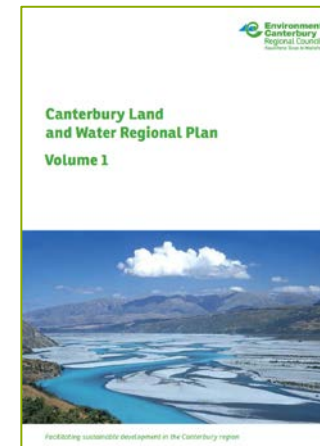
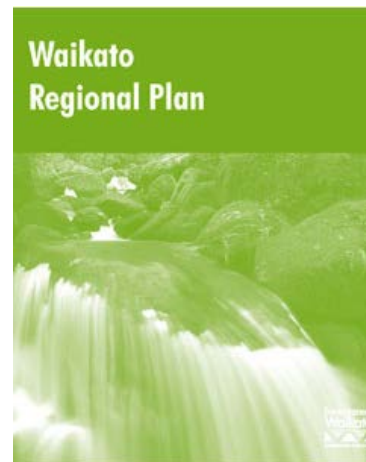
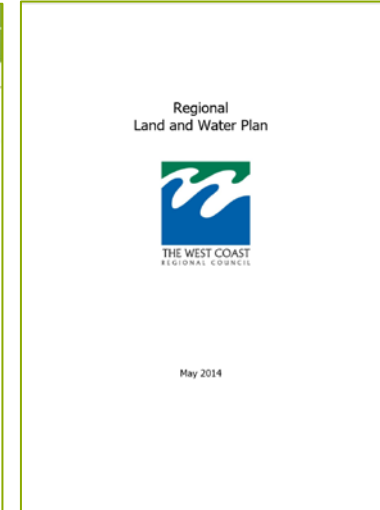
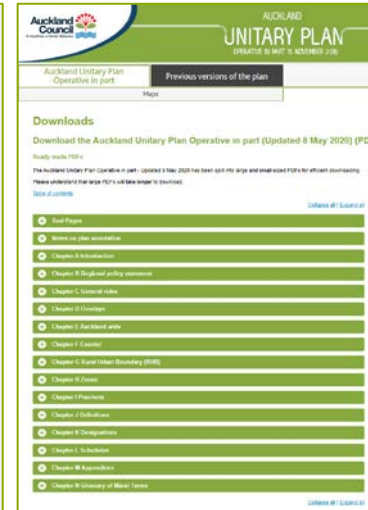
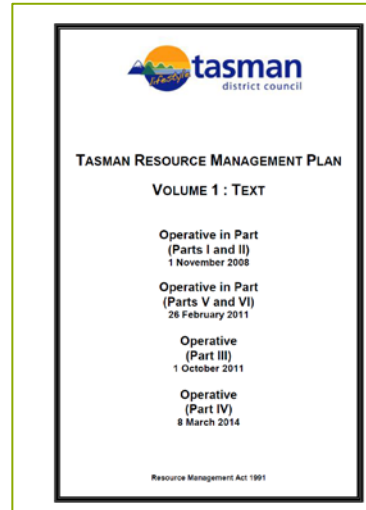
- provides an overview of the resource management issues of the region
- Must contain policies and methods to achieve integrated management of the natural and physical resources of the region (Environment Foundation, 2018b).
- Also sets out the objectives, policies and methods to manage regionally significant issues.
- **Regional and district plans** must “give effect to” **regional policy statements**, - they must “implement” obligations contained therein.
- The Resource Management Act clearly requires regional councils to have a Regional Policy Statement – they fill in the details and provide the ‘bottom line’ in terms of enforceable rules.

Ministry for the Environment (2019)

# Obligations of regional councils:

## The Regional Policy Statement (continued)

- RPS throughout the country largely cover the same major topic areas (i.e. water, air, land)  
Ministry for the Environment (2019)
- Most councils moving towards **combining their regional plans** for managing land, water and air into a **single plan** structure.
- Examples of **regional plans**  
(updated from original source Boffa Miskell Limited, 2015)



# Regional Policy Statements & Coastal Plans

- tend to be structured around regionally significant issues
- associated plans (such as coastal plans) typically reflect the same structure.
- Regional councils are required to maintain a regional coastal plan to give effect to the New Zealand Coastal Policy Statement (NZCPS)
- NZCPS overlaps with the jurisdiction of other RMA plans, such as district plans and land and water regional plans.
- Many councils are now integrating their land, water, air and other plans into one document, and some are also including the coastal plan.

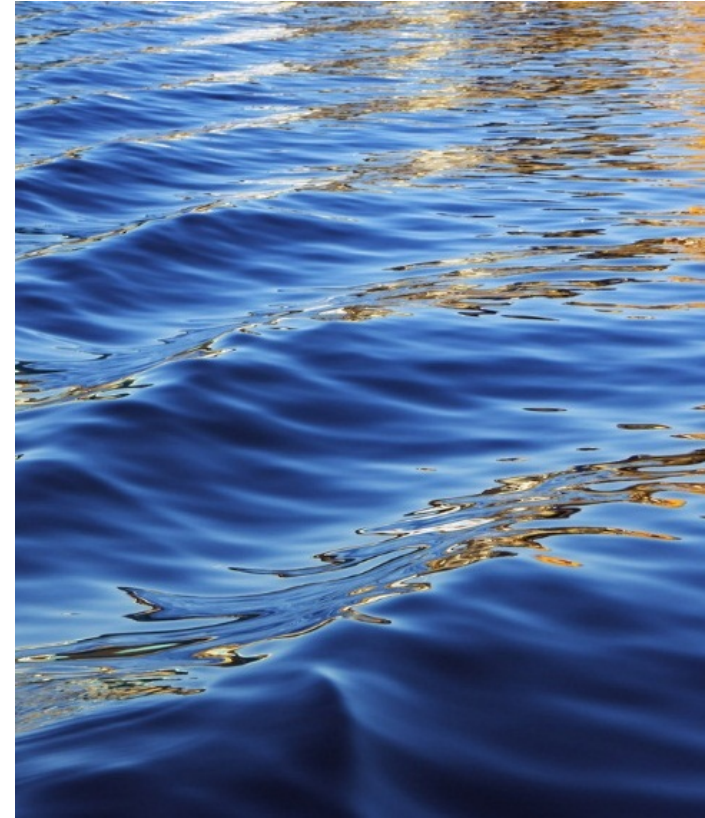
# Regional Plans

- Likely to include a catchment-based approach, partly to give effect to national direction, such as the National Policy Statement for Freshwater Management
  - e.g., Greater Wellington Regional Council's Proposed Natural Resources Plan, Northland Regional Council's Proposed Regional Plan for Northland, and Horizons Regional Council's One Plan).
- Whilst regional plans contain objectives, policies and rules, integrated plans contain issues and methods sections which tend to be embedded in the Regional Policy Statement.



# Orders, Consents and related factors

Government Policy & Regulations



# Water permits

In reality: a form of resource consent - are not automatically transferred when land is sold.

- Water permits for damming or diverting water **can only be transferred** to other parties **if they are the owner or occupier of the site** to which the permit relates.
- Other water permits can also be transferred to another person or another site **in the same catchment...** where this is **expressly allowed in the regional plan** or has been approved by the consent authority.
- An application for approval from the consent authority is considered as if it were an application for a resource consent and the consent holder were the applicant

(Environment Foundation, 2014).

# Water permits – general rules

- do not run with the land, but are **personal** to the consent holder
- are **transferable** in some circumstances, and may be **sold**, gifted or '**leased**'
- can be **acted on by other persons** with the permission of the consent holder (unless there are conditions to the contrary)
- do not provide **ownership** of the water
- do not provide a **guarantee** of a water body's **availability**
- do not prevent '**upstream**' **consents** being granted which may derogate from permitted grants.

# National Environmental Standard on Ecological Flows and Water Levels

- Discussion document issued in March **2008**.
- aim being to “promote consistency in the way we decide whether the variability and quantity of water flowing in rivers, ground water systems, lakes and wetlands is sufficient”.

Ministry for the Environment (2008)

- held that water is suffering as a result of urban development, agriculture, horticulture, forestry and other human activities.
- also, that there is also a lack of robust regulation, monitoring & enforcement.
- Consultation on this document closed only quite recently - 31 October **2019**.
- Currently stated to be “**on-hold**”.

# Water Conservation Orders

## “outstanding amenity or intrinsic values”

- Applies to 15 rivers and lakes in New Zealand
- “designed to recognise and protect the outstanding values of particular bodies of water. They may be applied over rivers, lakes, streams, ponds, wetlands or aquifers and geothermal water”

1	Motu River *	9	Kawarau River
2	Rakaia River *	10	Mataura River
3	Lake Wairarapa *	11	Buller River
4	Manganuioteao River *	12	Motueka River
5	Lake Ellesmere *	13	Mohaka River
6	Ahuriri River *	14	Rangitata River
7	Grey River *	15	Oreti River.
8	Rangitikei River		

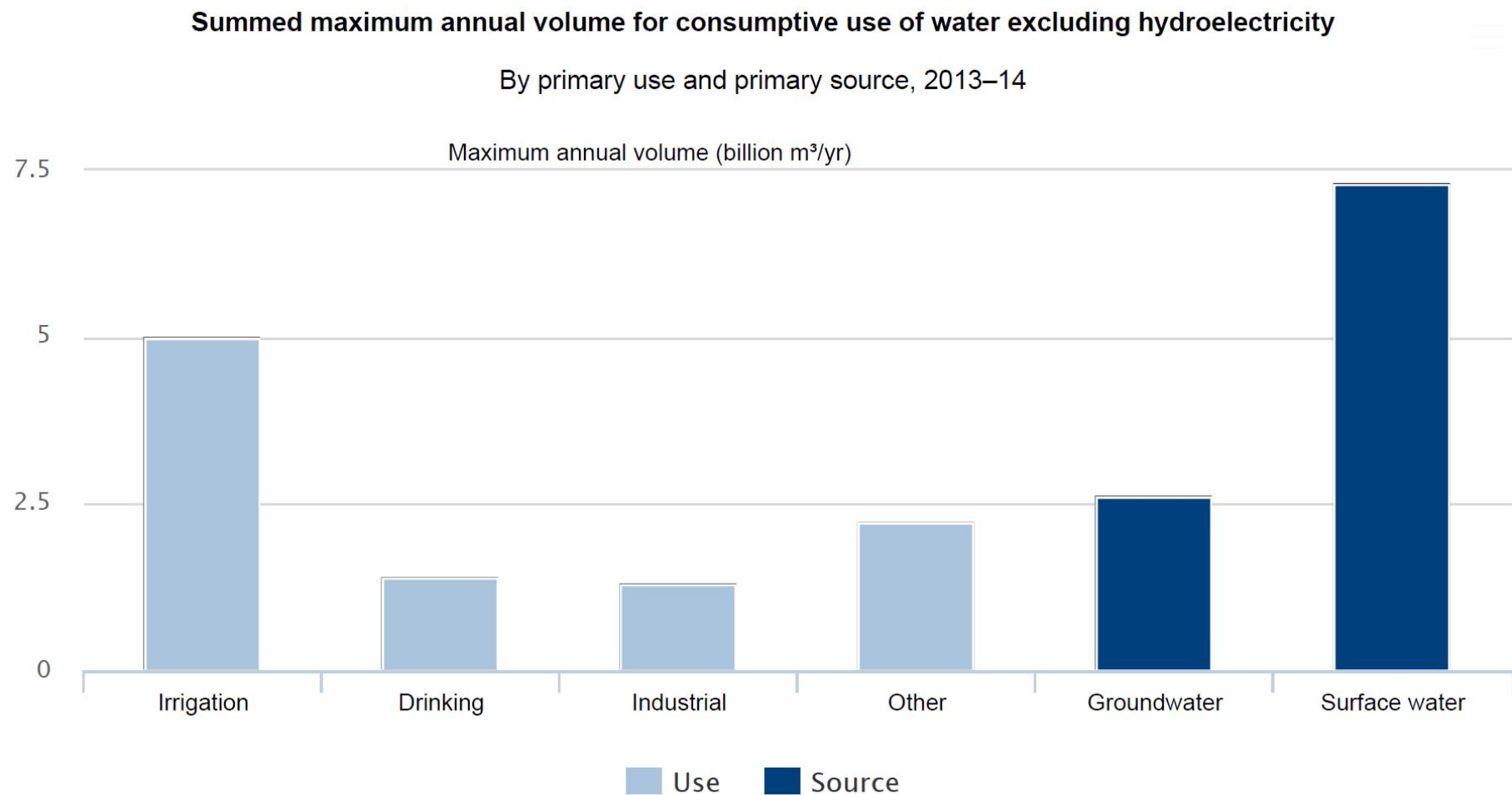
\* issued pre-RMA

# Economic importance of irrigation

- Irrigation in New Zealand has allowed for the significant expansion of a range of farming systems.
- Estimated that its impact on New Zealand GDP impacts range between \$3.3 billion and \$6.5 billion annually with the current figure likely much higher.
- water consented for irrigation varies by region
  - Canterbury - 65 percent of the national total
  - Marlborough - 9 percent
  - Otago – 7 percent

(Corong et al., 2014)

# Consented Freshwater takes



Stats NZ. (2017)

Source: Regional council data analysed by NIWA

# National Institute of Water & Atmospheric Research

## findings 2016-18

- The sum of irrigation is by far the greatest of any water use (excluding hydro) due to the **high number of consents** for this use
- there are approximately twice as many **groundwater consents** than surface water consents
- **Irrigation** uses have resulted in the **highest rates of stream depletion** across the country
  - takes for hydro, industrial and drinking uses are important in some catchments
- hydro-power uses have potential to **greatly deplete some large rivers** (e.g., the Southland Waiau).
  - ...but in many cases these schemes also augmented river flows (e.g., Waikato River).

(NIWA, 2016, 2018).

# National Regulations

measurement and reporting of consents  
(fresh water takes above five litres per second)

**Restricting** amount of **water** that can be taken for certain purposes. **Guidelines:**

1. Water takes require resource consent if the water is being sought for irrigation or industrial purposes (more than 5 cubic metres per day).
2. Water uses requiring **resource consent** may be termed “**controlled, discretionary and non-complying**” and will contain detailed requirements or conditions
3. **No consent** is required for “**permitted**” water takes - but **conditions** will inevitably apply
  - any person can take up to 5 cubic metres of water per day from either ground or surface water
4. Drilling a **bore** requires a **consent** even if the take of groundwater will be a permitted activity

# Water allocations and re-allocations

- Approach taken by regional councils to address **water quantity allocations** has been to **set water quantity limits**
- Setting water quality limits is a big challenge for councils.
- Despite the existence of the RMA, the type of **limit** and how it is enforced **varies widely**.
- **First-in-first served** is the predominant method for allocating available 'out of stream' water to users under the RMA.
- Enforceable limits for fresh water quality have often been set in place **after problems emerge**
- Some regions (e.g. Canterbury) have determined that there will be **no new allocations** for groundwater
  - any transfers even requiring part surrender
  - by 2008 new applications largely ceased.

# The conclusion

- Certainty about the ability to both exercise and renew a water permit is important in facilitating investment in irrigation and associated land uses.
- Registered valuers therefore face a challenging task as they need to determine **how existing and proposed water allocations may affect a property in order for them to ascertain the value of the investment on a case by case basis.**

# References

Andy Vance Trio. (2004). *Amazing Grace* *Amazing Grace*: Newmarket Music.

Armstrong, D. (2020, Tuesday, 12 May 2020 6:50 pm). [memo Gary Garner re VEIF Māori presentation and issues] Personal communication.

Bennion, T., Brown, D., Thomas, R., & Toomey, E. (2009). *New Zealand Land Law* (2nd ed.). Wellington, N.Z.: Thomson Reuters.

Boffa Miskell Limited. (2015). *RMA Regional Plan Definitions* Ministry for the Environment,.

*Draft National Policy Statement for Freshwater Management 2019*. (2019). Wellington, NZ: New Zealand Government Retrieved from <https://www.mfe.govt.nz/publications/fresh-water/national-policy-statement-freshwater-management-2014-amended-2017>

Environment Foundation. (2014). Transfer of consents. *Environment Guide* Retrieved March, 2020, from <http://www.environmentguide.org.nz/rma/resource-consents-and-processes/transfer-of-consents/>

Gross, B. (2020, Friday, 8 May 2020 8:24:49 am). [Comment for next week]. Personal communication

Lowe, M., & Joy, M. (Writers) & M. Potton (Director). (2020). Episode One - Freshwater. In S. Blackley (Producer), *NZ's polluted waterways threaten our health*. Wellington, NZ: Newsroom - Magpie Content Creation.

Ministry for the Environment. (2019). Structure of regional plan and policy statements. from <https://www.mfe.govt.nz/publications/rma/structure-of-regional-plan-and-policy-statements>

Ministry for the Environment. (2020). National Policy Statement for Freshwater Management. *Freshwater Acts & Regulations* Retrieved March, 2020, from <https://www.mfe.govt.nz/fresh-water/freshwater-acts-and-regulations/national-policy-statement-freshwater-management>

*National Policy Statement for Freshwater Management 2014 (amended 2017)*. (2017). (ME 1324). Wellington, NZ: New Zealand Government Retrieved from <https://www.mfe.govt.nz/publications/fresh-water/national-policy-statement-freshwater-management-2014-amended-2017>

NIWA. (2016). *National water allocation statistics for environmental reporting* (No. 2017065CH). Riccarton, NZ: Ministry for the Environment.

NIWA. (2018). *National water allocation statistics for environmental reporting* (No. 2019049CH). Riccarton, NZ: Ministry for the Environment.

Smiler, K., Samuels, D., Ruka, M., Ruru, J., Sykes, A., Baker, Artaria, J., et al. (2019). Te Kāhui Wai Māori overview of Te Mana o te Wai *Te Mana o te Wai - the health of our wai, the health of our nation* (pp. 4): Kāhui Wai Māori. Retrieved from <https://www.mfe.govt.nz/publications/fresh-water/te-mana-o-te-wai-health-of-our-wai-health-of-our-nation-kāhui-wai-māori>

Stats NZ. (2017). Consented freshwater takes. Environmental Indicators Retrieved March, 2020, from [http://archive.stats.govt.nz/browse\\_for\\_stats/environment/environmental-reporting-series/environmental-indicators/Home/Fresh%20water/consented-freshwater-takes.aspx](http://archive.stats.govt.nz/browse_for_stats/environment/environmental-reporting-series/environmental-indicators/Home/Fresh%20water/consented-freshwater-takes.aspx)

*Treaty of Waitangi [Te Tiriti O Waitangi]*. (1840). Waitangi, NZ



# Elizabeth Soal

CEO, Irrigation NZ  
Guest Speaker





# Murray Doak

Senior Investment Adviser, Sector Partnerships & Programme  
Ministry for Primary Industries  
Guest Speaker





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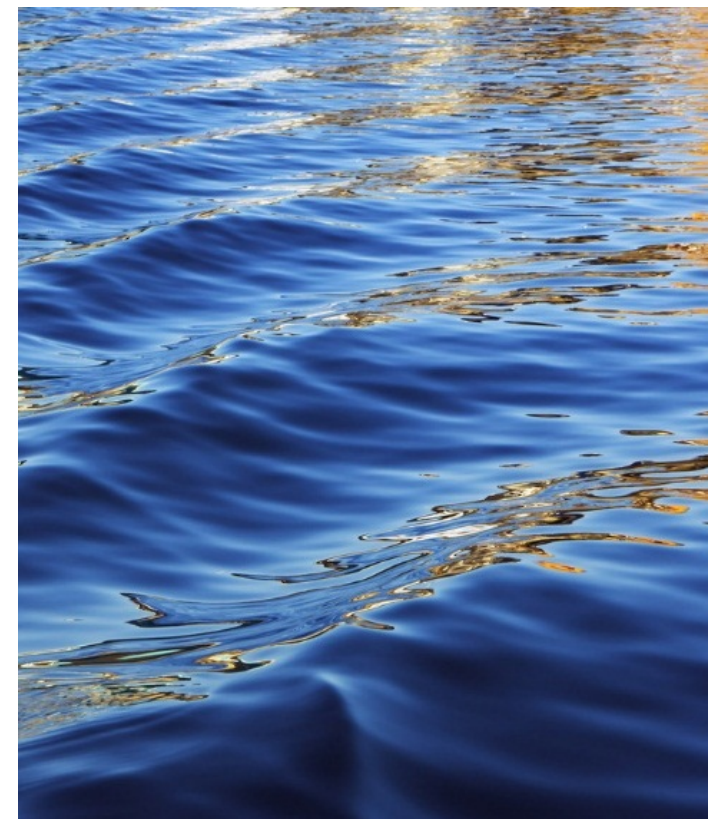
This research was funded by:

# Questions

**Elizabeth Soal**

**Murray Doak**

Government Policy & Regulations



# Webinar Program

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<b>Webinar 5</b>	Summary & Conclusions: Valuation principles & procedures	21 May 2020	1:00pm

# Valuation principles and procedures

## Webinar 5

- Valuation of irrigated farmlands
- Nutrient regulations impact
- Accounting for water allocations & resource consents
- Market values / in situ, transferability
  - Valuer tasks and obligations
  - Valuation reporting
- **Webinars summary (including new matters)**





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