

**Table 1: Timeline of key views of the Crown and members of the Collective expressed on rights and interests in freshwater<sup>1</sup>**

Year	Document	Key points
2013	Crown statement in the New Zealand Maori Council and Others v The Attorney-General and Others (SC 98/2012) [2013] NZSC 6 <a href="https://www.courtsofnz.govt.nz/assets/cases/2013/sc-98-2012-nz-maori-council-anor-v-the-attorney-general-ors.pdf">https://www.courtsofnz.govt.nz/assets/cases/2013/sc-98-2012-nz-maori-council-anor-v-the-attorney-general-ors.pdf</a>	Statement of Rt Hon Bill English, Deputy Prime Minister: [145] Mr English summarised the Crown position as being that it acknowledges that Maori have “rights and interests in water and geothermal resources”. Identifying those interests is being addressed through the “ongoing Waitangi Tribunal Inquiry” and a number of “parallel mechanisms”. The Crown position is that any recognition must “involve mechanisms that relate to the on-going use of those resources, and may include decision-making roles in relation to care, protection, use, access and allocation, and/or charges or rentals for use. Currently the Ministry for the Environment has responsibility for progressing policy development around these issues.” The Court should accept that it is not an empty exercise.
Jan 2015	Government’s five ‘bottom lines’ for the development of freshwater policy [CAB Min (15)1/9 refers]	The Government agreed five 'bottom lines' for the development of freshwater policy: <ul style="list-style-type: none"> <li>• no-one owns freshwater, including the Crown;</li> <li>• there will be no generic share of freshwater resources provided for iwi;</li> <li>• there will be no national settlement of iwi/hapū claims to freshwater resources;</li> <li>• freshwater resources need to be managed locally on a catchment-by-catchment basis within the national freshwater management framework; and</li> <li>• the next stage of freshwater reform will include national-level tools to provide for iwi/hapū rights and interests.</li> </ul>
2016	Cabinet Paper: Fresh water, Allocation work programme	This paper sought Cabinet’s agreement to the terms of reference for the freshwater allocation work programme. The work programme outlined the following bottom lines. <ul style="list-style-type: none"> <li>• Nobody owns freshwater.</li> <li>• No national settlement favouring iwi/hapu over other users.</li> <li>• Allocation determined catchment by catchment based on resource</li> <li>• availability, efficiency of use, good industry practice and a positive contribution to regional economic development.</li> </ul> <p>We will need to develop an allocation approach that is in the best interests of all New Zealanders. In doing this we need to consider the fact the Crown has committed to considering how to address iwi/hapū rights and interests in a contemporary system for freshwater management. The Crown has stated to the Courts that the recognition of rights and interests in freshwater and geothermal resources must, by definition, involve mechanisms that relate to the ongoing use of those resources, and may include decision-making roles in relation to care, protection, use, access and allocation, and/or charges or rentals for use.</p>

<sup>1</sup> Please note that this does not include the views of individual iwi, including in recent litigation

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2017	'FOMA Submission on Clean Water Consultation 2017', FOMA	<p>Water allocation is a key focus of FOMA's freshwater policy development, and presents a significant challenge to Māori land development</p> <ul style="list-style-type: none"> <li>• FOMA seeks greater access and certainty of freshwater supply to Māori landowners to support the continuing growth and development of their land interests</li> <li>• As a matter of priority, there needs to be government commitment to develop a process to "clawback" water in over-allocated catchments. If the government is committed to environmental flows and sustainable allocation, then issues relating to over-allocation and the impact this is having on Māori landowner groups need to be addressed urgently.</li> </ul>
2017	Te Mana o Te Wai Summary Report, Freshwater Iwi Leaders Group	<p>The Freshwater Iwi Leaders Group has developed Ngā Mātāpono ki te Wai, a freshwater framework that provides iwi with an equitable share of allocation. Specific commentary on allocation within this framework:</p> <ul style="list-style-type: none"> <li>• Te Mana o te Wai: the first right to the water, goes to the water itself. In the context of allocation, Te Mana o te Wai must be achieved before an allocable quantum is available</li> <li>• Access: Communities should not have to pay to access water for drinking water purposes</li> <li>• Equity: Iwi/hapū must have a perpetual and non-alienable right to water that is catchment based</li> <li>• User assessment: Whoever uses water must prove that they have the systems and infrastructure in place to care for it responsibly, permits should include assessments of users and not just effects</li> <li>• Te Mana Motuhake o ia wai o ia wai ki te wai: Each catchment is different and will need a suite of tools to ensure this difference is honoured. There will be no one size to fit all</li> <li>• Te Tiriti o Waitangi te tāhuhu o te Wai: Access to water for tangata whenua based on Treaty partnership is not just related to land that currently owned but is connected through whakapapa</li> <li>• Te kaitiakitanga o ngā hapū me ngā iwi ki te wai: Costs of water use and the implications of water use must be borne by the user, not kaitiaki and not the ratepayer</li> <li>• Certainty: Attributing value to water is expected to support efficiency and effectiveness of use as long as the value is then transferred to the river and to tangata whenua in an appropriate way</li> <li>• Te kaitiakitanga o ngā hapū me ngā iwi ki te wai: A freshwater management system that is agile to address environmental shocks is required</li> <li>• Equity: In over allocated systems all users must take a reduction in their water use to ensure the water is shared equitably and Te Mana o te Wai is met</li> <li>• Equity: No grand-parenting, but reverse grand-parenting should be considered</li> <li>• Wai Tuku Kiri: Once Te Mana o te Wai is achieved, drinking water must be the next priority.</li> </ul>
July 2018	Cabinet Paper: A new approach to the Crown/ Māori relationship for freshwater ENV-18-MIN-0032	<p>On 3 July 2018, the Cabinet Environment, Energy and Climate Committee noted:</p> <ul style="list-style-type: none"> <li>• there are significant ongoing expectations on the Crown to engage meaningfully with Māori as to the recognition of Māori rights and interests in freshwater,</li> </ul>

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		<ul style="list-style-type: none"> <li>• More progress is required to improve water quality and ecosystem health, and provide for fair access to freshwater resources to allow for the development of under-developed land</li> <li>• A building sense among Māori that there is no clear 'path ahead' for the Crown's engagement with Māori and addressing Māori rights and interests in freshwater</li> </ul> <p>Agreed:</p> <ul style="list-style-type: none"> <li>• That the Crown will take a phased approach to its engagement with Māori across all freshwater issues, starting with a focus on water quality issues rather than water allocation</li> <li>• That following the initial phase, the government will then engage on broad policy parameters regarding Māori desires for access to freshwater resources to allow development of under-developed land.</li> </ul> <p>Options for addressing Māori desires for access and use of freshwater resources noted that the Minister for Crown/Māori Relations and the Minister for the Environment have considered the following three options for addressing Māori desires for access to and use of freshwater resources:</p> <ul style="list-style-type: none"> <li>• Option A: impose a royalty/charge on the use of freshwater (payable to the Crown), and distribute under-used water permits (or discharge capacity) that could be relinquished, and the revenue from the charge;</li> <li>• Option B: find a mechanism to more equitably share the resources over time through a 'regulatory' route: in scarce catchments this proposal could require the generation of 'headroom' between the total allocated quantum of 'use rights' and the sustainable limit in order to give Māori (and other new users) the opportunity to obtain a share of those use rights;</li> <li>• Option C: allow matters to unfold through the courts and Waitangi Tribunal;</li> </ul> <p>agreed that the government signals its preference is Option B because it:</p> <ul style="list-style-type: none"> <li>• focuses the debate on regulatory solutions that meet Māori concerns, rather than a contest about 'ownership';</li> <li>• 11.2 allows for meaningful development of Māori land; and</li> <li>• 11.3 is significantly more constructive and likely to provide more certainty than an exploration of rights in the Courts;</li> </ul> <p>noted that, although a charging mechanism (Option A) may eventually be useful to drive efficient use of freshwater resources, Ministers have not considered it further because of the coalition agreement; and that Option C may still be where the parties end up if the Crown and Māori have exhausted all good faith endeavours and options to resolve the issues;</p>
Oct 2018	<p>Shared Interests in Freshwater</p> <p><i>A New Approach to the Crown / Māori Relationship for Freshwater</i></p>	<p>The state of our water bodies is far from what New Zealanders want. Māori have consistently identified improving water quality and ecosystem health as a key priority.</p> <p>In addition, the current way water resources are allocated in scarce catchments (both water takes and rights to discharge to water) has led to limited economic opportunities, inefficiencies and the exclusion of some groups, in particular Māori, from accessing the resource to develop underdeveloped land.</p>

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		<p>There is a significant opportunity to achieve better economic, environmental, cultural, and social outcomes by:</p> <ul style="list-style-type: none"> <li>• Stopping further degradation and loss – taking a series of actions now to stop the state of our freshwater resources, waterways and ecosystems getting worse (ie, to stop adding to their degradation and loss), and to start making immediate improvements so water quality is materially improving within five years.</li> <li>• Reversing past damage – promoting restoration activity to bring our freshwater resources, waterways and ecosystems to a healthy state within a generation, including through a new National Policy Statement for Freshwater Management and other legal instruments.</li> <li>• Addressing water allocation issues – working to achieve efficient and fair allocation of freshwater and nutrient discharges, having regard to all interests including Māori, and existing and potential new users.</li> </ul> <p>Many of these issues cannot be progressed without a concurrent and substantive discussion with Māori about their rights and interests in freshwater under the Treaty of Waitangi.</p> <p>The following parameters have been agreed by Cabinet.</p> <ul style="list-style-type: none"> <li>• The Crown and Māori have a key shared interest in improving the quality of New Zealand’s freshwater, including the ecosystem health of our waterways.</li> <li>• The Crown and Māori have a shared interest in ensuring sustainable, efficient, and equitable Access to and management of freshwater resources.</li> <li>• No one owns freshwater – it belongs to everyone, and we all have a guardianship role to look after it.</li> <li>• The Crown acknowledges that Māori have rights and interests in freshwater, including accessing freshwater resources to achieve their fair development aspirations for underdeveloped land.</li> <li>• The Crown acknowledges that existing users also have interests that must be considered.</li> </ul> <p>The Crown will work with Māori and regional government to consider how, on a catchment by-catchment basis, freshwater resources can be accessed fairly to achieve the development of underdeveloped land, based on the following principles:</p> <ul style="list-style-type: none"> <li>• the need to gather key catchment-level information on water-related Māori land development opportunities and the current situation in those catchments in terms of water quality, water takes, and existing capital investments</li> <li>• any change to existing allocation method is achieved in a way and at a pace that takes into account the interests of existing users and the public interest in the optimal use of the resource</li> <li>• the need to ensure solutions for water meet sustainable limits for swimmability, ecological health, and human health, being the values captured by Te Mana o Te Wai.</li> </ul>
Oct 2018	NZMC closing submissions, Wai 2358 stage 2 inquiry	<p>The NZMC’s views on components to redress are:</p> <ul style="list-style-type: none"> <li>• Appropriation (proprietary rights), which could be provided for through a combination of</li> </ul>

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		<ul style="list-style-type: none"> <li>- reverse grandparenting (reduction and reallocation of rights to take and discharge over time)</li> <li>- quota management system, involving percentage allocation to Māori</li> <li>- ongoing royalties or taxes for commercial uses of water</li> <li>- cash compensation (directed to hapū where the rights and interests lie)</li> <li>• Governance/co-management <ul style="list-style-type: none"> <li>- fixed level of involvement required</li> <li>- rights for Māori to develop, apply, and monitor water quality requirements at all levels of government</li> <li>- decision-making capacity related to water-related resource consents</li> </ul> </li> <li>• Notification/consultation <ul style="list-style-type: none"> <li>- notification/consultation where there is a Tiriti right or interest, and need to demonstrate effect of consultation</li> <li>- notification if there is no Tiriti right or interest</li> </ul> </li> <li>• Funding <ul style="list-style-type: none"> <li>- at a level to enable meaningful participation in governance/management</li> <li>- directed to hapū where the rights and interests lie</li> <li>- ongoing royalties and payments may contribute</li> </ul> </li> <li>• Other issues <ul style="list-style-type: none"> <li>- reset the RMA iwi bias in favour of hapū</li> <li>- find a way to determine where proprietary rights and interests exist.</li> </ul> </li> </ul>
Sept 2019	Waitangi Tribunal Wai 2358 report	<p>Recommendations concerning the RMA allocation regime:</p> <ul style="list-style-type: none"> <li>• The allocation regime should be reformed to recognise and provide for Te Mana o te Wai, and this should be done urgently</li> <li>• The first-in, first-served system of allocation should be replaced, and over-allocation phased out</li> <li>• The Crown should devise a new allocation regime in partnership with Māori, including through a national co-governance body</li> <li>• The Crown should arrange for an allocation of water on a percentage basis to iwi and hapū, according to a regional, catchment-based scheme to be devised by the national co-governance body in consultation with iwi and hapū. All allocations to iwi and hapū should be perpetually renewable and inalienable other than by lease or some other form of temporary transfer</li> <li>• The Crown should arrange for an allocation of water for the development of Māori land (including land returned in Treaty settlements), where such allocation is sustainable, according to a scheme to be devised by the national co-governance body</li> <li>• The national co-governance body should investigate other possible mechanisms for 'proprietary redress', including royalties. This should include leading a wider conversation within Māoridom on proprietary rights and how these might be recognised</li> <li>• The Tribunal makes no recommendations about an allocation of discharge. The co-governance body should</li> </ul>

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		<p>consider this matter and develop an approach for allocations to iwi and hapū and for the development of Māori land if discharge rights (including transferable discharge rights) become a general feature of freshwater management</p> <ul style="list-style-type: none"> <li>• If the co-governance body is not established, then the Crown should carry out these recommendations in partnership (and on a co-design basis) with the Freshwater Iwi Leaders Group, the New Zealand Māori Council (NZMC), and Te Kahui Wai Māori</li> <li>• It may be necessary for a test case to be brought before the courts on whether native title in freshwater (as a component of an indivisible freshwater taonga) exists as a matter of New Zealand common law and has not been extinguished.</li> </ul>
	<p>'Te Mana o te Wai: the health of our wai, the health of our nation: Kāhui Wai Māori Report to Hon Minister David Parker', KWM, April 2019</p>	<ul style="list-style-type: none"> <li>• A new water allocation system must conform with Te Mana o te Wai and iwi/hapū rights and obligations, including the recognition of the long-held exercise of ahi kā by Māori landowners</li> <li>• No allocation based on grandparenting and no perpetual rights</li> <li>• KWM do not provide a view on options for resolution of customary title</li> <li>• Recommend an urgent process be agreed between iwi/hapū and the Crown to enable the ownership issues to be discussed and implemented over a three year period (from 2019). Any allocation of additional discharges and water access must be time bound while the ownership issue is resolved.</li> </ul>
<p>March 2020</p>	<p>Further feedback on the Resource Management Review Panel's Issues and Options Paper – "Transforming the Resource Management System: Opportunities for Change", Te Wai Māori Trust, March 2020</p>	<p>The Government's revised approach to allocation should move firmly away from the present highly inequitable "first in first served" approach, widely recognised as disadvantaging Māori, to a Treaty compliant regime</p> <p>Key to such an approach would be shared governance and partnership arrangements that genuinely provide for Māori freshwater values and concepts, in addition to review of the current Cabinet parameters that are narrowly focussed on under-developed Māori land.</p>
<p>2020</p>	<p>Labour Party Manifesto</p>	<p>We are the guardians of this land for our mokopuna. We must protect the natural environment, its indigenous biodiversity, and our marine ecosystem. To help us do this we will:</p> <ul style="list-style-type: none"> <li>• Ensure Māori are involved in the development of a new Resource Management Act to deliver better outcomes.</li> <li>• Continue to improve the health of New Zealand's freshwater and coastal areas within the next five years.</li> <li>• Focus on stopping further degradation of New Zealand's freshwater resources.</li> <li>• Address water allocation issues by working to achieve efficient and fair allocation for freshwater resources, having regard to all interests including Māori, and existing and potential new users.</li> <li>• Continue to roll out the Jobs for Nature package which will encourage more Māori into environmental jobs.</li> <li>• Implement the primary sector vision Fit For a Better World and develop the Te Taiao strategy.</li> </ul>

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		<ul style="list-style-type: none"> <li>• Build on the work we have undertaken with Te Ohu Kaimoana and Māori to resolve the outstanding issues surrounding the Kermadecs.</li> <li>• Continue to work with Māori in the fisheries sector.</li> </ul>
Nov 2020	Freshwater System Initial Briefing for Incoming Minister 2020	<p>Allocation</p> <ul style="list-style-type: none"> <li>• The Essential Freshwater work programme has provided greater national direction to limit setting. Some limits are being met using simple practice controls (such as E.coli), but others (such as water takes and nitrogen) will need to be more effectively managed as water becomes scarce. Reform of the allocation system could: <ul style="list-style-type: none"> <li>○ help communities to reach catchment limits;</li> <li>○ provide councils with the tools to remain within, sustainable limits (for plans which need to be notified by December 2024);</li> <li>○ ensure New Zealand is benefitting from the best use of fresh water (both use and discharging to it);</li> <li>○ provide a fair approach to the use of the resource.</li> </ul> </li> <li>• Allocation reform is inextricably linked to the ability of Māori to access and use water resources (ie water takes and the ability to discharge to water), and to realise and express their economic and development interests. We consider that these policy areas need to be progressed in tandem, as the potential solutions will likely be interrelated.</li> <li>• Sector stakeholders and local government are also calling for government intervention on allocation, as they cannot solve it alone. Imperative to this work is an understanding of the evidence base and the ability to effectively communicate the problem that needs to be addressed and the expected impacts of any proposed changes.</li> <li>• Critical decisions will be required around the pace of reform, the level of national direction, the transition to a new allocation system and how the work fits with resource management reforms.</li> </ul> <p>Addressing Māori rights and interests</p> <ul style="list-style-type: none"> <li>• Maori have long called for recognition of their rights and interests in freshwater, and the Crown has provided a number of undertakings to address these rights and interests over a number of years.</li> <li>• There are several potential dimensions to addressing rights and interests in water, including: protecting the mauri of waterways (water quality outcomes); mana over waterbodies (role in governance and decision making); protection of customary activities; access, use and economic benefits from water resources. In its relatively recent (2019) Wai 2358 report, the Waitangi Tribunal provided its recommendations around how the Crown should address different elements of Maori rights and interests in freshwater.</li> <li>• The governance and decision-making dimension of rights and interests is closely linked to allocation system reform and wider reforms of the resource management system.</li> </ul>

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		<p>The Crown has acknowledged that iwi/Māori have rights and interests and committed to work on these as it works on the reform of the allocation system. The Crown has previously stated that any recognition must involve mechanisms that relate to the on-going use of those resources, and may include decision-making roles in relation to care, protection, use, access and allocation, and/or charges or rentals for use (<i>The New Zealand Māori Council v The Attorney-General</i> [2013] NZSC 6).</p> <ul style="list-style-type: none"> <li>• There is a significant distance between Māori views of what a just resolution would look like and the Cabinet mandate associated with Essential Freshwater (ENV-18-MIN-0032 refers). Getting Māori/Crown dialogue off on the right footing will be important to finding a way through. The alternative, of these issues being addressed through the Courts, will likely be lengthy, create uncertainty for all with interests in freshwater, and be expensive and time-consuming for both iwi/Māori and the Crown.</li> </ul>
Dec 2020	<p>Minute of Decision: Freshwater and Wider Allocation Reform: Proposed approach to engagement with Māori</p> <p>CBC-20-MIN-0119</p>	<p>On 9 December 2020, the Cabinet Business Committee:</p> <ul style="list-style-type: none"> <li>• noted that a Māori collective (the Collective) has been formed to engage with the Crown on Māori rights and interests in freshwater and resource management reform;</li> <li>• noted the Minister for the Environment's intention to engage in good faith and open dialogue to try to find a way through on these important, complex and challenging issues;</li> <li>• noted that discussions between the Crown and the Collective on Māori rights and interests in freshwater between now and February 2021 will focus initially on establishing a process that both sides can have trust and confidence in, and then on a substantive work programme for the next 12 months;</li> <li>• noted that the Crown's existing position on freshwater [ENV-18-MIN-0032] remains an appropriate starting point for discussions with the Collective;</li> </ul>