

Freshwater Iwi Leaders Group

July/August 2015

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Availability of Information

- The presentation and the information circulated for the Regional Hui in 2014 and 2015 can be found at www.iwichairs.maori.nz
- Otherwise you can contact:

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Further Background Information

1. The Appendix to this presentation has some of the key background information that has been presented to the last 3 regional hui (October 2014, December/January 2015 and April 2015).
2. This information will be taken as read and will not be presented. If you have any queries on this information then we are happy to answer them.

Role of the Freshwater ILG

- 1 Engaged directly with Senior Government Ministers
- 2 Protocol signed by ILG and Senior Ministers (including Prime Minister)
- 3 Ensures ILG views represented in Cabinet and policy development process
- 4 ILG will not usurp the mana of individual iwi to engage directly regarding their own water bodies
- 5 Participation in Land and Water Forum (LaWF)
- 6 Any decisions will require consultation by Crown with all iwi

Resolution To Be Put at End of Hui

That the participants at this regional hui support the Freshwater Iwi Leadership Group and Iwi Advisors Group:

1. progressing the agreed workplan and workstream priorities for Iwi rights and interests;
2. progressing the National Policy Statement on Freshwater Management and the RMA amendments; and
3. providing a full update to whānau, hapū and Iwi in mid November 2015.

Presentation overview

1. Summary of Regional Hui held late in April 2015.
2. Iwi Case Studies.
3. Update on the engagement with the Crown.
4. National Policy Statement on Freshwater (NPS – FM) and RMA Amendments.
5. Next Steps.
6. Resolution.
7. Contacts.

1. Summary of Regional Hui in April 2015

1. The Freshwater ILG and Crown workplan, workstream priorities and allocation was supported at the last series of regional hui.
2. The representatives for two groups indicated that they represent themselves on freshwater issues: Te Maru o Ngati Wahiao and Ngati Rangiteaorere.
3. The Ngati Kahungunu hui resolved that Te Tiriti o Waitangi/Article 2 must underpin the Freshwater ILG resolutions with the Freshwater ILG continuing, subject to Te Mana o Te Wai, to explore a rights based approach to the allocation of freshwater which creates certainty for iwi and hapū, and accommodates other users.

2. Iwi Freshwater Case Studies

1. Four case studies across the motu were approved by the ILG and Ministers in March 2015 and have been completed (see www.iwichairs.maori.nz):
 1. Horouta Iwi Collective (Te Whānau a Apanui, Ngāti Porou and Turanga Iwi) – Gisborne District Council region;
 2. Te Hapori o Maungatautari (led by Ngāti Korokī-Kahukura) – Waikato Regional Council
 3. Ngāti Kahungunu – All Regional Councils within the rohe of Ngāti Kahungunu.
 4. Te Waipounamu
2. The focus was on understanding hapū/iwi rights and interests in freshwater at a catchment level including water quality (water takes and discharges), power sharing and allocation.
3. The outcome of the case studies has been the identification of how water quality can be improved, how power sharing can be achieved and how allocation – particularly in over allocated catchments – can be addressed while recognising Hapū/Iwi rights and interests. These case studies will be implemented locally but shared nationally.

Te Hapori o Maungatautari

Case Study – Unique Aspects

1. All Crown owned (proven to be in Crown title) lake beds and river beds should be vested in the relevant hapū or Iwi.
2. The water column, the space through which the water flows, should be vested in the relevant hapū or Iwi:
 1. This was agreed by the Crown for Ngāti Tuwharetoa (lake Taupo) which was not a Treaty settlement; but
 2. This has not been agreed anywhere else (including Te Arawa lakes which was a Treaty settlement).

Horouta Iwi Collective Case Study

– Unique Aspects

1. **Ngāti Porou** are currently negotiating a Joint Management Agreement for their rohe under s. 36B of the RMA aimed at eventually achieving a s.33 transfer of full Council powers by 2020.
2. **Turanga Iwi** are currently negotiating an extension of their Local Leadership Board (settlement mechanism) to include all consenting.
3. **Te Whanau a Apanui** seeks a Rohe Protection Area. This is similar to a Marine Protection Area which covers marine, land and freshwater with no involvement of council or DOC unless required by Hapū/Iwi.

Ngāti Kahungunu Case Study

1. Limited examples where co-management or co-governance arrangements have been implemented.
 1. Limited examples where Councils have adopted Kahungunu values within their plans or policies.
2. Crown in collaboration with Councils are choosing who they engage with rather than using existing structures and entities.
3. Concerns of national interest including water storage (Ruataniwha dam) and accessing aquifer for export of freshwater.

Te Waipounamu Case Study

- Quality relationships with local authorities are sought and highly valued by mana whenua
- Mana whenua are looking for constructive and proactive approaches to freshwater management that reflect iwi aspirations
- Improved integration of Iwi Management Plans into regional policy/planning instruments
- Wide range of legislative, regulatory, and planning instruments
- No one-size fits all approach where there are regional differences

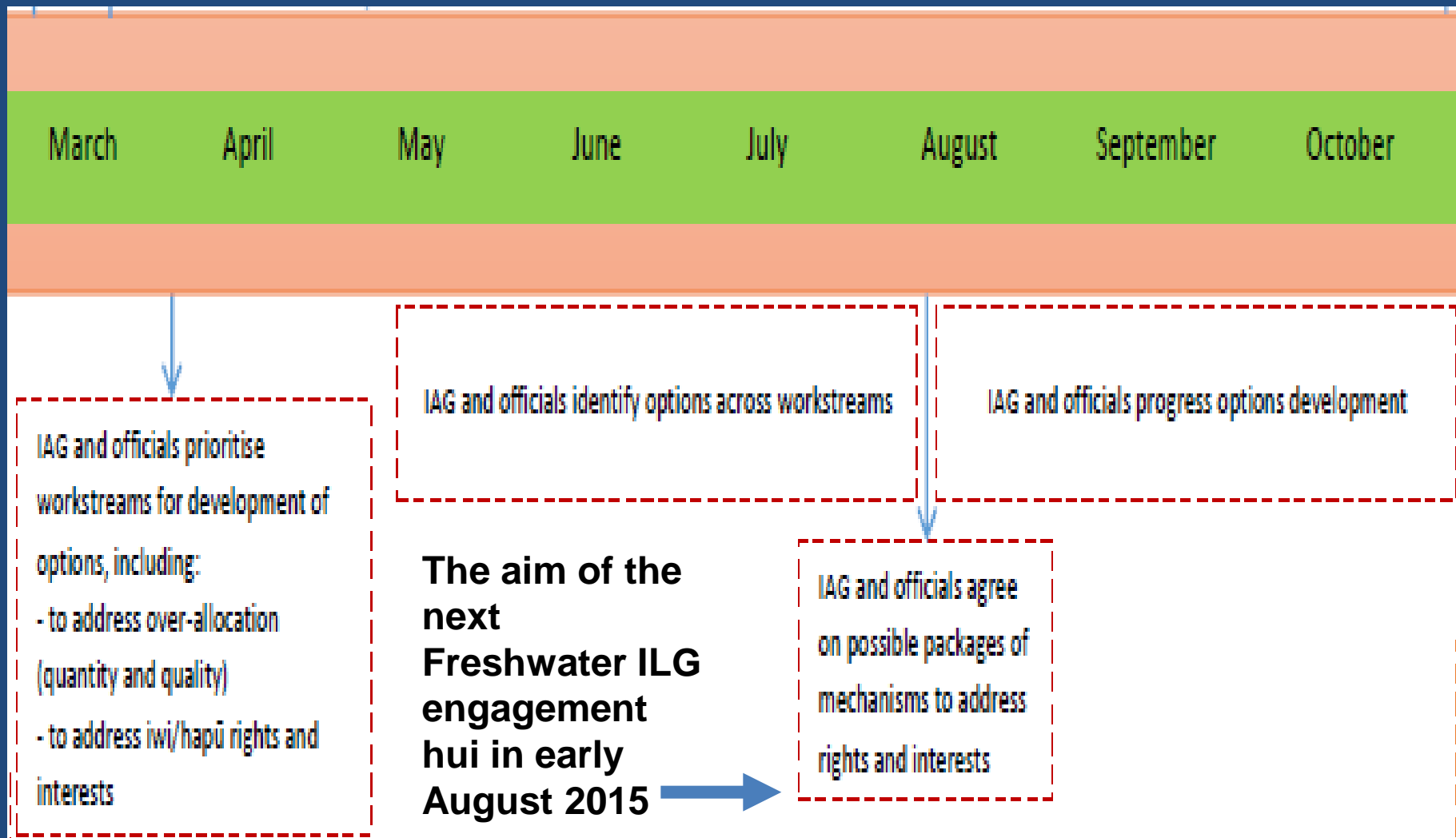
Te Waipounamu Case Study – Unique Aspects.

1. Understanding the timeframes that would be required for iwi to achieve an allocation of water;
2. Determining what the trade-offs could be in securing an allocation of water for iwi; (e.g., strengthening of existing users rights);
3. Determining the level of comfort for iwi utilising allocation of water for commercial gain (either through direct use of lease of water); and
4. Understanding what mechanisms could be used to allocate water and what this would mean for iwi pre- and post- iwi securing an allocation of water.

3. Engagement Update since April 2015

1. **Rights and Interests work programme** – Confirmed by Officials (Iwi and Government) in March 2015 and approved by Cabinet in July 2015 (contained in this presentation).
2. Completion of 3rd and final **Sapere Report** which outlines the Economic benefits of allocation of freshwater including allocation to Iwi (available online).
3. Completion of **Stakeholder Networking evening** (with corporates, councils and agencies), **LAWF and LGNZ engagement**.

Work Plan to August 2015 (circulated in April 2015)



| Workstream | Proposed objectives |
|--|---|
| Recognition of whanau, hapu and Iwi (Willie Te Aho) | <ol style="list-style-type: none"> 1. Enable formal recognition of iwi/hapū/whānau relationships with particular freshwater bodies 2. Address uncertainty of supply of potable water on all marae and in papakāinga |
| Hapu/Iwi Freshwater Governance, Management, and Decision-making (Willie, Roku Mihinui & Julian Williams) | <ol style="list-style-type: none"> 1. Enhance iwi/hapū participation at all levels of freshwater decision-making 2. Build capacity and capability amongst iwi/hapū and councils, including resourcing |
| Freshwater quality (Dr Adele Whyte) | <ol style="list-style-type: none"> 1. Develop a range of mechanisms to give effect to iwi/hapū values in order to maintain and improve freshwater quality |
| Economic interests (Donna Flavell) | <ol style="list-style-type: none"> 1. Develop a range of mechanisms to enable iwi/hapū to access freshwater resources in order to realise and express their economic interests |

Delays with Agreeing Mechanisms

1. Cabinet only considered the “Proposed Objectives” (previous slide) in late July 2015.
2. The Iwi Advisers have completed research that underpins mechanisms discussions. This will be made available at the Iwi Chairs Forum and then put online on 7 August 2015. (www.iwichairs.maori.nz)
3. Mechanisms, within the “Proposed Objectives”, will now be brought through to Regional Hui in mid November 2015.

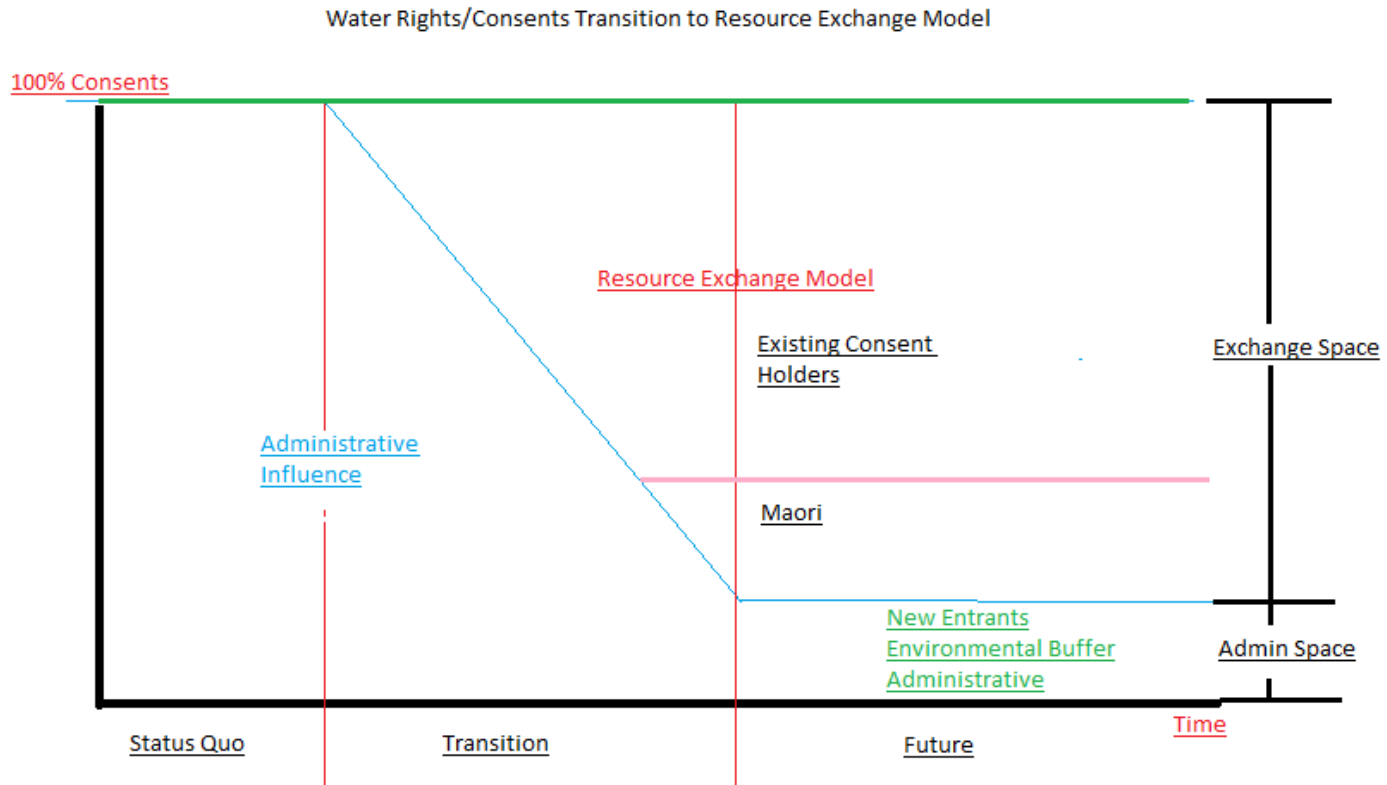
ILG on Recognition & Decision Making Mechanisms

1. The ILG considered and confirmed the ideal mechanisms for Recognition and Decision Making at their June and July meetings.
2. These mechanisms are outlined here.
3. The mechanisms are still to be discussed with Crown officials and confirmed with Cabinet.

| Workstream | Proposed objectives | ILG Proposed Mechanisms |
|-----------------|---|--|
| Recognition | <ol style="list-style-type: none"> 1. Formal recognition of iwi/hapū/whānau. | <ol style="list-style-type: none"> 1. Ownership of all Crown owned river & lake beds and the water column <u>OR</u> Awa Tupua (Whanganui) approach. 2. Title in freshwater consistent with Waitangi Tribunal rulings (see Appendix) |
| | <ol style="list-style-type: none"> 1. Guarantee of potable water on all marae and in papakāinga | <ol style="list-style-type: none"> 1. Guarantee of quality freshwater to every marae & papakaenga. 2. Guarantee of quality freshwater infrastructure to every marae/papakaenga. |
| Decision-making | <ol style="list-style-type: none"> 1. Enhance iwi/hapū participation at all levels of freshwater decision-making | <ol style="list-style-type: none"> 1. Iwi representation on Councils. 2. Joint Management Agreements. 3. Waikato River Co Management or Awa Tupua Arrangements. 4. Rohe Protection Area (like Marine Protection Area covering sea, land and freshwater). |
| | <ol style="list-style-type: none"> 1. Build capacity and capability amongst iwi/hapū and councils, including resourcing. | <ol style="list-style-type: none"> 1. \$1b fund in to an Iwi approved entity (like the Waimaori Trust) to address capacity and capability including mechanisms to assist decision making, water quality and economic mechanisms. |

| Workstream | Proposed objectives | ILG Proposed Mechanisms |
|-----------------------------|---|---|
| Water Quality | <ol style="list-style-type: none"> 1. Give effect to iwi/hapū values (in order to maintain and improve freshwater quality) | <ol style="list-style-type: none"> 1. Implementation of the NPS (eg: te mana o te wai, accounting and data) 2. Improved NPS (and NOF) 3. Regional and Catchment Policy Approach (eg: CWMS) 4. Integrated Policy Approach (eg: existing treaty settlements such as Te Ture Whaimana) |
| Economic Development | <ol style="list-style-type: none"> 1. Develop a range of mechanisms to enable iwi/hapū to access freshwater | <ol style="list-style-type: none"> 1. Administrative Models (eg: Enhance consents process) 2. Hybrid (eg: Operating within te mana o te wai as bottom line) 3. Market Model and Stronger rights based regime (eg: Sapere Approach) |

ILG on Economic Issues Mechanisms



Sapere Reports

1. In September 2014 the ILG commissioned Sapere Research Group to prepare three technical reports. The first report was released in December 2014; the 2nd report was issued in March 2015 and the 3rd report was completed in June 2015.
2. The purpose of the three reports is to determine the value (benefits and costs) of an iwi allocation of freshwater in the context of a stronger rights-based regime like the QMS/fisheries.
3. The Sapere reports assist the ILG to engage with the Crown (and key stakeholders) and discuss the allocation of freshwater to Iwi.
4. The Sapere reports are merely an option and highlight rights based options that have already been used in NZ (QMS, Land Tenure Review etc). The reports should be read as a starting point and can be found at www.iwichairs.maori.nz.

4. NPS FM & RMA Changes

1. Sections 6 & 7 will not change apart from the inclusion of a sub section dealing with natural hazards.
2. The key focus for the ILG is on influencing the matters of National Importance & Forward Agenda.
3. The key focus through to November 2015 will be on:
 1. Including Iwi in decision making for consents.
 2. RMA

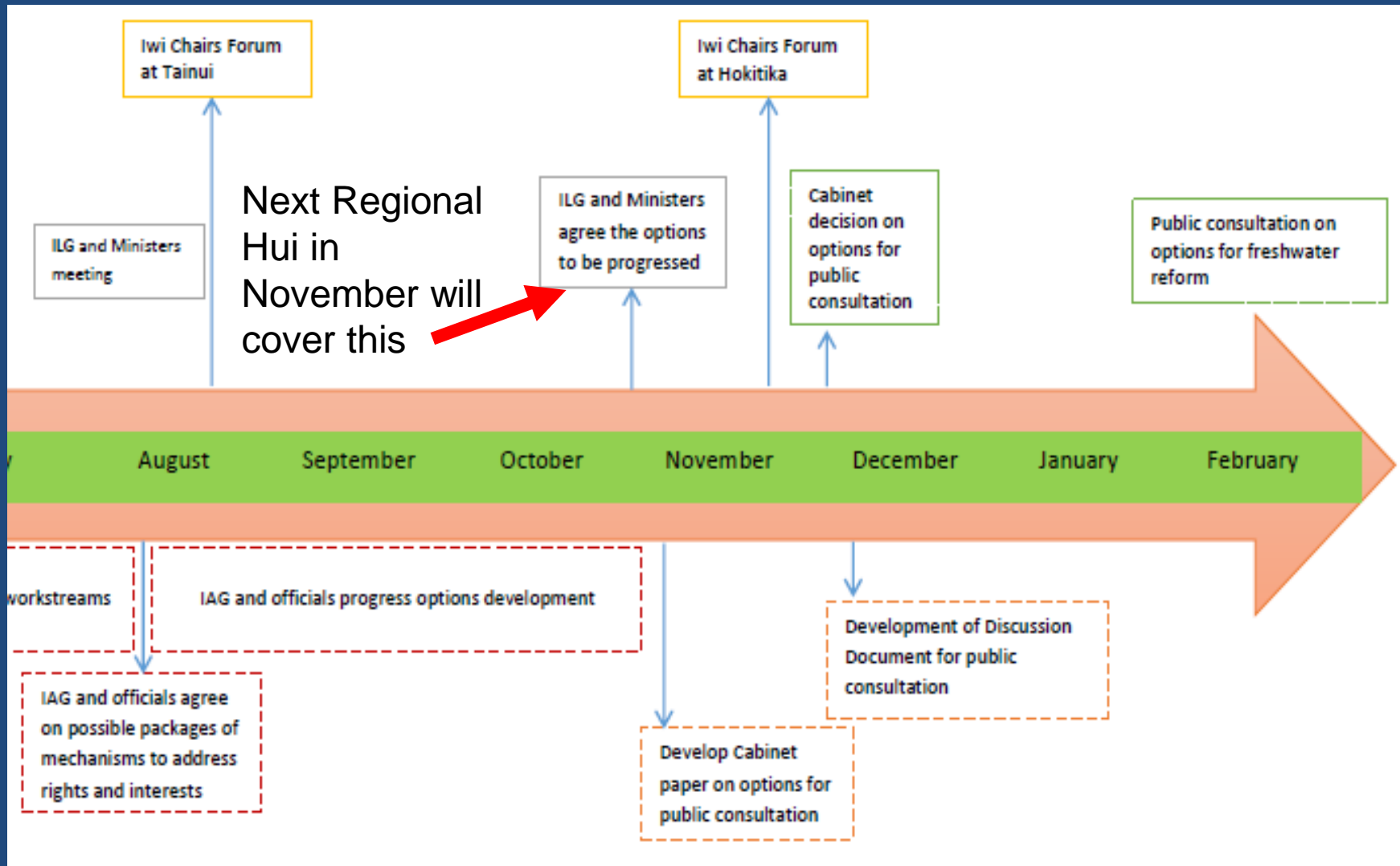
ILG on RMA Amendments

1. Participation and collaboration for Iwi must extend to consenting and include:
 1. Iwi representation on Councils
 2. Extending proposed Iwi Participation Agreements to consenting
 3. Strengthening Iwi Management plans so that the RMA has to either “give effect to” or “recognise and provide for” in all council decision making.
2. The ILG seeks to address under RMA amendments some issues that may not be progressed under the Ture Whenua Māori changes including:
 1. removal of paper roads and redundant Public Works,
 2. reducing local government planning impositions on Maori land to keep land in native bush rather than development
 3. no Māori land to be used for anymore public works.

5. Next Steps

1. By August 2015:
 1. Summary Report of Regional Hui & Report to ICF Hopuhopu.
 2. Outline key issues from Regional Hui to Ministers at ICF.
2. By September 2015: Officials (Crown & Iwi) confirm mechanisms for consideration by ILG and Ministers.
3. By October 2015: Possible package of mechanisms to address Iwi rights and interests in freshwater agreed in principle by ILG and Ministers subject to Regional Hui, Iwi Chairs Forum and public consultation process.
4. By mid November 2015 further regional hui.
5. By December 2015 – confirmation of Iwi position by Hokitika Iwi Chairs Forum.

Workplan to November 2015



Feedback sought

- *Opportunity to include comments back from whānau about the approach to resolving rights & interests and NPS FM & RMA amendments*
- *Identify any key issues or concerns*

Resolution

That the participants at this regional hui support the Freshwater Iwi Leadership Group and Iwi Advisors Group:

1. progressing the agreed workplan and workstream priorities for Iwi rights and interests;
2. progressing the National Policy Statement on Freshwater Management and the RMA amendments; and
3. providing a full update to whānau, hapū and Iwi in mid November 2015.

Moved: Seconded: Abstentions: Against

Contacts

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**APPENDIX –
SUPPORTING DOCUMENTATION
(PRESENTED IN
DECEMBER/JANUARY 2015 AND
APRIL 2015)**

Iwi Leaders Group - Freshwater

- 1 Established in late 2007
- 2 Tuwharetoa, Ngāi Tahu, Whanganui, Te Arawa, Waikato - Tainui, Ngāti Porou, Raukawa, Ngāti Kahungunu
- 3 Mandated by the Iwi Chairs Forum (ICF) to engage directly with senior government Ministers on freshwater reforms
- 4 Focused on ensuring the Government recognises and gives effect to full range of iwi rights and interests in freshwater.
- 5 Chair: Sir Tumu Te Heuheu, Deputy Chair: Sir Mark Solomon

Role of the ILG

- 1 Engaged directly with Senior Government Ministers
- 2 Protocol signed by ILG and Senior Ministers (including Prime Minister)
- 3 Ensures ILG views represented in Cabinet and policy development process
- 4 ILG will not usurp the mana of individual iwi to engage directly regarding their own water bodies
- 5 Any decisions will require consultation with all iwi
- 6 Participation in Land and Water Forum (LaWF)

Crown Law to the Waitangi Tribunal

20 March 2015

21. Through the intended steps outlined above, the Crown continues to engage iwi representatives in an important collaborative process. This process, of course, is not a substitute for the Crown's obligation to inform itself about Māori perspectives on any policy proposals. The Crown notes the Tribunal has cautioned the Crown against treating the ILG as "the" Treaty partner, and acknowledges that the steps outlined above are not a substitute for consultation with Māori. The ILG has also reiterated to the Crown that the ILG's engagement does not usurp the mana of individual iwi and hapū and is not a substitute for the Crown's consultative obligations to Māori. Following the development of policy options a comprehensive process of consultation will be undertaken before any decisions are made.¹¹

Ngā Mātāpono – ILG Key Principles

ILG Engagement is guided by 5 Key principles (agreed Feb 2012):

- 1 Ko te Tiriti o Waitangi te tāhuhu o te kaupapa o te wai
- 2 Te Mana o Te Wai
- 3 Te mana motuhake o ia wai o ia iwi ki te iwi
- 4 Te kaitiakitanga o ngā hapū me ngā iwi i te wai
- 5 Te mana whakahaere o ngā iwi me nga hapū ki te wai

NGA MATAPONO KI TE WAI

OBJECTIVES

- Improved Water Quality – Mana o Te Wai
- Realise value of water resources (including economic)
- Enduring future iwi relationship with water bodies

VALUES

- Ki uta ki tai
- Mana
- Mauri
- Kaitiakitanga
- Wairua
- Intergenerational decision making (mo tatou a mo nga uri)
- Mana Atua Mana Tangata

Allocable Quantum

Instream Limit

GOVERNANCE

Joint Iwi/Community

- Including Collaborative Stakeholder Group
- Direct iwi involvement in decision making

Central

- NPS
- NES
- EPA

Local flexibility

Local/regional governance

- Planning
- Limits
- Allocation
- Monitoring
- Enforcement
- Restoration
- Rentals/Rating

Build on existing Treaty Settlements

LIMITS

Gives effect to Mana Atua Mana Tangata

Balance instream values with economic use

Mana Tangata

- Ceremonial
- Drinking
- Transportation
- Economic
- Recreation
- Food Gathering

Quantity

Quality

Providing for instream values and uses

ALLOCATION

National framework

Increased certainty for all users via better defined rights

Move to highest value use over time

Iwi allocation (economic development)

- Proportional
- Allocated to iwi within catchment
- Perpetual
- Subject to environmental controls
- Inalienable
- Transferable
- Right to access water (not ownership)

Additional interests may exist outside of this framework

TRANSITION

Phase in over time to allow existing users to adjust

Allocating water to iwi may take time in over/fully allocated catchments

Length of transition critical to avoid 'shocks' by allowing existing users to adapt

Create certainty for existing users on new regime

Community/iwi determine allocation objectives via planning regime

Limit setting process

PRINCIPLES

Mana o te Wai Te Tiriti o Waitangi te tahuhu o te Wai Te Mana Motuhake o ia wai o ia iwi ki te wai Te kaitiakitanga o nga hapu me nga iwi ki te wai Te mana whakahaere o nga iwi me nga hapu ki te wai

UNDERSTANDING IWI RIGHTS AND INTERESTS

WHĀNAU, HAPŪ, IWI SPECIAL CASES

Porotī Springs

Taniwha/Hamurana
Springs

etc

TREATY SETTLEMENTS

Iwi specific

Whanganui River

Waikato River

Te Arawa Lakes

etc

IWI LEADERS GROUP ENGAGEMENT

Common rights and
interests shared by
all iwi

Waitangi Tribunal (2012)

[22] The Tribunal did however grant urgency to the claim that the sale of shares in the State enterprises would be in breach of the principles of the Treaty. As has been indicated, in its interim report on that urgent inquiry the Tribunal found that Maori interests in waters used by the State enterprises were in the nature of ownership:³⁵

Our generic finding is that Maori had rights and interests in their water bodies for which the closest English equivalent in 1840 was ownership rights, and that such rights were confirmed, guaranteed, and protected by the Treaty of Waitangi, save to the extent that there was an expectation in the Treaty that the waters would be shared with the incoming settlers. In agreement with the *Te Ika Whenua Rivers Report*, *The Whanganui River Report*, and *He Maunga Rongo*, we say that the nature and extent of the proprietary right was the exclusive right to control access to and use of the water while it was in their rohe.

Crown Position – Supreme Court Decision (2013)

[101] In submissions to the Waitangi Tribunal and in the course of the hearings in the High Court and this Court, the Crown accepts that some hapu will have interests in particular waters and that their interests are protected by art 2 of the Treaty.¹¹⁰

Prime Minister – 14 September 2012

“The government has a very clear position, it believes no one owns water, it does believe that on a case by case basis certain Maori may have rights and interests...but we don't believe water is a nationalised issue; I don't see the need for a national hui, national conversation.”
Mr Key said.

**Priority workstreams for addressing
iwi/hapū rights and interests in
fresh water**

Recognition

1. Iwi/hapū/whanau relationships with fresh water and particular freshwater bodies
2. Iwi, hapū and whanau as kaitiaki and decision-makers for particular waterbodies in their rohe and/or areas of responsibility
3. Iwi/hapū access to fresh water for marae, papakainga and mahinga kai; and
4. Alternative forms of iwi relationship to freshwater bodies (e.g. legal personality of Te Awa Tupua status (Whanganui River) and Ngati Tūwharetoa with Lake Taupō)

Water Quality

1. Iwi/hapū participation in processes to achieve Te Mana o Te Wai through the setting of waterbody objectives, and freshwater quantity and quality limits
2. Address over-allocation and identify how councils and resource users can efficiently and equitably transition to water quantity and quality limits
3. Achieve Te Mana o te Wai in the National Policy Statement – Freshwater Management 2014 (NPS-FM), including the National Objectives Framework

Governance/Management/ Decision Making

1. Iwi/hapū participation in freshwater planning processes through Crown proposed amendments to the Resource Management Act 1991
2. Iwi/hapū participation in all levels of freshwater governance and management decision-making
3. Capacity- and capability-building amongst iwi/hapū and government to give effect to iwi/hapū decision-making at all levels of freshwater management

Economic Development

1. Iwi/hapū access to and use of freshwater resources (freshwater quantity and quality) for economic development purposes
2. Access to and the use of freshwater resources (freshwater quantity and quality) for the development of under-developed Māori land including land where the water consent is held by the lessee
3. Allocation of freshwater resources – create access for new uses/users while recognising existing investment (including of iwi/hapū)
4. Incentivise efficient use and free up water for new uses/users, including iwi/hapū