

# Kluwer Mediation Blog

## Working on Water # 4: tapping into dialogue issues

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Previous blog entries on this theme of water have focussed primarily on the process and stalled progress of the Land and Water Forum [LWF] in New Zealand. This was a process intended to bring together most if not all of the stakeholders on questions of water allocation and quality. As we've seen earlier, what looked to be a promising initiative on these troubled waters, and on a process of "collaborative governance", ran aground on political and partisan shoals. Instead of seeing the recommendations of the LWF implemented, we now see the prospects of government and policy-led programmes on clean water (allocation being kept as a separate matter), with a view to reaching a standard of "swimmability" of the majority of New Zealand's fresh water within a designated timespan. This is not without contention, especially on process (the by-passing of the LWF's recommendations) and science (with fresh water ecologists challenging the government's figures on permissible levels of contaminants, especially nitrates).

As of this week, there is now yet another **initiative**: in a joint press statement (issued, fittingly, on the banks of the Ngaruroro River) seven key agricultural sector actors have acknowledged that the quality of our fresh waterways is not up to standard and that they will "play their part" in moving towards that same goal of swimmability. These key players are Federated Farmers, New Zealand Dairy, Beef + Lamb NZ, Fonterra (the principal dairy processing and exporting company), the Meat Industry Association, Ravensdown (a major fertiliser company) and a government agriculture trade envoy. Absent from that line-up, observers were quick to note, are any representatives of the scientific, tourist, indigenous or environmental sectors. The response to that, at this early stage, seems to be that those groups are not excluded from the conversation; but this is uniquely an initiative of the agricultural sector - in part, in must be said, as the finger of blame for the serious decline in water quality in recent years has been pointed at that sector. It has also been noted that there is no timeframe on achieving that goal, nor any specific actions identified that can or will be taken. However, as a statement of intent, it must be taken at face value; and needs to be seen as an indication that the conversation on water quality will continue. If there's a defensive note at all, it's to the effect that the agricultural sector - contrary to the image conveyed - has a key interest in maintaining or restoring water quality, given the centrality of water to the survival of the sector.

As you might imagine, the announcement has been greeted with a degree of enthusiasm – that the sector is finally moving on water quality issues; and scepticism – that this is a rearguard and defensive move to deflect the usual criticisms, a form of chilling out the opposition.

It has also been noted that one of the key environmental and scientific considerations in restoring water quality is through the reduction of the footprint (or hoof print) of the pastoral sector, especially cattle farming. For those who revel in the standard jokes about the number of sheep per head of population in New Zealand, it's time to update the information (even though humour really doesn't need facts) and to note that there has been a significant reduction in "dry stock" farming (typically, sheep) and a massive intensification of dairy and beef farming. This too has involved the conversion of land that is often marginal for dairy farming, through significant irrigation and fertiliser inputs. This is not the place to explore the science and the ecology, but the key factor mentioned in fresh water quality conversations tends to be nitrates, usually identified as farm run-off. Even with the introduction of stricter fencing requirements to keep cattle back from waterways, there are issues of the steady leaching of nitrates through gravel into both fresh water streams and underground aquifers.

So, the relevance of this to a mediation blog? First – and for those whose work is primarily in the commercial mediation field – this is inescapably a commercial matter. Fonterra, one of the parties to this new pledge, is New Zealand's largest exporter; and it's not an over-exaggeration to note the degree to which the vagaries of the whole economy of NZ fluctuate with the fortunes of Fonterra. As of February of this year, Fonterra contributed NZD\$8 billion to the NZ economy. See [this report](#) on the dairy sector's contribution.

Second, at the time of writing, it is also a political matter: we are a month away from the general election and the results are finely in the balance, especially because of some recent changes in the leadership of two political parties, the meteoric rise of one of those leaders, the surprise resignation from Parliament of the leader of one of the smaller parties, the not always subterranean grumbling about land ownership – especially of some prime cattle land – "falling" into overseas hands; and the perennial influence of the farming sector in NZ's political life. Indeed, cleaning up the waterways has now become one of the core electoral planks of the main parties and no party could risk neglecting that issue, given the fond memory that many voters will have of being able to swim without fear of e-coli or other toxins in most streams.

The substantive questions of water quality and allocation also fall well within the established experience of environmental and public policy mediation, and negotiated rule-making. A number of fellow authors of this Kluwer blog have been involved in matters relating to environmental planning, community development, road and highway planning and so on. And, while this new pledge looks at this stage to be a promise of unilateral action on the part of one key sector, it's unlikely to advance without a modicum of engagement with other stakeholders. In mediation terms, we might ask whether the absence of those parties from the table is a potential speed bump (or, to maintain the riverine metaphor, a set of rapids). Mediators – if it came to that – might well want to ask if there are parties with an interest in the outcome who

need to be there. This too is a matter of the relationships between those with often competing interests in access to resources: town and country; indigenous and settler; tourist and irrigator . . .

There are two other core issues that raise the prospective mediation flag in this initiative. The first involves the relationship or tension between science (ecology), economics, politics, and an array of parallel values, especially - in the NZ context - the value attributed to water as both *taonga* (treasure) and legal right by Maori. The success of the LWF lay in bringing those representative perspectives together, many for the first time in the same room, to nut out common principles for navigating water use and standards.

Second, there is that perennial warning flag in mediation: the presence or absence of trust. The faltering progress of gaining agreement on water quality and allocation has indicated the possibility of establishing trust between groups that would not typically find easy common ground; but the failure to implement any of the apparent agreements indicates the hard work that still needs to be done at the political, popular, and industry levels. As an astute observer noted at an economic summit in India, immediately after the global financial crisis, trust grows slowly at the pace of a coconut tree, but it falls as fast as a coconut falling to the ground. Even as the ink was drying on this new pledge, the sceptical voices were suggesting that this looked more like a marketing exercise by those primarily responsible for the reduction in water quality than a genuine move on swimmability. That remains to be seen of course.

At this stage, of course, this is not a mediation . . . but it's in the public domain again as a further foray into the next phase of the ongoing conversation on environmental standards, economic development, political integrity, the quality of life (in a country that typically scores well on such international rankings), and - resisting the post-truth turn in politics - the importance of science and verifiable data.

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