

**Office of the Minister for the Environment
Office of the Minister for Agriculture and Forestry**

Chair

Cabinet Economic Growth and Infrastructure Committee

Use of alternative form of Regulations to meet national policy objectives on the Measurement of Water Takes

Proposal

1. This paper seeks policy approval for a regulation to be made under section 360(1)(d) of the Resource Management Act 1991 (RMA) to achieve the policy objectives for the measurement of water takes in place of regulations made under section 43 of the RMA (a national environmental standard). The paper outlines the proposed alternative approach and presents a Regulatory Impact Statement.
2. This paper also seeks approval to consult the Implementation Taskforce Group on exposure drafts of the regulations to ensure that they achieve the policy intent.

Executive summary

3. On 20 February 2008, following widespread consultation, Cabinet approved the policy for a national environmental standard for the measurement of water takes, and authorised the Parliamentary Counsel Office to prepare draft regulations [Pol Min (08) 2/2 refers]. National environmental standards are regulations made under section 43 of the RMA.
4. By using section 360(1)(d) of the RMA to make regulations instead of section 43 (a national environmental standard), estimated savings of around \$4.1 million in transactions costs to councils can be met while still meeting the policy intent and objectives approved for the national environmental standard.
5. We have consulted with stakeholders on this alternative proposal, via an Implementation Taskforce Group for the national environmental standard. The Taskforce agrees to the proposed use of a section 360(1)(d) regulation. As requested by the Taskforce, we propose to continue to consult with it on exposure drafts of the regulations to ensure that they achieve the policy intent.

Background

Approved policy for a national environmental standard

6. On 20 February 2008, following widespread consultation, Cabinet approved the policy for a national environmental standard for the measurement of water takes,

and authorised the Parliamentary Counsel Office to prepare draft regulations under section 43 of the RMA [Pol Min (08) 2/2 refers].

7. The agreed policy objectives are to:
 - ensure consistency at national, regional and catchment levels for the measuring and reporting of actual water taken;
 - enable water users and regulators to easily determine compliance with water take consents;
 - provide accurate information about actual water taken in any catchment (including the catchments of groundwater resources); and
 - ensure the comprehensive uptake of water measuring devices in a cost effective and timely way.
8. The national environmental standard would set minimum standards for measuring and reporting of all consented takes of fresh water. It would apply to all new and existing water takes requiring consent under the RMA. It would not apply to permitted water takes.
9. While most councils already impose conditions on water permits requiring metering, these conditions may not cover all of the minimum standards. Therefore, under the national environmental standard, existing consents would need to be reviewed under section 128 of the RMA, on a consent-by-consent basis, to ensure that the required consistency in measuring and reporting is met. The intention (passed by Cabinet) was that all consents be reviewed within 5 years.

The need for a national regulation

10. The need to measure actual amounts of water taken is widely recognised and generally accepted as an important component of freshwater management. Information on actual use is critical to understanding and improving the efficiency of water use. Most importantly, it is a key requirement in understanding water resources and how they respond to the removal of water. Many elements of the government's freshwater work programme require users and regional councils to know how much water is actually taken and over time build up a better appreciation of the variations in volumes taken – for example, improving freshwater allocation mechanisms and resolution of over-allocated catchments, transfer of take consents, establishment of water-user groups, and the management of environmental flows.
11. The recent review by the OECD on New Zealand's environmental performance recommended "*strengthening and expanding the use of water demand management measures (e.g. volumetric metering, pricing for full recovery of water management costs, water efficiency standards)*". The proposed regulation relates to volumetric metering of abstractive or consumptive takes.
12. Despite its recognised importance, water measuring is not yet widespread in New Zealand and its application is patchy. At the end of 2006, there were a total of 19,527 consented water takes nationally, of which 66 percent or 12,850 takes are not measured. Based on an analysis of the size of each take, only 31 percent of the volume of water granted to consent holders is currently measured.

13. The difference in available information on what is granted versus what is actually used makes it difficult for councils, and end users, to fully understand how much water is actually available for business, industry and other uses. The 2009 cost benefit assessment for the policy reports that an allocative efficiency gain of 4.2% would outweigh the costs of the proposal (assuming allocative gains only from unmeasured consents). The gain in allocative efficiency is expected to be greater than 4.2%, with experts estimating gains of between 5 and 10% in constrained catchments in Canterbury, Otago, Tasman, Marlborough and Waikato.
14. Regional councils are moving to increase the measurement of water takes, and, in most cases, add a measuring requirement to new and replacement consents. Some councils such as Marlborough District Council have a long history of water use data from the requirement to measure water takes. However, the transition from the current situation to full measurement across the country is hampered by the fact that just over a third of existing consents in New Zealand have a replacement date more than 20 years away. The majority (85 percent) of these long-term consents are in the Canterbury region. There are programmes in place to require water measurement on existing consents that would be assisted by a national emphasis on the importance of measurement.
15. There is currently significant variation in the detail and extent to which the required accuracy, ongoing reliability and reporting standards for water measurement are prescribed. Issues such as device accuracy are as much about what is achievable with current hardware, rather than catchment specific requirements for accuracy. The technical requirements for water measuring devices do not need to differ from region to region. Providing national consistency in the technical requirements for measurement will provide more certainty to users and hardware suppliers.
16. A national regulation provides a relatively simple and effective way of ensuring that existing and new consents have consistent requirements for accurate and comprehensive measurement of water takes. It reduces the need for individual councils to undertake separate, but similar, plan change processes.

Concerns about the use of a national environmental standard

17. Regional councils have raised concerns about the high transactional costs and resources required for extensive reviews of existing consents to implement the national environmental standard. The 2009 cost benefit assessment estimates these costs to be in the order of \$4.1 million.
18. The regional councils also suggested that regulations made under section 360(1)(d) of the RMA should be investigated as an alternative approach to meet the agreed policy objectives.

The use of s360(1)(d) regulations in place of a national environmental standard

19. Section 360(1)(d) of the RMA provides for regulations to be made:
“requiring the holders of water permits ... to keep records for any purpose under this Act, and prescribing the nature of records, information, and

returns, and the form, manner, and times in or at which they shall be kept or furnished.”

20. A regulation made under section 360(1)(d) of the RMA can achieve the same policy outcomes as a national environmental standard-type regulation under section 43 of the RMA, but at considerably less cost. The section 360(1)(d) regulations can be applied directly to both new and existing consents, without the need to review existing consents. This approach meets the previously approved policy intent, while not imposing unnecessary transactional costs for regional councils and end-users.
21. However, there are differences in how the two forms of regulations are drafted and implemented.

Difference in drafting

22. Rather than placing minimum standards on measuring devices (as per what was proposed for a national environmental standard), a regulation made under section 360(1)(d) could place minimum requirements on the records (and the form and manner in which they are kept and furnished). The minimum standards for the records would be the same as for the devices but would need to be framed in the context of the records.

Difference in implementation processes

23. Section 360(1)(d) regulations would impact directly on existing consent holders without the need for their consent conditions to be reviewed to meet the minimum standards. We propose that a transitional provision of 5 years is provided in the regulations for existing consents, to match the period for reviews to be done which was set out in the Cabinet decision approving the national environmental standard proposal.
24. In contrast, once a national environmental standard is in force, the RMA provides a process for review of consent conditions to meet the proposed minimum standards. This is very similar to a resource consent application process, but with the costs being borne by the council (ie, ratepayers). The consent holder could object to the review of conditions and ultimately have the matter determined by the Environment Court. The likely success of any appeal to such a review would appear very low and therefore the cost of providing for this process is not justifiable.

Application of the regulation

25. The regulation will come into force 28 days after it is gazetted and will apply, subject to few exemptions, to all new and existing consents. We propose to provide a transitional period of 5 years for existing consents to comply with the regulations. This is both to reflect the period that Cabinet previously approved for existing consents to be reviewed within, and to provide adequate time for the installation of measuring devices across the country.
26. The proposed regulation would not apply to water takes for which no resource consent is required. These takes cover those for an individual's domestic purposes and for animals' drinking water, and takes for fire-fighting as allowed

under s14(3) of the RMA. It will also exclude takes which regional plans allow without resource consent (permitted takes). Because the regulation would apply at the point at which water is taken from a river, lake or groundwater system the standard would not apply to individual households or businesses that source water from a reticulated supply.

27. On approving the policy intent for drafting into (section 43) regulation, Cabinet directed officials to look into exemptions where it can be justified that there is little or no benefit to be gained from measuring the take and imposing unnecessary costs in terms of:
 - improving efficiency of use,
 - understanding of the resource,
 - providing information useful in strategic planning, or
 - implementing environmental flows and/or water levels.
28. This work is currently ongoing. Our officials will finalise the details around exemptions over the next months and will seek the Minister for the Environment's sign off to exemptions prior to finalisation of the regulation.

Risks

29. Because the regulations will be tailored to meet impracticality concerns, it is considered that the impacts on consent holders as a result of the difference between the implementation processes will not be significant.
30. Central government will be expected to provide assistance to regional councils to effectively implement the regulations and educate consent holders for compliance with the regulations. Work has already begun on a package of implementation guidelines which will provide specific guidance to regional councils, and other work has already been completed that provides technical guidance to users and contractors on the installation of measuring devices. My officials will continue working with the Implementation Taskforce Group to roll out other guidance aimed at the full range of audiences for these regulations. This work will require considerable resources to ensure that the regulations are, effective (both immediately and longer term) and that there are no unnecessary delays to their implementation.

Consultation

31. I have consulted and gained the agreement of the Minister of Agriculture and Forestry, who has co-led the development of this national instrument.
32. Public consultation on the policy intent of this proposal was undertaken through a public process during development of the previously proposed national environmental standard. Given that the policy intent and outcomes will not change with the different form of regulation (apart from further development in regard to exemptions), no separate public consultation process has been undertaken on the use of regulation made under section 360(1)(d) instead of under section 43.
33. However, our officials have consulted with stakeholders and regional council representatives, via an Implementation Taskforce Group, on this alternative

proposal. The Implementation Taskforce Group agrees to the proposed use of a section 360(1)(d) regulation.

34. Our officials have consulted with iwi advisors.
35. The following departments have been consulted in the preparation of this paper and concur with the contents of the paper: Ministry of Economic Development, Te Puni Kokiri, Treasury, and the Department of Conservation. The Ministry of Education and Department of the Prime Minister and Cabinet were also consulted in the preparation of this paper.

Financial implications

36. This paper does not contain specific recommendations on expenditure or revenue.
37. The use of section 360(1)(d) regulations will prevent unnecessary further expenditure on reviewing existing consents to meet the requirements of the regulation.

Human rights

38. There are no human rights implications associated with this proposal.

Gender implications

39. There are no gender implications associated with this proposal.

Disability perspective

40. There is no disability perspective associated with this proposal.

Legislative implications

41. The proposed standard will be developed as a regulation to be made by the Governor-General, by Order in Council. The final regulation must be approved by Cabinet Legislation Committee.

Regulatory impact analysis

42. A Regulatory Impact Statement has been prepared and the Regulatory Impact Analysis Unit considers the analysis and the Regulatory Impact Statement to be adequate.
43. The final Regulatory Impact Statement was circulated with the Cabinet paper for departmental consultation.

Publicity

44. The Minister for the Environment intends to release a press statement on the release of the regulations.
45. The regulations will not come into force until at least 28 days after they have been notified in the New Zealand Gazette. We will release press statements

prior to the regulations being completed, and the Ministry for the Environment will develop an implementation package with regional councils.

46. If the proposed standard is approved, we propose that this paper, including Cabinet decisions, and the Regulatory Impact Statement, be publicly released, including by publication on the Ministry for the Environment and Ministry of Agriculture and Forestry websites.

Recommendations

47. The Minister for the Environment and the Minister for Agriculture and Forestry recommend that the Committee:
 1. agree to the use of a regulation made under section 360(1)(d) of the Resource Management Act in place of one made under section 43 (national environmental standard) to achieve the same and agreed policy intent for the measurement of water takes at considerably lower costs
 2. note that the policy intent already agreed by Cabinet minute POL Min (08) 2/2 requires all resource consents for water takes to collect and report records which meet the following minimum standards:
 - 2.1. continuous records of the amount of water taken
 - 2.2. records of daily volumes (or weekly volumes for some takes) in cubic metres in an auditable manner
 - 2.3. is capable of recording daily volume in cubic metres to an accuracy standard of ± 5 percent for pipes, and ± 10 percent for channels
 - 2.4. is capable of providing output in a form suitable for electronic data storage
 - 2.5. is appropriate to the qualities of the water it is measuring (including temperature and sediment content)
 - 2.6. is sealed and as tamper proof as practicable
 - 2.7. is installed to comply with the manufacturers' installation instruction
 - 2.8. is installed in a location that measures all water taken (e.g. be installed before the first outlet point downstream of the point of take)
 - 2.9. is independently verified for accuracy every five years or more frequently if recommended by the manufacturer/installer
 3. direct officials from the Ministry for the Environment to finalise details any exemptions from the regulation on the basis of little or no benefit and that these exemptions are approved by the Minister for the Environment prior to finalisation of the regulation
 4. agree that the regulation establishes that the responsibility for recording and transferring the data to the regional council rests with the consent holder, and that data is transferred to the regional council on at least an annual basis.

5. note that consultation was undertaken on the proposed policy intent during development of the national environmental standard and in accordance with the requirements of the Resource Management Act
6. invite the Minister for the Environment to instruct Parliamentary Counsel to draft a regulation under section 360(1)(d) of the Resource Management Act to give effect to these requirements
7. direct officials from the Ministry for the Environment and Ministry of Agriculture and Forestry to consult with the Implementation Taskforce Group on exposure drafts of the regulations to ensure that they achieve the policy intent
8. agree that the Minister for the Environment may publicly release this paper, including the Regulatory Impact Statement, once Cabinet has made a decision.

Hon Dr Nick Smith
Minister for the Environment

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Hon David Carter
Minister for Agriculture and Forestry

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