



## Joint Briefing: Proposed regulations for the measurement of water takes

<b>Date:</b>	25 August 2009	<b>MfE Priority:</b>	<b>URGENT</b>
<b>Security Level:</b>	CLASSIFICATION	<b>Number of Attachments:</b>	Nil
		<b>MfE Ref No:</b>	09-B-2456
		<b>MAF Ref No:</b>	B09-158

## Action Sought

	Action Sought	Deadline
Minister for the Environment Hon Dr Nick Smith  Minister of Agriculture and Forestry Hon David Carter	<p><b>Note</b> the details of proposed regulations on the measurement of water takes, to be made under section 360(1)(d) of the Resource Management Act,</p> <p>And:</p> <p><b>Identify</b> your preferred options to be included in the Cabinet paper on the use of section 360(1)(d) regulations for the measurement of water takes, which is to be discussed by EGI Committee</p> <p>Or:</p> <p><b>Agree</b> to meet with officials to confirm the details of the proposal to Cabinet.</p>	No deadline

## Ministry for the Environment Contacts

Name	Position	Telephone		1st Contact
		(cell)	(work)	
Miriam Eagle	Senior Policy Analyst		04 439 7592	✓
Glenn Wigley	Manager, Resource Management Tools	027 491 7806	04 439 7515	
Kevin Currie	Director, Environmental Protection	027 240 5643	04 439 7590	

## Ministry of Agriculture and Forestry Contacts

Name	Position	Telephone		1st Contact
		(cell)	(work)	
Chris Arbuckle	Senior Policy Analyst	029 951 4724	03 951 4724	✓
Gina Sweetman	Acting Manager, Environment	029 200 7295	04 894 0321	
Mike Jebson	Director, Natural Resources Policy	029 894 0696	04 894 0696	

## Executive Summary

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This paper provides further information on the substance of proposed regulations to be made under section 360(1)(d) of the Resource Management Act (1991) (RMA) for the measurement of water takes.

The proposed section 360 regulations will meet the same policy objectives as those approved by the previous Cabinet for a national environmental standard (NES). They will apply to all new and existing water takes requiring consent under the RMA (with some exemptions subject to your joint approval).

The proposed regulations will set minimum requirements for measuring and reporting all consented water takes that are equivalent to those proposed for an NES. There are regions which already place more stringent conditions on water take consents and they wish to continue to do so (e.g., where telemetry is required for the transfer of data). We therefore recommend including in the proposed regulations the ability for councils to apply more stringent requirements on consent holders as necessary.

We have previously recommended a transitional provision of five years for the regulations to apply to existing consents, to mitigate the effect on existing consent holders from using this alternative form of regulation. An option to reduce this timeframe (in some areas) could be to require high-priority regions and catchments to be compliant within a shorter period (e.g., three years from gazettal), with the other regions and catchments compliant within five years.

We propose that exemptions to the regulations be provided for as follows:

- Full exemption – non-consumptive water takes, on the basis that there is little or no benefit to be gained from measuring these takes where they have no effect on the availability of water to other users.
- Partial exemptions from some of the minimum standards – circumstances where it is physically or extremely impracticable to meet requirements around accuracy, point of measurement and frequency of measurement/reporting, and where the objectives of the regulation could be better met by applying specific alternative requirements.

9(2)(h)



We recommend that, in addition to approval to use section 360 regulations for this purpose, that Cabinet approval is sought for the exemptions (including mining privileges if you choose that option) and to provide the ability for councils to apply more stringent requirements on consents as necessary. We seek your agreement to take these additional matters to Cabinet.

We also seek your approval to continue to consult with stakeholders, through the Implementation Taskforce Group, on exposure drafts of the regulations to ensure that they achieve the policy intent generally, and around exemptions.

## Recommended Action

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### We recommend that you:

- (a) **Note** the details of the proposed regulations to be made under section 360(1)(d) of the RMA on the measurement of water takes **Noted**
- (b) **Agree** to meet with officials to confirm the details of the proposal to be put to Cabinet. **Yes / No**
- (c) **Direct** officials to prepare a Cabinet paper which: **Yes / No**
- Either:
- i. includes the transitional provision of five years for existing consents **Yes / No**
- Or:
- ii. includes a phased approach to the proposed regulations (with high priority regions and catchments complying within three years and the remainder of consents complying within five years). **Yes / No**
- And either:
- i. provides for mining privileges to be exempted from the proposed regulations **Yes / No**
- Or:
- ii. includes mining privileges in the proposed regulations with no consultation **Yes / No**
- Or:
- iii. includes mining privileges in the proposed regulations with urgent and targeted consultation to mining privileges holders. **Yes / No**
- And:
- requests that the proposed regulations include the ability for councils to apply more stringent requirements on consent holders as necessary. **Yes / No**

(d) **Agree** for exposure drafts of the proposed regulations to be **Yes / No** provided to the Implementation Taskforce Group for feedback.

Glenn Wigley  
Manager, Resource Management Tools  
**Ministry for the Environment**

Gina Sweetman  
Acting Manager, Environment  
**Ministry for Agriculture and Forestry**

Hon Dr Nick Smith  
**Minister for the Environment**

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Hon David Carter  
**Minister for Agriculture**

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## **Purpose of Report**

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1. You have asked for further information on the substance of proposed regulations for the measurement of water.
2. The issues that the proposed regulations will address are defined below, followed by a description of the policy objectives and minimum standards, and how the proposed regulations would be applied (including an update of policy work on exemptions).

## **Problem definition**

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3. Water measuring is not yet widespread across New Zealand and its application is patchy – at the end of 2006, around 66%<sup>1</sup> of water takes (and around 69% of the associated volume of water taken) across New Zealand were not being measured. The difference in available information on what is allocated 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.
4. Regional councils are moving to increase the measurement of water takes, however the transition to full measurement across the country is hampered by the large number of existing consents (particularly in Canterbury) having a replacement date more than 20 years away.
5. In addition, 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. Providing national consistency in the technical requirements for measurement will provide more certainty to users and hardware suppliers.
6. 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.

## **Policy objectives of the proposed regulations**

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7. In February 2008, Cabinet approved a proposal for an NES for the measurement of water takes. Officials now propose that the same policy objectives of that proposed NES can be better achieved using regulations made under section 360(1)(d) of the RMA. This alternative form of regulation will minimise implementation costs for councils as they are able to apply directly to existing consents without the need for a section 128 review (which is required for an NES).
8. The objectives of the proposed regulations are to:
  - ensure the comprehensive uptake of water measuring in a cost effective and timely way,
  - provide accurate information about actual (consented) water taken in any catchment,
  - ensure consistency for the measuring and reporting of actual water taken at the national, regional and catchment levels,
  - enable water users and regulators to easily determine compliance with water take consents.

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<sup>1</sup> We understand from discussions with councils that this percentage is still representative of the current situation.

## **Requirements of the proposed regulations**

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9. The proposed regulations will set minimum requirements for measuring and reporting all consented takes of fresh water. These minimum requirements would be equivalent to those proposed for an NES – the difference being that the requirements under s360(1)(d) regulations would be framed in the context of keeping and furnishing water use records, rather than in the context of requirements on measuring devices which was proposed under an NES.
10. The proposed regulations will require that all resource consents for water takes shall collect and report records which meet the following minimum standards:
  - i. continuous records of the amount of water taken
  - ii. records of daily volumes (or weekly volumes for some takes) in cubic metres in an auditable manner
  - iii. records must be collected by water measurement / monitoring devices and systems which are:
    - i. capable of recording daily volume in cubic metres to an accuracy standard of  $\pm$  five percent for pipes, and  $\pm$  10 percent for channels
    - ii. capable of providing output in a form suitable for electronic data storage
    - iii. appropriate to the qualities of the water it is measuring (including temperature and sediment content)
    - iv. sealed and as tamper proof as practicable
    - v. installed to comply with the manufacturers' instructions
    - vi. installed in a location that measures all water taken (e.g. be installed before the first outlet point downstream of the point of take)
    - vii. independently verified for accuracy every five years or more frequently if recommended by the manufacturer/installer.
  - iv. records can be in either manual or electronic form, as elected by the regional council
11. The proposed regulations will place responsibility with the consent holder for recording and transferring the data to the regional council. They will require that data is transferred to the regional council on at least an annual basis.
12. Resource consent conditions or a rule in a plan could be more stringent than these minimum requirements provided that the regulation expressly identifies that more stringency is allowed. An example of where this would be required is the Manawatu-Wanganui region where existing consents require water use data to be transferred to the council by telemetry. We recommend seeking approval from Cabinet to provide for this in the proposed regulations.

## **Application of the proposed regulations**

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13. A further key part of the proposed regulations will be which consents it applies to (and exemptions), and the timeframe for consents to meet the minimum requirements. These matters have been the most contentious part of developing the NES (and more recently the section 360 proposal).

14. The proposed regulations will apply to all new and existing water takes requiring consent under the RMA. It will not apply to permitted water takes (i.e., takes that do not require a resource consent) or any exemptions agreed by Cabinet.

#### Timeframe for application of the proposed regulations to consents

15. The proposed regulations will come into force 28 days after they are gazetted and can apply immediately to all water take consents (if they are not exempted).
16. We have previously recommended to you that a transitional provision of five years is provided in the proposed regulations for existing consents, to mitigate the effect on existing consent holders from using a section 360 regulation. This period matches the period approved by the previous Cabinet for section 128 reviews to be undertaken under the NES approach. Regional councils and industry representatives, through an Implementation Taskforce Group<sup>2</sup>, have also indicated that this timeframe is appropriate for all consents to comply with the proposed regulations (over 13,000 existing consents are currently not metered), given the hardware and manpower required to install devices and check compliance with the proposed regulations.
17. An option, should you wish to reduce this timeframe, would be to phase in the application of the proposed regulations. That is, the regulations could require high-priority regions and catchments to be compliant within a shorter period (e.g., three years from gazettal), with the other regions and catchments compliant within five years. This would require certain regional councils to identify high-priority catchments before the proposed regulations are drafted. We note that the 2009 cost benefit assessment for the policy predicts that gains in allocative efficiency would outweigh the costs of the proposal in constrained catchments in Canterbury, Otago, Tasman, Marlborough and Waikato – Hawke's Bay is another potential region to target. High priority catchments should be those that are currently over-allocated or at full allocation.
18. This phased option has not yet been discussed with the Taskforce or other stakeholders. However we understand from regional councils that many are already preparing roll out plans for the review of consents that would have been required under the NES. For example, Canterbury has prepared a Water Implementation Plan for the next five years and is already in the process of reviewing Selwyn-Rakaia consents which account for a large volume of allocated water in that region.

#### Exemptions

19. On approving the proposed NES for drafting, the previous 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. Officials have engaged with the Implementation Taskforce Group to develop policy around exemptions.
20. We are still finalising the detailed proposal for exemptions for Cabinet approval, however the proposal will recommend that the proposed regulations:
  - will not apply to non-consumptive water takes.
  - will provide for circumstances where it is physically or extremely impracticable to meet requirements around accuracy, point of measurement and frequency of measurement/reporting (ie, partial exemptions from some of the minimum standards).

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<sup>2</sup> An Implementation Taskforce Group made up of representatives from regional councils, industry, NGOs and water users was established in early 2008 to address implementation matters.

21. Non-consumptive water takes would include 'take and returns' to the same water resource at the same location and time and with no effects on the availability of water to other legal users. Measuring the water use data from these takes will not add to the catchment, regional or national water balance.
22. Exemptions for temporary water takes were considered in response to issues raised in submissions on the proposed NES. However a number of regional councils have indicated that there are valid reasons to measure temporary consents.
23. It is also proposed, subject to Cabinet approval, that the proposed regulations provide 'partial' exemptions for circumstances where it is physically or sensibly impracticable to meet the standard requirements for:
- point of measurement
  - accuracy
  - frequency of measurement/reporting
- and where the policy objectives of the regulations could be better met by applying alternative requirements.
24. The proposed regulations will require that water is measured at a location that includes all water taken (e.g. before the first outlet point downstream of the point of take). Examples of where it may be physically impracticable to meet this requirement are:
- Open water races with several take points which cannot meet the requirement around accuracy and for which a more accurate (combined) take measurement may be acquired at an alternative point or points.
  - Multiple consents taking from one point. Having the point of measurement on each outlet (rather than before each outlet), upstream of the point of take, would provide a better outcome in terms of the ability for councils to monitor compliance with the regulations.
  - Takes which include some permitted volumes (for domestic and stock watering) in addition to irrigation water – Canterbury are requiring these takes to measure consented water take volumes after the permitted volume is diverted.
25. For these cases, the proposal may include setting out alternative standards in the regulations as suggested above, or changing the standard requirement so that it refers to the measurement at a point where all 'consented' water can be accurately measured.
26. The minimum accuracy requirements are consistent with the accuracy required by regional councils and the equivalent Australian initiative. As indicated in submissions to the proposed NES, they are also thought by industry to generally be achievable standards. However, an example of where it is physically impracticable to meet the standard's accuracy requirements is open race weirs where the gradient is too steep. To meet the standard accuracy of +/-10mm (for open channel takes) these systems would need to be totally redesigned. These cases can be addressed by alternative points of measurement as described above.
27. Examples of where it may be physically impracticable to meet the regulations' requirements around frequency (daily recording) are those exceptional cases in remote areas where the take would be considerably difficult to access every day and where electronic data transfer is not possible (i.e., no cellphone or internet coverage).

28. Again, the proposed regulations would set out the alternative standards for exceptional cases of this sort. The previous Cabinet approval envisaged that weekly recording would be appropriate in some cases.
29. The issue of exemptions has been one of the more complex and contentious during the development of the proposal. We seek your approval to provide exposure drafts of the regulations to the Taskforce, to 'roadtest' them and ensure that they achieve the policy intent.

### Mining privileges

30. We have previously noted that the proposed NES would apply to all new and existing water takes requiring consent under section 14 of the RMA, including mining privileges.
31. A number of Otago water bodies are subject to historic permissions for taking of water through "mining privileges in respect of water". Mining privileges were issued under early mining legislation and allowed the taking, damming and discharging of water. However, as gold mining declined, this water was increasingly used for irrigation. The Crown acquired a number of the higher priority, significant mining privileges which were used for irrigation schemes, and these were then transferred to community irrigation groups. On the enactment of the RMA in 1991, every mining privilege was deemed under Section 413 to become a water permit for the taking or damming of water, on the same terms and conditions as the original mining privilege. These deemed permits expire on 1 October 2021 and must be replaced with water permits, if water is to be taken or dammed after that time.
32. Through our discussions with the Taskforce it was noted that the proposed NES would only apply to mining privileges in 2021, which is when they are required to be replaced with water permits. This is because, under section 413(1), mining privileges cannot be reviewed under section 128 in the same way water permits can.
33. However, section 360 regulations can apply immediately to mining privileges as this form of regulation can apply directly to existing consents without the need for consent reviews under section 128. This is desirable to regional councils who wish to require the measurement of these water takes but who cannot currently do this under the RMA. We also understand that the majority of mining privilege holders expected that the proposed NES would have applied to them and would provide benefits in regard to overall regional, catchment and individual water management.

9(2)(h)



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## **Approval by Cabinet**

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36. As discussed in a previous briefing to you, the proposal to use section 360 regulations to achieve the policy objectives for measurement of water takes will require approval by Cabinet.
37. We also recommend that Cabinet approval is sought for the exemptions (including mining privileges if you choose that option), and to provide the ability for councils to apply more stringent requirements on consents where appropriate, and to consult with the Taskforce on exposure drafts of the regulations to ensure that they achieve the policy intent.