



Joint Briefing: Proposed regulations for the measurement of water takes – further information on costs and application

Date:	24 September 2009	MfE Priority:	URGENT
Security Level:	CLASSIFICATION	Number of Attachments:	Nil
		MfE Ref No:	09-B-2847
		MAF Ref No:	B09-243

Action Sought

	Action Sought	Deadline
Minister for the Environment Hon Dr Nick Smith	Note the further information on the costs and benefits of the proposed regulations on the measurement of water takes. And: Direct officials to proceed with the proposal to Cabinet, while developing criteria for exemptions with the Implementation Taskforce.	No deadline
Minister of Agriculture and Forestry Hon David Carter	And: Agree for exposure drafts of the proposed regulations to be provided to the Implementation Taskforce Group for feedback	

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Executive Summary

This paper provides further information on the costs and application 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 2007 cost benefit assessment by Harris Consulting (for the proposed NES) reports an overall cost to consent holders of \$41.8 million, made up of:

- capital and installation costs (\$21.7 million),
- 5 year and 20 year replacement / calibration costs (\$7.0 million), and
- annual costs for data download and transfer (\$13.1 million).

The 2007 cost benefit assessment also identifies benefits to consent holders resulting from the proposal – these include improved compliance monitoring, technical efficiency, allocative efficiency, reporting and understanding of their water take, and possible reduction in transactional costs when making future / replacement consent applications.

We understand that capital and installation costs have become more competitive in the two year period since the report was produced. In addition, some regional councils are already moving to increase the measurement of water takes by reviewing existing consents and so the regulations will not impose capital costs itself on those consents. We are therefore preparing to update the cost benefit assessment to reflect these changes, the use of section 360 regulations instead of an NES, and any proposed exemptions to inform the regulatory impact statement to accompany the proposal to cabinet.

We can confirm that, under section 360(2) of the RMA, the Minister for the Environment can exempt certain takes from the regulations in any way that you see fit, by issuing a Gazette notice. This provides a clear mechanism for you to choose to exempt catchments where you consider that there are no foreseeable adverse effects from abstracting water. We recommend that certain criteria are developed to assist you in making such decisions as they are suggested / applied for.

To provide a five year transitional period, while impelling regional councils to focus on priority catchments first, we propose encouraging regional councils to incentivise high priority catchments to install meters sooner than the transitional period requires them to, where possible. Central governmental support might be required in some regions, depending on the incentive option(s) identified.

As regulations made under section 360(1)(d) can only apply to consent holders, and not to regional councils, these processes (gazetting exemptions and encouraging councils to incentivise the early uptake of metering in high priority catchments) would not need to be set out within the regulations – rather, they would be parallel processes between central government and regional councils.

Recommended Action

We recommend that you:

- (a) **Note** the estimated costs of the proposed regulations on the measurement of water takes to consent holders
- (b) **Note** that officials are preparing to update the 2007 cost benefit assessment, for the final proposal to cabinet.
- (c) **Direct** officials to develop appropriate clear criteria, through the Implementation Taskforce Group, for catchments which may warrant exemption on the basis that their allocation status does not adversely affect the resource, users or environmental values in the foreseeable future. **Yes / No**
- (d) **Agree** for exposure drafts of the proposed regulations to be provided to the Implementation Taskforce Group for feedback. **Yes / No**

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Purpose of Report

1. Previous briefings to you have described the content of the proposed regulations (MFE Ref 09-B-2456, MAF Ref B09-158 refers).
2. At our meeting with you on 16 September 2009, you asked for further information on the application and costs of proposed regulations for the measurement of water.

Application of the proposed regulations

What the proposed regulations will apply to

3. As discussed with you, the proposed regulations will apply to all water takes requiring consent under the RMA (with certain exemptions as agreed by Cabinet).
4. As a first principle, the proposed regulations would not apply to takes for domestic or stock water as these are permitted under section 14(1) of the RMA (and hence do not require consent).
5. For other takes not permitted by section 14(1) of the RMA, the threshold for application of the proposed regulations would be any water takes which are above the permitted take levels set in regional plans. Permitted take levels vary across regions and indeed across catchments/aquifers within regions. There is considerable variability in approaches in regional plans to setting permitted take levels – for example:
 - some regional plans set permitted take levels across the region by the use of/ need for the water,
 - some set by catchment/'groundwater zone', or by categories of resource across the region,
 - some streams have reaches with different categories.

This variability in approach reflects the considerable variability in the types of catchments, the ecological and other values, and the pressures on these on different resources.

Exemptions

6. We acknowledge your comments at our meeting that the proposed regulations need to be introduced and implemented in the simplest way possible, with pragmatism.
7. As discussed with you, we have recommended proposing to Cabinet that the proposed regulations:
 - will not apply to non-consumptive water takes – for example, instream gold dredges and hydro-generators, provided that there is no effect on the availability of water to other legal users (or scheduled environmental flows).
 - 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).
8. You have requested officials to also look into the possible exemption of catchments where the allocation status will not result in adverse effects on the resource, environmental values or other users, in the foreseeable future. We can confirm that it is possible by issuing a Gazette notice, to exempt certain takes (or catchments) as

you see fit. These exemptions need not hold up the gazettal of the regulations proper.

9. Section 360(2) of the RMA allows you to apply regulations '*from time to time*' by Gazette notice, '*within any specified district or region of any local authority or within any specified part of New Zealand, or to any specified class or classes of persons*'. You are able to reduce the scope of the regulation but you are not able to expand the scope.
10. The wording '*from time to time*' implies that this would be a temporary exemption which would require a stated sunset clause or your review at a later date, however we consider this to be appropriate given the impacts of takes are only able to be assessed into the foreseeable future.
11. Catchments for exemption may be identified by you or suggested by others (eg, regional councils) for your consideration. A similar process is provided for in the NES for air quality whereby regional councils can apply to you to identify airsheds that that standard applies to.
12. You are able to make decisions on which catchments should be exempted as you see fit, however we recommend that certain criteria are identified to assist you in making such decisions as they are suggested / applied for. This is the approach used for the NES for air quality. We suggest that appropriate criteria could be developed with key stakeholders, through the Implementation Taskforce Group.
13. As noted above, this option would allow catchments to be exempted even after the regulations proper have been gazetted. Considering the proposed transitional period, this would likely have little effect on the timing of application of the regulations for existing consents. However it could impact on new or replacement consents that may be applied for in potentially 'exemptible' catchments, in the interim period between a consent being granted and any gazette notice exempting those catchment. Therefore it would be preferable for councils to notify you of potentially suitable catchments in the shortest period possible.
14. As regulations made under section 360(1)(d) can only apply to consent holders, and not to regional councils, this process would not need to be set out within the regulations – rather, it would be a parallel process.
15. An alternative option for exempting catchments would be to include these in the proposed regulations proper or to review the regulations at a later stage. However these options, would impact on the timeframe for gazettal of the regulations and incur additional costs for each review. We therefore do not recommend these alternative approaches.

Transitional period – application of the regulations to existing consents

16. We have noted your instructions to propose in the Cabinet paper a five year transitional period for all existing consents to comply with the proposed regulations.
17. We discussed an approach to regional councils to focus on priority catchments first. We note that regulations made under s360(1)(d) apply to consent holders, not councils, and therefore there would be no legal obligation for councils to enforce the compliance of existing consents to the regulations before the end of the 5 year period.
18. We therefore propose the best approach by central government is encouraging regional councils to incentivise high priority catchments to install meters sooner the

transitional period requires them to, where possible. Central governmental support might be required in some regions, depending on the incentive options.

19. An example of how regional councils could incentivise consents holders to this end is in the Selwyn-Rakaia reviews being carried out by Environment Canterbury. The council is progressing through a large scale review of consents within this catchment to require meters to be installed and data collected and transferred to the council. The council has worked with stakeholders on a procurement and implementation programme through which meters are able to be offered to consent holders at a reduced rate and installation costs are minimised through bulk tenders. This is considered by the majority of the Implementation Taskforce Group as good practice and will be described in implementation guidance material produced by the Taskforce.
20. There are other options that could place a legal onus on councils, however these would require a shorter transitional period.

Costs of the proposed regulations

21. As noted in our previous briefing to you, water measuring is not yet widespread across New Zealand and its application is patchy – at the end of 2006, around 66% of water takes (and around 69% of the associated volume of water taken) across New Zealand were not being measured.
22. The 2007 cost benefit assessment by Harris Consulting (for the proposed NES) reports an overall cost to consent holders of \$41.8 million, as follows:

Cost item	PV_{10%} cost (of NES) \$million
Capital and installation costs	\$21.7
5-year (calibration/replacement mechanical register) costs	\$3.8
20-year replacement costs	\$3.2
Annual costs – data download and transfer to councils <i>(*conservative estimate based on service by third party)</i>	\$13.1
Total cost	\$41.8

23. While the make-up of these costs will not change as a result of using s360 regulations, we understand that the following elements may have changed in the two year period since the report was produced:
 - Capital purchase costs for all sized meters have on average become very competitive over the past 3 years. For example, median costs for meters, dataloggers plus installation (including calibration) were:
 - estimated between \$4,900 and \$12,950 in the 2007 cost benefit assessment.
 - ranging from around \$4,250 to \$6,800 in the Environment Canterbury Selwyn-Rakaia tender process.
 - Some regional councils, using the proposed regulations as a basis, are moving to increase the measurement of water takes by reviewing existing consents. This will mean that the regulations will no longer impose capital costs on those consents.

24. We intend to update the cost benefit assessment to reflect these changes, the use of section 360 regulations instead of an NES and any proposed exemptions to inform the regulatory impact statement to accompany the proposal to cabinet.
25. Clearly the proposal will also result in benefits to consent holders. A summary table from the 2007 cost benefit assessment (below) indicates where benefits will lie. Note that the quantification of the allocative efficiency will be updated in the cost benefit assessment to reflect the changes noted above.

Magnitude of costs / benefits summarised			Magnitude	Affected group
Cost	PV _{10%} cost of NES	Quantified	\$41.8 million	Existing consent holders
			\$4.4 0.6 million <i>(adjusted for use of s360 regulations)</i>	Regional council
			\$0.6 million	Central government
	Total PV_{10%} cost of NES			\$43.5 million
Benefit	Management of freshwater resources	Qualitative	Improved	Regional council and the wider regional community
	Determination of environmental flows	Qualitative	Improved	Regional council and the wider regional community
	Compliance monitoring	Qualitative	Significantly improved	Regional council, consent holders and the wider regional community
	Transaction costs at consent application	Qualitative	Possible reduction	Regional council, consent applicants and the wider regional community
	Technical efficiency	Qualitative	Can contribute to the derivation of benefit in some situations	Consent holders
	Allocative efficiency	Quantified	Significant (e.g. if it enabled a 3.4% increase in consumptive water use by irrigation, the benefits would outweigh the costs of the NES)	Applicants for new consents and existing consent holders, where the latter are able to exploit the knowledge that they are not fully utilising their consented allocation
	Reporting and understanding actual water take	Qualitative	Significantly improved	Regional council, central government, consent holders and consent applicants

More stringent conditions

26. You have asked for further description about the need to provide for more stringent conditions than the regulations to be applied by councils as appropriate. Resource consent conditions or a rule in a plan could only be more stringent than the minimum requirements set out in the regulation *if* the regulation expressly identifies that more stringency is allowed.

27. The regulations will automatically apply to existing consents and will take precedence over consent conditions where the regulations are more stringent. However for new consents, the regulations would have to state that conditions could be more stringent than the minimum requirements if needed by the council.
28. For example, in some regions, existing regional council policy is more stringent than the proposed regulations, such as:
- Requiring data transfer by telemetry - Some regional councils (for example, Horizons which is widely considered a good example of good practice) require data transfer by telemetry technology so that water can be measured on a real time basis.
 - Data transfer more frequent than annually – for example, for real-time water management or for during water short times as a means to manage restrictions.
29. Through submissions, councils raised the need for this to be provided for so that this can be carried into new consent conditions.