



Approvals sought for Resource Management (Measurement and Reporting of Water Takes) Regulations 2010

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|------------------------|----------------|-------------------------|---|
| Date: | 11 August | Priority: | Urgent |
| Security Level: | CLASSIFICATION | Document Number: | MfE Ref: 10-B-03080 MAF Ref: B10-069 |

Action sought

| Minister | Action Sought | Deadline |
|-------------------------------------|--|----------------|
| Minister for the Environment | Note the contents of this briefing and agree to the actions sought. | 9am, 16 August |
| Minister of Agriculture | Note the contents of this briefing and agree to the actions sought. | 9am, 16 August |

Ministry for the Environment Contacts

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Key points

1. Ministry for the Environment and Ministry of Agriculture officials have worked with stakeholders and the Parliamentary Counsel Office to turn the policies agreed by Cabinet [EGI Min (10) 8/5 refers] into regulations.
2. The Resource Management (Measuring and Reporting of Water Takes) Regulations 2010 are now ready for you to present to Cabinet. A copy of the most recent draft of the Regulations is attached for your information as **Appendix 1**.
3. We intend to assist the Minister for the Environment to take a Cabinet paper and the regulations to Cabinet Legislation Committee (LEG) on 19 August (the final version of the regulations will be sent directly from the Parliamentary Counsel Office to Cabinet Office). This requires us to lodge the Cabinet paper and the regulations with Cabinet Office by 10am on Monday 16 August.
4. To achieve the deadline for submission of material to Cabinet Office, we require by 9am Monday 16 August:
 - Your joint approval for exemptions, and technical changes, as set out in **Appendix 2** (Cabinet required your joint approval on these matters [EGI Min (10) 8/5 refers], and that these matters be reported in the paper seeking approval from LEG Committee – the latter requirement is fulfilled by paragraphs 5 to 10 in the Cabinet paper)
 - The Minister for the Environment's approval for the LEG paper attached as **Appendix 3**.
5. We understand you are both out of the office until at least Friday 13 August, meaning you are unlikely to seek any changes until early Monday morning. This leaves little time to make changes in time to meet the Cabinet Office deadline. Therefore if changes are sought, it will be necessary to reschedule for LEG at a later date.
6. If you do obtain approval from LEG on 19 August, and then from Cabinet on 23 August, the Right Honourable Governor-General would make the regulations by Order in Council (also on 23 August). The regulations would be notified in the Gazette on 26 August and would take effect (notwithstanding transitional provisions) on 1 November 2010.
7. If that timeline applies, during September-October, officials will:
 - raise awareness of the impending regulations (and of upcoming guidance) via webpage updates, industry/council media, and talks at upcoming water forums
 - develop a user's guide and introductory pamphlet, and
 - work with Irrigation New Zealand to develop a separate technical guideline document, and to establish accreditation and certification programs for installers and verifiers of water measuring devices and systems.
8. We understand that the Minister for the Environment wishes to announce the regulations at the Canterbury Show (10-12 November). We suggest that:
 - this is preceded by an earlier announcement (late August/early September) confirming the regulations have been made and announcing funding for Irrigation New Zealand to develop supporting material and programs
 - the Minister for the Environment uses the Canterbury Show announcement to reinforce the message that the regulations are in effect, and to advertise guidance material, including outputs from the Irrigation New Zealand project.

Recommended Action

We recommend that the Minister for the Environment and the Minister of Agriculture:

- a) **Note** that the Resource Management (Measurement and Reporting of Water Takes) Regulations 2010 (attached as Appendix 1) are now ready for the Minister for the Environment to present to Cabinet for approval to be referred to Executive Council **Yes / No**
- b) **Approve** the exemptions and other technical changes (Appendix 2) **Yes / No**

We also recommend that the Minister for the Environment:

- c) **Approve** the Cabinet paper (Appendix 3) **Yes / No**
- d) **Note** that prior to your intended announcement of the regulations at the Canterbury Show, officials will raise awareness of the regulations and work on guidance material **Yes / No**
- e) **Agree** to preceding your announcement at the Canterbury Show with an announcement in late August/early September, raising awareness that the regulations have been made and the funding for Irrigation New Zealand **Yes / No**

Kevin Currie **Date**
Environmental Protection Directorate, Ministry for the Environment

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

Mike Jebson **Date**
Natural Resources Directorate, Ministry of Agriculture

Hon David Carter **Date**
Minister for Agriculture

Appendix 1: Resource Management (Measuring and Reporting of Water Takes) Regulations 2010

Appendix 2: Exemptions (scope) and technical changes

1. Cabinet (EGI Min (10) 8/5) authorised the Minister for the Environment and the Minister of Agriculture to approve the final details of exemptions, and any other technical changes that may be required to give effect to the policy set out in the paper under EGI (10) 66).
2. As shown in paragraph 8 below, Section 360(2) of the RMA does not explicitly provide for 'exemptions'. Selectivity is provided for in a positive sense – by defining who the regulations apply to, it is the remainder that is 'exempted'. This is why the Cabinet paper refers to the 'scope of the regulations'.
3. Your joint approval is sought for the exemptions/scope, and technical changes, as detailed below.

Exemptions/scope of the regulations

4. As initially proposed in the paper under EGI (10) 66, the regulations do not apply to certain classes of water takes, including:
 - takes of geothermal or coastal water
 - permitted water takes
 - consented water takes of less than 5 litres/second
 - non-consumptive takes.

Non-consumptive takes

5. The regulations include a simple description of 'non-consumptive take' that strikes a balance between providing certainty, and allowing some flexibility to account for individual circumstances.
6. The description is broadly supported by all councils and water users consulted during the drafting process, although some have asked for greater specificity (defining how long is a 'substantial delay' or what is the maximum distance that constitutes 'near'). Greater specificity would increase certainty, but at the expense of flexibility. Such a trade-off would need to be justified by solid evidence that justified specific parameters. No such evidence exists, so it is preferable to retain some room for interpretation.

Individual catchments

7. The paper under EGI (10) 66 anticipated that the Minister for the Environment may, in future, re-define the scope of the regulations to exclude:

individual catchments where the allocation status will not result in adverse effects on the resource, environmental values or other users, in the foreseeable future...Regional councils will be required to make a case and provide good justification for this. Any such exemptions would be considered in the context of an assessment of effects in the 'foreseeable future' and impacts on national reporting.
8. The Minister's ability to re-define scope is via Section 360(2) of the RMA:

Any regulations may apply generally or **may apply or be applied from time to time** by the Minister [for the Environment] by notice in the Gazette, 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.
9. Regulation drafting protocols are not to repeat in regulations what is already provided for in the head statute. Accordingly, while the regulations do not mention that the regulations may not apply to individual catchments by notice in the Gazette, it is provided for outside of the Regulations via Section 360(2). We

propose to signal your power to define the scope of the regulations in the user's guide to accompany the regulations.

Dispensations

10. Also as signalled in the paper under EGI (10) 66, the regulations provide local flexibility (ability to impose alternative arrangements) around point of measurement and recording frequency:
 - Point of measurement: the default minimum requirement is that the water measuring device or system is located *at* the point of take. The alternative is that it is located *as near as practicable* to the point of take.
 - Recording frequency: the default minimum requirement is for records of *daily* water use. The alternative is for records of *weekly* water use.
11. Regional councils will have full discretion whether or not to require the default, or the alternative arrangement. Feedback from councils and water users is that there are many circumstances where the alternative may be necessary, so providing full (rather than limited) discretion is the most pragmatic approach.

Other technical changes

12. Technical changes are all in response to stakeholder feedback during the drafting process. They include:
 - two situations where the regulations provide for the minimum requirements in a slightly different way than indicated in the wording of the EGI decision.
 - a change to how 'reviewed consents' are dealt with
 - one minimum requirement that is not provided for
 - one new provision
13. Different ways of providing for minimum requirements in the EGI decision include:
 - accuracy requirements: previously they were based on whether a take was 'piped' or from an 'open channel'. To be more technically accurate (and consistent with Australian guidelines), accuracy requirements are now +/- 5% for water taken by a 'full pipe', and +/- 10% for 'other methods (including a partially full pipe or open channel)'. The regulations also include a definition of 'full pipe'.
 - accuracy verification: previously had to be undertaken 'independently every five years, or more frequently if recommended by the manufacturer/installer'. The requirement for five-yearly verification remains, but the verifier must now be 'suitably qualified in the opinion of the regional council'. This puts the focus on the abilities of the person, and avoids confusion about what constitutes 'independence' or not. Also the regulations do not include a reference to manufacturer/installer recommendations. These recommendations may not always be appropriate – and in any case, the regulations allow for councils to be more stringent (require verification more regularly)

14. In the EGI decision, reviewed consents would be subject to the regulations 'from the granting of the consent'. Upon reflection, it is unnecessary (and confusing) to treat existing consents under review as a separate sub-category of all existing consents. The regulations will apply to all existing consents anyway, according to the transitional provisions.
15. One minimum requirement not included in the regulations, is that the installation of water measuring devices shall "comply with the manufacturer's instructions".
16. Feedback from councils and water users is that water meter manufacturers' instructions are of variable quality. Following poorly worded or insufficiently detailed instructions when installing water meters may result in poor quality data.
17. We consider a simpler approach is to require all measurements to be within stated accuracy parameters, and to maintain that accuracy through regular verification by a suitably qualified person. We also note that the preparation of non-regulatory guidance on water meter specifications, installation and verification practices is an important component of the guidance package currently in preparation.
18. The regulations also include an additional provision of a standard conversion formula for permit holders to calculate their rate of take in litres/second.
19. Councils and water users told us many water permits do not include a rate in litres/second (for example, a permit may include a condition specifying a rate in cubic metres/day only). Having a consistent way of determining a rate in litres/second ensures all permit holders and councils know whether the Regulations apply to a permit, and if so, which transitional period applies.

Appendix 3: Cabinet Legislation Committee paper
