

**Office of the Minister for the Environment
Cabinet Legislation Committee**

**Resource Management (Measurement and Reporting of Water Takes)
Regulations 2010**

Proposal

1. I propose that the Cabinet Legislation Committee authorises the submission of the Resource Management (Measurement and Reporting of Water Takes) Regulations 2010 to the Executive Council.

Policy

2. On 28 April 2010, the Cabinet Economic Growth and Infrastructure Committee (EGI), having been authorised by Cabinet to have Power to Act [Cab Min (10) 14/13 refers], agreed that regulations be made under section 360(1)(d) of the Resource Management Act (RMA) to ensure consistent, accurate and complete measuring of water takes across New Zealand [EGI Min (10) 8/5 refers].
3. EGI also agreed that the proposed regulations would require the holders of all resource consents for the taking of five litres per second or more to meet minimum requirements. Minimum requirements related to the collection of records of water use by water measuring devices or systems, and to the reporting of water use by consent holders to regional councils. It was also agreed that the regulations would include the ability for a regulatory authority to apply more stringent requirements on consent holders.
4. EGI also agreed that new or replacement consents granted after the commencement date for the regulations would be required to comply with the regulations immediately, but that a transitional period would apply for existing consents. Holders of existing consents for the taking of twenty litres/second or more have two years from the commencement date to comply with the regulations. Holders of existing consents for the taking of greater than ten litres/second up to twenty litres/second have four years, while the remaining consent holders (for the taking of five litres/second up to ten litres/second) have six years to comply.
5. EGI also authorised myself, and the Hon David Carter as Minister for Agriculture, to approve the final details of the scope of the application of these regulations and any other technical changes that may be required to give effect to the policy set out in the paper under EGI (10) 66, and to report those changes to this Committee when seeking approval of these regulations.
6. On behalf of Hon David Carter, I can confirm that we have approved the following scope for the application of these regulations, and a number of minor technical changes. None of these approvals require any new policy decisions from this Committee.

7. The scope of the application of these regulations is consistent with the proposal in the paper under EGI (10) 66. The regulations will not apply to permitted takes (i.e., those do not require a resource consent), consented takes for the taking of less than five litres per second, takes of geothermal or coastal water, or non-consumptive takes as defined in the regulations.
8. Section 360(2) of the RMA also allows the Minister for the Environment to, by notice in the Gazette, define the application of the regulations. As signalled in the paper under EGI (10) 66, I intend to use this power (in future) so that these regulations do not apply in specified catchments under low allocation pressure.
9. The regulations also allow for some discretion at a local level (previously described as partial exemptions). This applies only to requirements for the point of measurement or the recording frequency. I expect councils to apply this discretion pragmatically where it is not practicable to locate water measuring devices or systems at the exact point of take, and where it may be unnecessary to record water meter readings every day.
10. The technical changes are all in response to stakeholder feedback during the regulation drafting process:
 - a) accuracy requirements now relate to water taken by a 'full pipe' or 'other method (including open channel or partially full pipe)', instead of differentiating between 'piped takes' and 'open channel takes'
 - b) verification that a device is accurate must now be by a 'suitably qualified person in the opinion of the regional council', rather than 'independently', and the potential for more frequent (than 5-yearly) verification on the recommendation of the manufacturer/installer has been removed
 - c) existing consents under review (like other existing consents) are now required to comply with the regulations according to the transitional provisions, rather than from the date of the granting of the consent
 - d) a new provision has been added clarifying how permit holders calculate their take in litres/second for the purposes of the regulations
 - e) a requirement that measuring devices or systems should be "installed to comply with the manufacturer's instructions" has been removed.

Timing and 28-day rule

11. I propose that the Resource Management (Measurement and Reporting of Water Takes) Regulations 2010 come into effect on 1 November 2010. This date is 66 days after the regulations would be notified in the *New Zealand Gazette*. A longer period is sought to enable development of a comprehensive implementation package to assist consent holders, the water measurement industry, and councils to comply with the regulations.
12. The implementation package will include a user's guide, information brochure, workshops, and an industry-led project funded by the Ministry for the Environment. The industry-led project has been initiated in response to concerns that current practices around selection, installation and verification of water measuring devices are at best, variable. The project includes development of a guidance document on water meter selection and practices around the installation

and verification of water meters, training for installers and verifiers, and company accreditation and individual certification programs. This project will be managed by Irrigation New Zealand in consultation with officials, councils, the water measurement industry and other water user groups.

Compliance

13. The Resource Management (Measurement and Reporting of Water Takes) Regulations 2010 complies with:
- the principles of the Treaty of Waitangi
 - the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993
 - the principles and guidelines set out in the Privacy Act 1993
 - relevant international standards and obligations; and
 - Legislative Advisory Committee (LAC) Guidelines.

Regulations Review Committee

14. I know of no particular reason why the Regulations Review Committee would need to draw these regulations to the attention of the House.

Certification by Parliamentary Counsel

15. The Resource Management (Measurement and Reporting of Water Takes) Regulations 2010 have been certified by Parliamentary Counsel as being in order for submission to Executive Council.

Regulatory impact analysis

16. A regulatory impact statement was prepared in accordance with the necessary requirements, and was submitted at the time Cabinet considered and approved the policy relating to the regulations in April 2010.

Publicity

17. Once approved by the Executive Council, the Resource Management (Measurement and Reporting of Water Takes) Regulations 2010 will be notified in the *New Zealand Gazette*.

Consultation

18. EGI [EGI Min (10) 8/5 refers] noted that consultation was undertaken on the policy intent as described in the paper under EGI (10) 66.
19. The following regional councils, water users and stakeholder groups were consulted during the drafting of the regulations: Irrigation New Zealand; Federated Farmers; Horticulture New Zealand; Water New Zealand; Genesis Energy; Contact Energy; Otago Regional Council; Environment Canterbury; Marlborough District Council; Taranaki Regional Council; Environment Waikato; Auckland Regional Council.

20. In preparing this paper the following government departments and government agencies were consulted: Department of the Prime Minister and Cabinet, Ministry of Agriculture, Ministry of Economic Development, the Treasury, Ministry of Justice, Department of Internal Affairs, Te Puni Kokiri, Ministry of Health and the Department of Conservation.
21. Iwi Advisors were also consulted in preparing this paper.

Recommendations

22. I recommend that the Cabinet Legislation Committee:
 1. note that on 28 April 2010 Economic Growth and Infrastructure Committee (EGI), having Power to Act [Cab Min (10) 14/13 refers], agreed that regulations be made under section 360(1)(d) of the Resource Management Act (RMA) to ensure consistent, accurate and complete measuring of water takes across New Zealand [EGI Min (10) 8/5 refers]
 2. note that EGI agreed that the holders of resource consents for the taking of five litres per second or more must meet minimum requirements to collect records and to report water use to regional councils; and that the regulations would include the ability for a regulatory authority to apply more stringent requirements
 3. note that EGI agreed that new or replacement consents granted after the commencement date for the regulations must comply with the regulations immediately, but that a transitional period would apply for existing consents of between two to six years
 4. note that EGI authorised myself and the Minister of Agriculture to approve the scope of the regulations and any other technical changes, and that the scope and technical changes have been reported to this Committee
 5. note that the Resource Management (Measurement and Reporting of Water Takes) Regulations 2010 give effect to the decisions referred to in paragraphs 1, 2 and 3 above
 6. note that the Resource Management (Measurement and Reporting of Water Takes) Regulations 2010 will come into force on 1 November 2010
 7. authorise the submission to the Executive Council of the Resource Management (Measurement and Reporting of Water Takes) Regulations 2010.

Hon Dr Nick Smith
Minister for the Environment

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