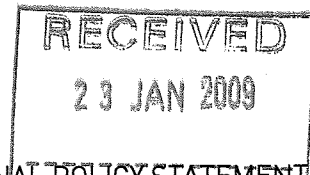


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SUBMISSION ON THE PUBLICLY NOTIFIED PROPOSED NATIONAL POLICY STATEMENT
FOR FRESHWATER MANAGEMENT

To: The Chairperson
Board of Enquiry – Water
Freeport Board of Inquiry - Water
C/o P O Box 10362
WELLINGTON 6143

Name of Submitter: Mighty River Power Limited.

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1. This is a submission on the following proposed National Policy Statement:
The Proposed National Policy Statement for Freshwater Management.
2. Mighty River Power **opposes** the Proposed National Policy Statement for Freshwater Management (NPS-FW) in its entirety.
3. The reasons for Mighty River Power's opposition are detailed below, along with views on what the NPS-FW should include and the relief we seek.
4. The decision Mighty River Power seeks from the Board of Inquiry is that the Board recommend to the Minister that the Proposed National Policy Statement be withdrawn and that it be redrafted in a form which more appropriately recognises and addresses the freshwater management issues currently facing New Zealand, including national guidance on prioritising the use and allocation of this significant natural resource. The redrafting must be managed in an integrated manner with other National Policy Statement initiatives which impact on fresh water management. The process of redrafting must assign priority to allocation of water to hydro generation.
5. Mighty River **Power wishes to be heard** in support of this submission. If others make a similar submission, Mighty River Power will consider presenting a joint case with them at a hearing.

A handwritten signature in dark ink, appearing to read "Rob Hunter".

Rob Hunter
Manager – Environmental Strategy and Policy – Mighty River Power Limited

23 January 2008
Date

EXECUTIVE SUMMARY

6. Mighty River Power supports the notion that a well developed and focused national policy statement on freshwater management is an appropriate means of managing this vital natural resource and welcomes the opportunity to make a submission on the proposed National Policy Statement for Freshwater Management [NPS-FW].
7. Mighty River Power supports the three key outcomes for the Sustainable Water Programme of Action 2004 but does not believe that the NPS-FW contributes in any meaningful way to managing increasing demands on water resources which is one of the key outcomes of the Programme of Action and one of the three resource management issues to be addressed through this NPS-FW.
8. Mighty River Power has a number of concerns in respect of the NPS-FW and is disappointed that the NPS-FW has not taken the opportunity to provide real leadership and guidance, at a central government level, in respect of freshwater allocation which is one of the most major and critical resource management issues currently facing New Zealand.
9. Mighty River Power's concerns relate to the failure to provide very little direction other than to repeat the Resource Management Act (RMA) requirements of Regional and District Councils for the development of plans, apart from giving priority for domestic drinking water and encouraging Iwi involvement in statutory processes and decision making. Despite the renewable energy targets set in the New Zealand Energy Efficiency and Conservation Strategy (NZECS), New Zealand Energy Strategy (NZES) and in the Proposed National Policy Statement on Renewable Electricity Generation (NPS-REG) this NPS-FW fails to recognise that there are only limited opportunities available for the development of renewable energy resources within New Zealand. It also fails to acknowledge the use of freshwater in the generation of electricity at all, either currently in existing generation plant or in the future.
10. The NPS-FW, as proposed, essentially serves only as a good practice guide to the development of Regional Policy Statements, and Regional and District Plans with the emphasis on setting freshwater quality standards and environmental flows and levels, conditions on all consents to promote good practice and efficiency and to allow restriction of existing uses in times of low flow [Policy 1(g)] and to protect water quality.
11. In addition, the proposed NPS-FW does not contain any development of priorities or seek to set targets for freshwater management. Given that freshwater quality decline, demand pressures and allocation have been identified as one of the critical issues for New Zealand¹ Mighty River Power considers that this is a major policy failure at the national level.
12. Mighty River Power seeks the withdrawal of the NPS-FW in its current form and that it be redrafted to ensure that it does provide effective national guidance on critical issues

¹ Ministry for the Environment, Briefing to the Incoming Government 2008 : Environmental Sustainability

such as water quality and water allocation. Any revised national policy statement must also meet the requirements of the cost and benefit (section 32 analysis) required by the RMA and further sustainable management as required by section 45(1) of the RMA. Any redraft will also need to be consistent with existing national guidance, most notably the proposed Renewable Energy NPS, the Transmission NPS, the proposed NZ Coastal Policy Statement, the New Zealand Energy Strategy, the National Energy Efficiency and Conservation Strategy and the Government's Climate Change policy. Finally, it is absolutely critical that any revised national policy statement be developed in close, comprehensive consultation with stakeholders.

BACKGROUND TO MIGHTY RIVER POWER'S SUBMISSION ON THE PROPOSED NATIONAL POLICY STATEMENT ON FRESHWATER MANAGEMENT.

MIGHTY RIVER POWER

13. Mighty River Power is a State Owned Enterprise [SOE] established under the State-owned Enterprises Act 1986. Its principle operations are electricity generation and energy retail activities. Mighty River Power has over 340,000 customers, employs 680 staff, is the fourth largest electricity generator in New Zealand [based on electricity produced annually], and the third largest electricity retailer [based on customer numbers].
14. Mighty River Power produces electricity from renewable and other energy resources and sells energy and energy-related services and products to retail and wholesale customers.
15. The elements of Mighty River Power's business relevant to the NPS-FW are:
 - Securing fuel to meet long term energy needs;
 - The protection of existing hydro electricity generation plant;
 - The management of fuel reservoirs; and
 - Conversion of fuel, in this case water, into higher value energy forms, particularly electricity.
16. Mighty River Power's objectives include being a leader in achieving the objectives of sustainable development for communities, in which the group operates through world's best management of fuel resources, including renewable generation.
17. The Waikato Hydro system provides the majority of the company's electricity generation, averaging 4,200 gigawatt hours [GWh] [annually from an annual generation total of around 6,500GWh].
18. Hydro-electricity is obtained from the energy contained in falling water; it is a renewable, comparatively non-polluting energy source and unlike other forms of renewable energy, hydro-electricity is already a well established technology and a major contributor to energy supplies in New Zealand and overseas.
19. Without access to the water resources of the Waikato hydro system the sustainability of Mighty River Power's business would be undermined. Hydro-generation is its dominant generation type at present and while there is scope to expand investment in other generation using alternative fuel sources, it is expected that hydro will continue to be an important and significant part of its generation portfolio for the foreseeable future.
20. It is essential that existing water currently allocated to hydro generation is protected to enable Mighty River Power's Waikato Hydro System to continue to play its part in the electricity supply to the New Zealand economy and society at large.

HYDRO ELECTRICITY GENERATION IS NATIONALLY IMPORTANT

21. New Zealand's electricity system is underpinned by hydro-generation. Hydro generation is critical to New Zealand's security of electricity supply, its economic development, the delivery of the NZES and the meeting of the nation's international climate change obligations.
22. Electricity is integral to the functioning of a modern economy, often with no alternatives. New Zealand's economic and social wellbeing is inextricably dependant on a secure, cost effective, self reliant and diverse electricity supply system.
23. The Electricity Commission's National Demand Forecast [May 2007] predicts that New Zealand's demand for electricity will continue to grow for the foreseeable future. The demand for electricity in New Zealand has grown on average by around 2.3% per annum since 1980 to its current level of around 40,000 GWh. In some years demand growth has exceeded 3% to 4% and current forecasts range from 1.3% through to 2.5% per annum over the next 25 years.
24. These expectations for growth in demand for electricity do not currently include an allowance for the on-going substitution of fossil fuel by electricity in transport and stationary energy. It is realistic to expect this could add up to 1% to the demand growth over the next 30 years. This is a reflection of the Government's expectations for the uptake of electric traction in transport with a parallel change for non-transport energy provision.
25. Historically New Zealand has relied heavily on hydro electricity backed up by flexible thermal generation plants. However, New Zealand is becoming increasingly reliant on the flexibility of hydro generation as thermal flexibility declines, as a result of natural gas supply constraints now and in the future.
26. Against this backdrop it is critical that existing energy infrastructure is maximised and opportunities to increase and diversify New Zealand's generation capacity, and in particular renewable generation capacity is fostered.
27. The protection of existing hydro generation capacity and the future development opportunities are key elements of a successful NPS on freshwater management. These matters are not currently included in the proposed NPS and need to be part of the ongoing development of the NPS-FW.

CLIMATE CHANGE

28. New Zealand has made an international commitment to reduce greenhouse gas emissions to 1990 levels during the initial Kyoto Protocol commitment period [2008-2012]. This has significant implications for New Zealand, noting that on current predictions, New Zealand faces on-going adverse economic impacts during the first commitment period.
29. To comply with its obligations under the Kyoto Protocol, New Zealand must look to reduce its emissions of greenhouse gases in all sectors of the economy including the

current reliance on thermal generation by developing its renewable energy resources, including hydro resources.

30. The NZES sets a target of 90% of the country's electricity supplied by renewable electricity generation by 2025. This target has been included in the proposed NPS - REG which is currently being considered by a separate Board of Inquiry.
31. The nation's ability to achieve its energy and emissions profile goals and position itself for a low carbon future is to a significant extent dependant on the impact of this proposed national policy statement.

GENERAL SUBMISSION ON THE PROPOSED NATIONAL POLICY STATEMENT FOR FRESHWATER MANAGEMENT

INTEGRATION OF NATIONAL POLICY

32. Mighty River Power notes that there are a number of existing and proposed national policy statements which will influence the development of renewable electricity generation projects, including hydro projects based on the use of freshwater. A National Policy Statement for Electricity Transmission has recently been completed, the New Zealand Coastal Policy Statement is currently under review, and submissions and further submissions have been received in respect of a NPS-REG.
33. Section 104 of the RMA requires that all national policy statements applicable to any decision making process are to be considered together and given equal priority. In a situation where more than one national policy statement is applicable in a particular decision the manner in which each national policy statement is developed and the strength of its policies is extremely important.
34. In the current case of the development of renewable electricity generation capacity this becomes extremely important because the policies applicable to this development are in tension and not working in an integrated manner to achieve New Zealand's long term targets.
35. National policy statements are intended to provide guidance at a national level on the use and development of a particular resource. It is important that the various national policy statements work in an integrated manner in order to achieve success in the objectives set for each of them.
36. It seems obvious that if national policy statements are to be used to inform and guide the development of renewable electricity generation capacity then they should all be working in an integrated manner to achieve the desired outcome rather than against one another in a manner which constrains rather than enables such desired development.
37. As well, the proposed NPS-FW, as it is currently drafted, does not directly address the issue of water allocation in respect of New Zealand's freshwater resource. The objectives and policies tend to provide a very broad implication towards the allocation of freshwater (e.g. objectives 6 and 7) but do not specifically provide for this to occur.

38. As the NPS-FW is intended to provide guidance at a national level on the management of the nation's freshwater resource it should deal directly and concisely with the issue of water allocation. If this was done, the NPS-FW would achieve greater consistency with the RMA.

NATIONAL GUIDANCE ON FRESHWATER USE AND ALLOCATION, INCLUDING ALLOCATION FOR RENEWABLE ELECTRICITY GENERATION

39. It is Mighty River Power's opinion that NPS-FW offers no support towards achieving the Government's targets around maintaining security of electricity supply and building up New Zealand's electricity generation capacity in order to deliver a 90% renewable generation profile by 2025 as promoted in the NZEECS and the NZES and included in the objective to the proposed NPS-REG.
40. This is despite the goal of NPS-FW to *"provide more certainty in respect of competing demands on New Zealand's Freshwater Resources and facilitate opportunities to increase benefits from the use of Freshwater Resources"*² and the recognised importance of electricity to achieving Objective 1 of NPS-FW³ *"To ensure that Freshwater Resources are managed in a way that enables the people and communities of New Zealand to provide for their social, economic and cultural well-being, and their health and safety"*.
41. The Section 32 report, and therefore the NPS-FW do not address the implications for freshwater management of s7(j) of the RMA – *"the benefits to be derived from the use and development of renewable energy"*. Neither does the Section 32 report include the infrastructure/energy sector as a stakeholder in the assessment of costs and benefits of the Policies set out in NPS-FW in Tables 10-14 or in the Overall summary of costs and benefits set out in Table 17⁴.
42. The NPS-FW does not contain any development of priorities or seek to set targets for freshwater management. The NPS-FW does not prioritise or promote the development of hydro electricity generation as any form of priority for the use of the nation's fresh water resources, even though this use leaves the water available for other abstractive or in-stream use following its generation use.
43. Objective 2 in the NPS-FW introduces the development of infrastructure for supply, storage and distribution of freshwater but completely fails to introduce or acknowledge the use of water in electricity generation infrastructure. This exclusion does not support the overall management of freshwater and needs to be corrected in any re-writing of the NPS-FW.
44. Table 7 'Evaluation of Objective 6' in the Section 32 report⁵ considers that Objective 6 'Managing demand for fresh water' is appropriate for achieving the purpose of the Act because it *"addresses all seven elements of the purpose"*. This objective does not in fact manage demand. Mighty River Power is concerned that in the evaluation of

2 NPS-FW Preamble, page 2

3 s32 Report 1.1 overview of New Zealand's freshwater resources, page 1

4 s32 Report, page 72

5 s32 Report Table 7: Evaluation of Objective 6, page 33

Objective 6 the social well-being assessment is limited to *recreational and amenity values that are dependent on a high level of water quality*; economic well-being is limited to *the long term sustainability of freshwater resources, and, in particular, increased future resilience* (against climate change). Health and safety is limited to *the recognition of cultural values, tangata whenua values and amenity values associated with freshwater*.

45. Objective 7 'Efficient use of fresh water' seeks "to ensure that allocated fresh water is used efficiently..." It does not seek to ensure that water is allocated efficiently or is allocated to "efficient" uses as is suggested by the evaluation in the s32 report.⁶ The inclusion of clause (c) "*facilitating opportunities to increase benefits from the use of fresh water*" does not change the focus of this objective as it still relates to allocated water rather than considering the overall efficiency of any particular proposed water use. Policy 6 'Policy as to certain consents and designations' refers to the *efficient consumptive use of fresh water (including where appropriate, the return of freshwater to Freshwater Resources)*. This policy focuses on conditions of consent but does not give any particular recognition to proposed uses which by their very nature return fresh water to Freshwater Resources, as occurs with hydro generation.
46. Policy 1(i)(i) directs that all regional policy statements guide and direct regional and district plans to manage demands for freshwater in a manner which "*provides certainty to communities and water users (including as appropriate through prioritisation of allocation for takes of fresh water for reasonably foreseeable consumptive use)*". There is no guidance from a national perspective as to how any form of prioritisation of allocation is to be arrived at and the circumstances under which it might be considered to be appropriate.
47. If there is to be any expectation of achieving the long term renewable energy goals for New Zealand any opportunity to provide for the provision of renewable electricity generation cannot be overlooked. Including hydro generation, other than run of river generation in the definition of "consumptive use" of water is not an accurate reflection of hydro generation based on water storage and release. The implications of this definition and the lack of any prioritising of water usage for essential uses such as future hydro generation are not addressed in the Section 32 report.
48. The NPS-FW seeks to introduce new terms that have not previously been used in the RMA or interpreted by case law. Mighty River Power considers that such terms, for example "notable values", "outstanding freshwater resource" and "tangata whenua values and interests" are not sufficiently well defined to serve any purpose other than to increase uncertainty. The meaning of these terms is critical to the interpretation of the effect and scope of the NPS-FW as drafted so if they remain the result will be time-consuming and costly litigation as parties whose interests are critically affected by the meaning of these terms seek clarity. Mighty River Power considers that where possible existing terms that have been defined in the RMA and through case law should be used.
49. The policies in the NPS-FW as proposed introduce the concept of environmental flows. This concept is not currently defined within the New Zealand context and its

⁶ s32 Report, page 43

use will introduce more confusion and uncertainty to the management of freshwater rather than clarify any intent or direction.

50. Mighty River Power has previously submitted on the process of development of this NPS-FW and sought to have included the following statements:

"The allocation and management of freshwater shall specifically recognise the national importance of the use of freshwater for the purposes of electricity generation."

"When managing, allocating and setting priorities for the use of water, local authorities must ensure that:

- *Priority is given to the use of freshwater for the generation of electricity*
- *The benefits to be derived from the use of water for renewable energy generation are maximised;*
- *The effects on climate change are taken into account; and*
- *Water that is currently used for electricity generation continues to be available for that purpose."*

"For the purposes of development and implementation of a plan for the allocation and management of freshwater local authorities are authorised to use alternative means to the general priority rule of first in first served when consider applications for water use."

51. The rationale for this proposal includes the following points:

- Water use effectively drives electricity generation. Over 90% of all electricity generation in New Zealand relies on water consents, between 60 and 70% of generation relies entirely on water.
- Society is reliant on electricity for its well-being and basic functioning. In many instances electricity is not substitutable.
- Ongoing demand for growth in electricity supply requires recognition of the national importance of existing and future electricity generation.
- Use of freshwater for electricity generation is likely to be on a scale that makes the electricity generation industry the largest user of freshwater in New Zealand without depleting the amount of water in the Environment.
- Local Government practice regarding water allocation and management generally is variable, and this variability is apparent in how impacts on and of electricity generation are addressed. Decisions regarding water allocation and management for electricity generation require a balance between national interest (effects) and local effects and other potential local uses. At present there is no national instrument under the RMA that "speaks for" the national interest in freshwater allocation and management for electricity generation – there are numerous planning instruments appropriately prepared by Local Government to "speak for" local effects and considerations.
- It is important to provide strong policy leadership in order to promote the national good value of freshwater use for electricity generation and avoid the "death by a thousand cuts" situation which has the potential to seriously erode the value of renewable energy generation for the New Zealand economy and society.

- In the absence of a strong direction on the priority use of freshwater for electricity generation the NZES, NZEECS and the Emissions Trading Scheme will fail to deliver the outcomes prescribed in the initiatives.
52. Section 5.6 of the Section 32 report⁷ addresses the risks, uncertainties associated with acting versus not acting. This section identifies a number of risks of not proceeding with NPS-FW and concludes that one risk of not acting will likely mean "increased demand and conflict over water allocation and use".
 53. Mighty River Power is of the opinion that in its present form NPS-FW will not reduce this risk to any significant extent and is disappointed at the lack of any real direction from central government on this issue. Mighty River Power's concerns can be summed up using the wording in the Briefing to the Incoming Government 2008 : Environmental Sustainability:

"We consider that further action on both quality and allocation issues is vital to make better use of water in ways that increase growth without compromising environmental outcomes." [page 12]

The NPS-FW in its current form fails to deliver any real resolution of this issue.

54. If, in fact, it is central government's wish that the role of hydro generation in New Zealand's electricity future be wound back or significantly reduced this intention ought to be clearly stated and the issue properly debated.

FAILURE OF THE PROPOSED NATIONAL POLICY STATEMENT FOR FRESHWATER MANAGEMENT TO PROVIDE DIRECTION AND GUIDANCE

55. It is Mighty River Power's opinion that the proposed NPS-FW, as currently drafted, fails to provide direction and guidance for practitioners in the management of freshwater in New Zealand.
56. The policies contained in the proposed NPS-FW are in essence parts of the Act rephrased and further interpreted. The policies do not promote or define clear courses of action for the sustainable management of New Zealand's freshwater resource.
57. The NPS-FW, as it is currently drafted, fails to recognise any priorities for the management of freshwater in New Zealand, except for the priority afforded domestic drinking water which is already provided for by s14 (3) of the RMA.
58. The proposed NPS-FW fails to recognise the use of water for renewable electricity generation. In addition, it does not include provisions to support the NPS - REG or the NZES or the NZEECS all of which focus on existing and new facilities for the generation of electricity from renewable energy sources.
59. As well, the NPS-FW does not promote the development of hydro electricity generation as any form of priority for the use of the nation's fresh water resources, even though

such use leaves the water still available for other abstractive or in-stream use following its generation use. If there is to be any expectation of achieving these long term goals for New Zealand, every opportunity to provide for the provision of renewable electricity generation must be developed.

RELIEF SOUGHT

60. Mighty River Power **seeks the withdrawal** of the NPS-FW in its current form and seeks that re-drafting is not undertaken in isolation so that the current tensions in the various documents are eliminated. If this integration adds to the time required to bring these policy statements to finalisation this is a worthwhile delay to allow for the long term outcome.
61. Mighty River Power seeks that the redrafted NPS-FW address the matters raised in this submission, in a manner outlined in the guidance provided in the attached notes which form part of this submission.
62. In the event that the Board continues with the National Policy Statement in its current form Mighty River Power reserves the right to provide comment to the specific clauses in the NPS-FW when presenting legal submissions and evidence to the Board of Inquiry to achieve the outcomes discussed in this submission.
63. If the Board considers that the most appropriate means to achieve the integration required for success is to also withdraw the other proposed policy statements and redraft them then Mighty River Power is of the opinion that this option should not be overlooked.

ATTACHMENT 1 - DIRECTION ON RE-DRAFTING OF NPS-FW

During the process of re-drafting of the NPS-FW the following directions should be included to ensure that the final adopted NPS achieves the aims of the Water Programme of Action and the general direction required of the New Zealand economy.

Purpose statement.

1. The Purpose statement in the NPS-FW should be changed to a statement relating to the matters to which the NPS-FW relates that are now to be considered of national significance.
2. This statement could potentially read as follows:

"Matter of national significance

The matter of national significance to which this national policy statement applies is the management of freshwater resources throughout New Zealand."

Objectives

3. The objectives included in the proposed NPS-FW do not provide any direction and guidance in the management of freshwater in New Zealand beyond that provided by the RMA and current case law.
4. To be of value in the management of freshwater the objective must identify the need to manage freshwater in an integrated manner. This approach must support the direction government has identified for ongoing development. This should include prioritising water use for the likes of domestic consumption, stock water and renewable electricity generation.
5. The objective must support the NPS-FW intent and guide the policy for management of freshwater in New Zealand.
6. The objective for the NPS-FW potentially could read:

"Objective

To recognise the national significance of the freshwater management by promoting the integrated management of all freshwater resources, such that water quality, effects of land and water use, life supporting capacity, demand and efficient use, priorities and monitoring are all provided for at all levels of management throughout New Zealand in a manner consistent with long term Government direction."

Policies

7. The policies included in the NPS-FW do nothing more that provide a good practice guide for regional and district councils in the writing of plans and policy statements.

8. Policies in the NPS-FW should prioritise water use for human drinking water and stock water as allowed for currently under section 14(3)(b) of the RMA.
9. Policies should also give priority for human drinking water and sanitation needs component of municipal water supplies as is necessary for the purpose of meeting the responsibilities of water supply authorities.
10. Policies in the NPS-FW should prioritise water for electricity generation as a matter of national importance, consistent with the NPS-REG, the NZES and NZEECS, to support New Zealand's long term commitments under the Kyoto Protocol, and the essential requirement to provide for electricity security of supply.
11. Policies in the NPS-FW should set parameters for efficient management and reporting on freshwater use in terms of wastage, losses and contamination of supply.
12. Policies should require that all regional policy statements and plans to assess freshwater assets and put in place allocation/use plans in order to bring prioritisation and integrated planning into decision making on all freshwater matters. This could be either at the next review or by setting a date by which time all RPS and plan documents will be reviewed. This policy approach should not rewrite or paraphrase the RMA requirements.
13. Policies should include direction for setting of targets for water quality and timelines for achievement of the desired outcomes. This would then translate to rules in planning instruments to manage the detailed implementation.