



14 April 2009

The Chairperson
Board of Inquiry - NPS for Freshwater Management
PO Box 10362
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Attention: Sefulu Sione, Executive Officer

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Dear Sir

Further submissions in Support or Opposition to Submissions on the Proposed National Policy Statement for Freshwater Management

Please find attached Mighty River Power's further submissions to the Board of Inquiry on the Proposed National Policy Statement for Freshwater Management (NPS-FW).

As stated in our original submission Mighty River Power opposes the proposed NPS-FW in its current form on the basis that it fails the requirements of section 32 of the Resource Management Act (RMA), and does not further the sustainable development purpose, as required by section 45(1). Mighty River Power **seeks the withdrawal** of the NPS-FW so it can be redrafted followed by another round of public consultation.

Mighty River Power considers it important any revision of the proposed NPS-FW takes account of other relevant existing or proposed national policy statements under the RMA and other relevant government policy, particularly energy and climate change policy. Mighty River Power also note that since its original submission the Government has commenced a review of the RMA with Phase One amendment proposals already being considered by Select Committee and Phase Two work about to commence. As part of Phase One the government is considering changes to the NPS process while Phase Two will include freshwater management.

Its continued participation in the current NPS process notwithstanding, Mighty River Power, considers that due to the significant amount of work that will be required to rework the proposed NPS-FW, the Board of Inquiry should consider recommending to the Minister for the Environment that if the NPS-FW is not withdrawn altogether then any revised version of the current proposed NPS-FW be exposed to another round of public consultation as foreshadowed in the Board of Inquiry terms of reference¹.

¹ Terms of reference for Board of Inquiry on the proposed National Policy Statement for Freshwater Management, clause (f).

In preparing its further submissions, Mighty River Power was mindful that many submitters have put substantial time and effort into drafting alternative NPSs, most notably Local Government NZ and the Ecologic Foundation. Mighty River Power considers both alternative NPSs have some merit and would welcome the opportunity to give them detailed consideration should they become the focus of discussions in the future. Mighty River Power is also mindful that many submitters have raised policy issues that are beyond the scope of the NPS-FW and the mandate given to the Board of Inquiry, for example a number of submitters raised the issue of water ownership and others the use of collaborative governance arrangements. Mighty River Power has focused its further submission on the official NPS-FW the Board of Inquiry has been tasked with reporting back on.

In its further submissions, Mighty River Power has not attempted a detailed line by analysis of the wording of the proposed NPS-FW because it considers that the NPS-FW requires significant reworking and further opportunities for comment by interested parties. Mighty River Power has endeavoured to assist the Board of Inquiry with its work by ensuring its further submission covers a selection of submissions with reasons for support/opposition being given. While Mighty River Power has not commented on every original submission, the reasons for its further submissions apply to any other original submission which raises similar points to those Mighty River Power has addressed.

Mighty River Power **would like to be heard in support** of both its original submission and its further-submissions. As stated in our original submission Mighty River Power reserves the right to provide comment on the specific clauses in the NPS-FW when presenting legal submissions and evidence to the Board of Inquiry.

If other persons make a similar submission then Mighty River Power would consider presenting joint evidence at the time of hearing.

Yours faithfully

Rob Hunter
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Further submissions in support or opposition to a submission on the publicly notified proposed national policy statement for freshwater management.

Submitter	Part of NPS submitted on	Support/Oppose	Mighty River Power's Reasons
<p>Sample of submitters who made these points include:</p> <p>Genesis Energy (122) Meridian Energy (108) Trustpower (110) Contact Energy (125) Pioneer Generation (79) King Country Energy (93) Todd Energy (124) Clearwater Hydro Ltd (99) Metrowater (66) LGNZ (11) Waikato River Municipal Users Group Environment Waikato(36) Horizons RC (109) Hamilton CC, Taupo DC, Waipa DC (77) South Waikato DC (15) Manawatu, Tararua &</p>	<p>Proposed NPS needs to be consistent with other government policy, particularly other NPSs (coastal, transmission and proposed renewable electricity generation).</p> <p>Development of any water NESs should be put on hold pending completion of the NPS that will be above them in the planning hierarchy.</p>	<p>Support</p>	<p>The national importance of renewable electricity generation should be recognised and provided for in the proposed NPS. This would be consistent with the proposed NPS on renewable electricity generation and government energy and climate change policy. Electricity generated using freshwater resources provides significant national social and economic benefits.</p> <p>As stated in our original submission, where there are NESs and NPSs covering the same subject then the NPS sets policy guidance for the development of NPS instruments. It makes sense to ensure that any NES is consistent with the relevant NPS and therefore the NES on ecological flows and water levels should be put on hold pending finalisation of the proposed NPS-FW.</p>

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Horowhenua DC Federated Farmers (88) Dairy NZ (106)			
Sample of submitters who made these points include: Genesis Energy (122) Meridian Energy (108) Trustpower (110) Contact Energy (125) Pioneer Generation (79) King Country Energy (93) Todd Energy (124) Clearwater Hydro Ltd (99) Metrowater LGNZ (11) Waikato River Municipal Users Group Environment Waikato(36) Horizons RC (109) Hamilton CC, Taupo DC, Waipa DC (77) South Waikato DC (15) Manawatu, Tararua & Horowhenua DC Federated Farmers (88) Dairy NZ (106)	Proposed NPS should focus on avoiding, remedying and mitigating the effects of activities not activities themselves. Adverse effects on quality and available quantity of freshwater can be appropriate if they are outweighed by the benefits of a particular activity, particularly if no practicable alternatives exist. There may be practicalities that hinder the adoption of industry good practice (whatever that is) and technology for existing activities and infrastructure.	Support	The RMA is not a “no effects” statute. The Act also does not allow for the blanket protection of resources to occur. It is premised on the notion that resources can be sustainably managed and effects can be avoided, remedied or mitigated. The NPS needs to be consistent with the purpose and principle of the Act and needs to reflect these in its provisions. It will not always be possible to adopt best industry practice for existing activities especially with respect to older assets (hydro-generation assets have at least a 50-100 year life span). The current approach in the NPS does not recognise that significant operations have positive benefits for the nation as a whole. The proposed NPS needs to strike an appropriate balance between use and protection of freshwater.

Submitter	Part of NPS submitted on	Support/Oppose	Mighty River Power's Reasons
Lakes Water Quality Society			
<p>Many submitters raised these issues, a sample of submissions include:</p> <p>Genesis Energy (122) Meridian Energy (108) Trustpower (110) Contact Energy (125) Pioneer Generation (79) King Country Energy (93) Todd Energy (124) Clearwater Hydro Ltd (99) Metrowater (66) Federated Farmers (88) Fonterra (113)</p>	<p>The submissions made relating to the need for the proposed NPS to recognise:</p> <ul style="list-style-type: none"> • the law relating to non-derogation of existing resource consents; • physical resources and the value of investments through formal priority or specific policies. <p>The submissions seeking the definition of the phrase "increased benefits" by reference to the contribution of the use of freshwater to social, economic and cultural wellbeing.</p> <p>The proposed NPS-FW does not adequately address water allocation issues.</p> <p>That it is inappropriate to elevate a subset of a recreational value of freshwater above other values</p>	Support	<p>Mighty River Power considers that drafting refinements such as those proposed in submissions by Genesis Energy and Meridian Energy will better provide certainty and appropriate recognition of existing use rights. The framework for freshwater allocation needs to address existing investment in infrastructure.</p> <p>Renewable generation infrastructure is costly and has a long life span. It would be counterproductive and inefficient to limit the useful life of existing or future infrastructure given the economic and social importance of electricity generation and the particular importance of renewable electricity generation for achieving the government's energy and climate change policies.</p> <p>Mighty River Power agrees in principle with Meridian Energy that the proposed NPS-FW should give direction to local authorities as to the setting of water allocation preferences and that as part of this direction key activities reliant on the use of freshwater should be recognised so that actual preferences can be determined at regional level. The current proposed NPS-FW merely acknowledges</p>

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	associated with freshwater.		<p>domestic water supply.</p> <p>It is not practical to raise all freshwater to a "swimmable" standard as a robust s32 analysis would have demonstrated. A better approach to take in the proposed NPS-FW is to provide national direction on how the different values associated with freshwater should be balanced and provided for on a regional basis. The starting point for determining the values to be considered is Part II of the RMA which, we note includes the requirement for local authorities to have particular regard to the benefits to be derived from the use and development of renewable energy and the effects of climate change.</p>
<p>Many submitters raised these issues. A sample of the submitters who made these points include:</p> <p>LGNZ (11) Waikato River Municipal Users Group Environment Waikato (36) Horizons RC (109) Hamilton CC, Taupo DC, Waipa DC (77)</p>	<p>The submissions made that the proposed NPS-FW:</p> <ul style="list-style-type: none"> • fails to recognise that many regional plans already address freshwater management issues; • proposes timeframes and process requirements that will impose unreasonable burdens on local authorities (e.g. the requirement to consult with iwi and hapu); 	Support	<p>Mighty River Power endorses the notion that where councils have recently undertaken a robust public consultation process under the RMA to address freshwater management issues the outcomes of these processes should be acknowledged and provided for in the proposed NPS.</p> <p>For example, the proposed variations to the Waikato Regional Plan (Variation 6 dealing with water allocation and Variation 5 dealing with the Taupo catchment). A common suggestion is that regional councils with regional policy statements that already</p>

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South Waikato DC (15) Manawatu, Tararua & Horowhenua DC Federated Farmers (88) Dairy NZ (106) Lakes Water Quality Society Selwyn District Council (3) Greater Wellington Regional Council (63) Environment Canterbury NIWA (101)	<ul style="list-style-type: none"> Provides insufficient guidance on demarcation between the respective roles of territorial and regional councils. 		<p>adequately address the objectives in the proposed NPS be exempted from the Schedule 1 process.</p> <p>Mighty River Power supports this approach because Mighty River Power, along with other stakeholders, have worked closely with Environment Waikato to develop an effective approach to freshwater management for the Waikato region. Starting again would be a huge waste of time and resources.</p> <p>Likewise imposing unreasonable (given current resourcing and expertise), timeframes and processes on local authorities will result in poor quality outcomes. For example, we do not support regional councils having to notify changes to their regional plans within 40 working days following changes to regional policy statements becoming operative as is proposed in Policy 1. Mighty River Power prefers a more generic approach whereby local authorities are required to set a timetable appropriate for their region and adhere to it.</p> <p>While Mighty River Power appreciates that the intent of the proposed NPS is to ensure land and water management is undertaken in a more integrated manner in order to drive improvements in water quality, it agrees with local authorities and other</p>

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			<p>submitters, that the way the proposed NPS is drafted creates uncertainties over the roles and responsibilities of local authorities. This uncertainty needs to be resolved in a manner consistent with the RMA. In principle Mighty River Power considers it undesirable to allocate territorial authorities water management responsibilities without providing them with the requisite support, expertise and resources.</p> <p>The LGNZ alternative proposed NPS adopts a superior approach to linking objectives with policies. Mighty River Power supports what it is trying to achieve to the extent it is consistent with the drafting suggestions made by Genesis Energy and Meridian Energy. However, in general terms Mighty River Power opposes any drafting that fails to provide for existing use rights, acknowledge existing infrastructure investment and the social and economic benefits associated with renewable electricity generation.</p>
<p>The vast majority of submitters took issue with the introduction of new terms. A sample of submitters who made these points include:</p>	<p>Introduction of new, undefined or poorly defined terms such as "swimmability", "industry best practice" and "tangata whenua interests and values" will create uncertainty and result in costly</p>	<p>Support</p>	<p>Introduction of new, undefined terms will create uncertainty and increase administrative costs for all parties. Mighty River Power supports an approach whereby wherever possible terms already in the RMA are used because their meaning is already understood through agreed usage or application of</p>

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Genesis Energy (122) Meridian Energy (108) Trustpower (110) Contact Energy (125) Pioneer Generation (79) King Country Energy (93) Todd Energy (124) Clearwater Hydro Ltd (99) Metrowater (66) LGNZ (11) Waikato River Municipal Users Group Environment Waikato(36) Horizons RC (109) Hamilton CC, Taupo DC, Waipa DC (77) South Waikato DC (15) Manawatu, Tararua & Horowhenua DC (104) Federated Farmers (88) Dairy NZ (106)	litigation as parties resort to the courts to determine the precise scope and meaning of parts of the proposed NPS.		<p>legal decisions on interpretation. For example, section 6(e) of the RMA refers to "The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga" rather than "tangata whenua interests and values".</p> <p>Where new terms need to be introduced these should be clearly defined. With respect to the new terms that are defined in the proposed NPS, Mighty River Power supports the drafting changes suggested by Genesis Energy and Meridian Energy.</p>
NZ Law Society (83)	All	Support	Mighty River Power agrees with the assessment of the shortcomings in the proposed NPS highlighted in this submission.
Tuwharetoa Maori Trust	Particular parts of the	Oppose	Mighty River Power considers that the proposed NPS

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Board (135) Waikato Raupatu Trustee Company Limited (Tainui) (129) Ngati Kahungunu Iwi Incorp (12) Te Runanga o Ngati Hine (100)	submissions that the proposed NPS should : <ul style="list-style-type: none"> • not be subsumed or overridden by other NPSs; • contain specific reference to the Treaty of Waitangi; • provide that all freshwater reach <i>or exceed</i> a swimmable standard; • not contain any recognition of the value of renewable electricity generation. 		<p>should be consistent with government policy. This would mean consistency with existing NPSs such as the NPS for transmission and the proposed NPS for renewable electricity generation along with climate change and energy policy.</p> <p>Mighty River Power does not consider that a document formulated under the RMA is the appropriate place for Treaty of Waitangi issues to be addressed. Any specific settlement issues are matters more appropriately dealt with between the relevant Iwi and the Crown.</p> <p>Requiring local authorities to manage freshwater so it reaches a drinkable standard is unrealistic for all water bodies and inconsistent with Part II of the RMA. Mighty River Power considers that a less absolute approach needs to be adopted whereby the NPS-FW sets priorities for freshwater use to be taken into account by local authorities in a regional context.</p> <p>Mighty River Power strongly supports recognition being given to the value of water for electricity generation as this is crucial to ensuring NZ has security of electricity supply and existing and future renewable electricity generation assets are efficiently utilised. This has been recognised through the</p>

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			proposed NPS for renewable electricity generation and is reflected in section 7 (j) of the RMA.
Many submitters expressed concern with the adequacy of the section 32 analysis supporting the proposed NPS. For example: MEUG (25) Horticulture NZ (118) Federated Farmers (88)	Section 32 analysis	Support in Part	Mighty River Power agrees the section 32 analysis underpinning the proposed NPS-FW is inadequate and that another section 32 analysis should be undertaken once the NPS has been through the Board of Inquiry process.
Water Safety NZ Wellington CC IPENZ Engineers NZ (70) A.C Sintenie Surfbreak Protection Society (72) C Walter Clark Ngati Awa & Mataatua Assembly (18)	Mainly supportive of the proposed NPS-FW as it is.	Oppose in Part	Mighty River Power considers that the proposed NPS-FW requires major amendment before it can be implemented. Mighty River Power supports the submissions made about new terms and vague phrases needing to be defined to avoid uncertainty.
NZ Pork (62) Hancock Forest Management (64) Guardians of Lake Wanaka Agri Nutrients Balance (69)	Oppose proposed NPS in its current form.	Support in Part	Mighty River Power supports the relief sought by these submitters as outlined in our original submission, but not necessarily for the reasons they offer.

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NZ Business Council for Sustainable Development (75) NZ Recreational Canoeing Assoc (96) Guardians of Lake Hawera			
Greater Wellington Regional Council (63) Environment Canterbury (5) NZ Fish and Game Council (91) Water Rights Trust Group (92) RMLA (89)	The proposed NPS should provide direction to, or mandate for local authorities to reduce and/or restrict existing water takes (ie claw back) to address over-allocation.	Oppose	<p>In setting environmental flows and limits, regional councils should take into account any environmental flows and other methods contained in existing resource consents that have been derived through extensive RMA processes.</p> <p>Any proposals to address over-allocation should be the subject of consultation with affected parties who have existing resource consents to take, use, divert or dam water or discharge into water and should not be implemented regionally unless derogation approval has been provided by the relevant consent holders.</p> <p>Any consideration of "claw back" needs to take into account:</p> <ul style="list-style-type: none"> • section 128 of the RMA which places limits on the extent to which a review of consent conditions can change the terms of conditions and would generally not allow for re-allocation to other users unless this is provided for in the

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			<p>conditions themselves;</p> <ul style="list-style-type: none"> • the value of investment in existing infrastructure; • the social and economic values associated with use of the existing resource; and • existing legal precedent in relation to water rights and the principle of non-derogation. <p>In this respect Mighty River Power prefers the drafting solutions offered by Genesis Energy and Meridian Energy.</p>
<p>Environment Canterbury ARC (74) NZ Fertiliser Manufacturers Research Assoc (111) Dugald MacTavish (143)</p>	<p>Seeks detailed amendments to Policy 1 to limit transferability of water takes and/or strongly oppose the commercialisation of water and see transferability of water permits as first step towards this.</p>	<p>Support in Part</p>	<p>Mighty River Power is generally supportive of the concept of allowing for the transfer of water permits amongst users if permit holders consent and specific site concerns are met.</p> <p>However, Mighty River Power believes that other alternatives to water use and takes also need to be considered and that in some cases trading may better achieve the efficient use of freshwater. The NPS-FW could contain more specific provisions allowing for trading to occur in limited circumstances,</p>
<p>Solid Energy Coals of NZ (68) Newmont Waihi Gold Ltd (121)</p>	<p>Submissions are opposed to the proposed NPS.</p>	<p>Support in Part</p>	<p>Mighty River Power supports the submissions made to the proposed NPS-FW that the NPS should not seek to impose conditions on resource consents that are outside the control of the consent holder eg</p>

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Oil Industry Environmental Working Group (131)			<p>consent conditions that have a cumulative component – consent holders can only control their own use of water.</p> <p>Likewise Mighty River Power supports the submissions in opposition that address the implication in Policy 1 that domestic water supply needs will always be considered ahead of other consumptive users in all situations and locations regardless of whether there is an established industry in the area which has significant social and economic benefits and is dependent on water for its functioning. There may be some areas where municipal growth may be unsustainable given the potentially restricted availability of water.</p>
Bream Bay Action Group Inc (34) G. Henderson (35) NZ Historic Places Trust (14) East Coast Hawkes Bay Conservation Board (17) NZ Freshwater Sciences Society (20) Public Health South (40) Wenita Forest Products Ltd (58)	<p>Submissions are mostly opposed to the proposed NPS-FW on the grounds it does not strike an appropriate balance between protection and use of freshwater resources.</p> <p>Submitters are particularly concerned about existing and future over-allocation of freshwater and erosion of water quality due to non-point source</p>	Oppose in part.	<p>Mighty River Power agrees that water quality issues need to be addressed and appreciates that managing non-point discharges into water is particularly challenging.</p> <p>The proposed NPS-FW does not adequately address this difficult problem. However, Mighty River Power does not support the removal of the scope to remedy or mitigate the environmental effects of activities as this would effectively shut down many existing activities that use freshwater regardless of their contribution to the social and economic well-being of</p>

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Regional Public Health (52) National Wetland Trust of NZ (117) Environment and Conservation Organisations (130) NZ Conservation Authority (42) Auckland Conservation Board (116) Otago Conservation Board (55) Taranaki/Whanganui Conservation Board (147) Otago RC (16) Te Runanga o Ngai Tahu (127) Environs Holdings Ltd (95)	discharges into freshwater (eg dairy conversions).		<p>the communities in which they take place.</p> <p>Mighty River Power supports the changes proposed only to the extent that they can be given effect to without:</p> <ul style="list-style-type: none"> • requiring existing consent holders to manage effects outside their control (see points on cumulative effects above); • to the extent that resource consent holders have given derogation approval; and • the economic and social benefits derived from existing uses are balanced against the costs of limiting these (refer to original submissions from Genesis Energy and Meridian Energy and the approach taken by Environment Waikato in Variations 5 and 6). <p>Mighty River Power does not support the further infusion of the phrase "tangata whenua interests and values" throughout the proposed NPS as the phrase is not defined and will create unnecessary uncertainty for those charged with implementing the NPS.</p>
RMLA (89)	The submitter offers numerous suggestions on how to improve the clarity and workability of the	Support in Part	Mighty River Power supports in principle the proposed changes designed to streamline the proposed NPS-FW.

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	<p>existing objectives and policies in the proposed NPS.</p> <p>The submitter wants the Board to introduce objectives and policies to address the ongoing adverse effects of existing land-use activities and consumptive uses on the quality and quantity of freshwater resources.</p> <p>The submitter considers some proposed deadlines are non-existent or too loose and favours the NPS-FW being more prescriptive in this area.</p>		<p>If new objectives and policies were to be introduced to address the ongoing adverse effects of existing land-use activities Mighty River Power would want an opportunity to consider the detailed provisions in order to determine how they would impact on its existing and renewable electricity generation business and provide comment.</p> <p>In general terms Mighty River Power considers that the proposed NPS-FW should not detrimentally affect existing operations which have resource consents and are associated with significant investment and have a long life span and have a minor impact on the environment.</p> <p>Mighty River Power agrees that freshwater quality and water allocation will not improve without the imposition of some deadlines for improvement. However, Mighty River Power considers that it is inappropriate to impose process requirements on local authorities without determining whether these are practical taking into account the circumstances of each region in terms of progress with freshwater management planning, skills and resources.</p>
Fonterra (113) NZ Institute of Forestry	Generally oppose the proposed NPS-FW.	Support in Part	Mighty River Power supports the submissions made about the need for the proposed NPS-FW to focus on

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(85) Horticulture NZ (118) NZ Wine (149) Federated Farmers (88)	Federated Farmers offers principles for water allocation.		effects of activities rather than activities and the impracticality of requiring all water bodies to achieve a swimmable standard of water quality and the need to distinguish between existing and new rights to water and the recognition of the non-derogation principle.
Ecologic Foundation (134)	This submitter supplied an alternative proposed NPS that draws on the collaborative governance models such as the Sustainable Land Use Forum.	Oppose	<p>This proposed NPS is significantly different from the one being considered by the Board. While it appears to focus primarily on water quality issues associated with agricultural land use, Mighty River Power would want the opportunity to undertake detailed consideration of its implications for renewable electricity generation should it become part of the formal consultation.</p> <p>Mighty River Power has concerns that the proposed alternative could create uncertainty for its operations. In addition, the following concerns also exist (amongst others but not limited to):</p> <ul style="list-style-type: none"> • The adequacy of the recognition afforded existing resource consents and the physical resources (eg electricity generation infrastructure) and related significant long term investment that is fuelled by freshwater. • Unrealistic timeframes and processes being imposed on local authorities (despite some acknowledgement of this issue).

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			<ul style="list-style-type: none"> • The use of undefined terms with the potential to have a significant but uncertain impact; • The promotion of certain recreational values above other values; • The lack of clarity around how standards for environmental flows and water levels will impact on existing renewable electricity generation.