



**The Proposed National Policy Statement for
Freshwater Management, released by the Ministry for
the Environment in September 2008.**

To: The Ministry for the Environment
PO Box 10362
Wellington.

Submission on: The Proposed National Policy Statement for Freshwater
Management.

Name: King Country Energy Limited

Address: King Country Energy Limited
PO Box 363
TAUMARUNUI
Attention: Kit Wilson

Phone: (07) 896 0135

Fax: (07) 895 7208

E-mail: kwilson@kcenergy.co.nz

Signature: *PP. [Handwritten Signature]*

Date: 28th of January 2009

1.0 INTRODUCTION AND OVERVIEW

King Country Energy ('KCE') is a publicly owned renewable electricity generation Company, with its two largest shareholders being Todd Energy Limited (35.4%) and King Country Electric Power Trust (20%). The remainder of its shareholding is divided between approximately 8,500 smaller shareholders. KCE was incorporated in 1991, taking over the business of the King Country Electric Power Board and was subsequently restructured in 1999 as a consequence of the Electricity Industry Reforms Act 1998 which resulted in KCE and Waitomo Energy Services firstly combining their assets, and then splitting their assets, at which point KCE acquired the generation and retail businesses held by the two organizations.

KCE has its head office in Taumarunui. It owns and operates four hydroelectric power generation schemes, which are small in scale. These schemes include Kuratau (6MW, 28GWh), Mokauiti (1.7MW, 7 GWh), Piriaka (1.3MW, 7 GWh), and Wairere (4.6MW, 18GWh) and half of the Mangahao Hydroelectric Power Scheme (50% of 42MW, 130GWh) in conjunction with Todd Energy Limited. In addition to this, KCE has a proposal for a further hydroelectric power generation scheme – the proposed Mokau Hydroelectric Power Scheme. KCE's smaller, local Renewable Electricity Schemes provide a range of benefits both to their customers and nationally including, but not limited to, additional security of renewable supply, lower transmission losses, and a reduced need for costly transmission capacity upgrades, or new transmission lines to transport electricity between regions.

While KCE recognises that the sustainable management of New Zealand's freshwater resources is crucial in order to achieve the purpose of the Resource Management Act 1991 (the 'RMA' or 'Act'), KCE is concerned that the proposed National Policy Statement for Freshwater Management ('**proposed NPS**'), will significantly affect both existing and new hydroelectric power generation development and enhancement projects in New Zealand. Should KCE's concerns not be addressed in the final NPS, this document will cast a shadow over KCE's existing hydroelectric power generation schemes and development proposals; and potentially the future of hydroelectric power generation in New Zealand as a whole. This would be contrary to the proposed National Policy Statement for Renewable Electricity Generation and Part II of the RMA.

2.0 STRUCTURE OF SUBMISSION

KCE is concerned that the proposed National Policy Statement for Freshwater Management will significantly affect both existing and new hydroelectric power generation development and enhancement projects in New Zealand, along with a number of other water related activities.

This submission focuses on KCE's key areas of concern and provides the company's questions and comments with regard to the proposed NPS. The submission also provides recommended amendments and redrafting to address KCE's concerns to particular provisions within the same.

3.0 SPECIFIC COMMENTS, CONCERNS AND RECOMMENDATIONS

3.1 Objective One

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.

3.1.2 Comment:

KCE supports Objective One of the proposed NPS, as it is consistent with the definition of sustainable management prescribed within section 5 of the Act.

3.1.3 Relief Sought:

That Objective One be retained unmodified.

3.2 Objective Two

To ensure effective integrated management (including by the co-ordination and sequencing of Land-use Development with investment in infrastructure for supply, storage and distribution of fresh water) of the effects of Land-use Development and discharges of contaminants on the quality and available quantity of fresh water.

3.2.1 Comment:

KCE requests that Objective Two be amended. In this regard, the objective is ambiguous and highly uncertain. For example, there is no guidance as to how the term 'effective integrated management' is to be interpreted or applied within the proposed NPS. Further, KCE questions the need for the term 'effective' to be included within the objective and suggests that it is more appropriate that the desired outcome of the objective is made more explicit. Lastly, KCE believes that the focus of the objective should be on the quality, rather than the quantity of water as, in KCE's opinion, this is the most tangible benefit of integrated land management.

3.2.2 Relief Sought:

That Objective Two be amended as follows:

REVISED OBJECTIVE TWO

To ensure ~~effective~~ integrated management (~~including by the co-ordination and sequencing of Land-use Development with investment in infrastructure for supply, storage and distribution of fresh water~~) of the effects of Land-use activities ~~Development~~ and associated discharges of contaminants to maintain, and only where ecologically necessary enhance the ~~on the~~ quality and available quantity of fresh water.

Explanation: Freshwater resources will only be enhanced, where practicable and appropriate, so as to meet necessary water quality standards by 2035.

3.3 Objective Three

To ensure the progressive enhancement of the overall quality of Freshwater Resources, including actions to ensure appropriate Freshwater Resources can reach or exceed a swimmable standard.

3.3.1 Comment:

KCE requests that Objective Three be amended. It is unclear how the term 'progressive enhancement' is to be defined and applied. Objective Three does not state the time period within which all freshwater resources are to 'exceed' swimmable standards. Presumably this is to be undertaken by 2035, in order for the quality of freshwater resources to meet the 'aspirations' of all New Zealanders. Further, the objective itself does not explicitly state what 'overall quality' means. Lastly KCE believes the requirement to 'exceed' swimmable standards is inappropriate as this target could significantly and inappropriately constrain existing infrastructure which relies on the use of water to provide social and economic benefits. Rather KCE suggests that swimmable water quality standards should be 'achieved'.

3.3.2 Relief Sought:

That Objective Three be amended as follows:

REVISED OBJECTIVE THREE

To improve ~~ensure the progressive enhancement of the overall the~~ quality of degraded Freshwater Resources, including actions to ensure swimmable

standards can be achieved. ~~appropriate Freshwater Resources can reach or exceed a swimmable standard.~~

Explanation: Degraded freshwater resources will be improved, where practicable and appropriate, so as to meet the necessary water quality standards by 2035.

3.4 Objective Four

To ensure the life supporting capacity and ecological values of Freshwater Resources are recognised and protected from inappropriate –

- (a) taking, use, damming or diverting of fresh water; and*
- (b) Land-use Development; and*
- (c) discharges of contaminants.*

3.4.1 Comment:

Objective Four requires significant modification. In this regard, it is unclear how 'ecological values' are to be interpreted and applied. The term ecological value is listed within the definition of notable values in the proposed NPS, but is not defined explicitly or explained within the proposed NPS. Further, KCE questions the need for the proposed NPS to emphasize that both the 'life supporting capacity' and all 'ecological values' are to be recognised and protected. KCE considers that Objective Four should be amended to be consistent with the wording prescribed within Part II of the RMA.

3.4.2 Relief Sought:

That Objective Four be amended as follows:

REVISED OBJECTIVE FOUR

To ensure that ~~the life supporting capacity~~ all nationally significant ecological values and ecological values of Freshwater Resources are recognised and provided for. ~~protected from inappropriate –~~

- ~~(a) taking, use, damming or diverting of fresh water; and~~*
- ~~(b) Land-use Development; and~~*
- ~~(c) discharges of contaminants.~~*

Explanation: Significant indigenous vegetation and / or significant habitats of flora and fauna are considered to have ecological values.

3.5 Objective Five

To control the effects of Land-use Development and discharges of contaminants to avoid further degradation of Freshwater Resources.

3.5.1 Comment:

KCE considers that Objective Five is onerous and unnecessarily restrictive and therefore requests that it is amended. KCE further notes that this objective singles out land use activities and associated discharges and does not consider any other causes of degradation. If, for example, freshwater degradation in the form of the discharge of suspended sediment into the water column was to occur for a short period of time, such as during the maintenance and / or construction of a structure, and during silt removal / dredging, the sedimentation would effectively be inconsistent with Objective Five. Temporary environmental effects, or effects that are minor or less than minor, should be recognised and provided for separately to

those activities that significantly degrade a freshwater resource on a continued basis. KCE also considers that degradation should be able to be avoided, remedied and mitigated.

3.5.2 Relief Sought:

That Objective Five be amended as follows:

REVISED OBJECTIVE FIVE

To ensure that ~~control~~ the permanent adverse effects of any activity or discharge of contaminants to water are avoided, remedied or mitigated so that the freshwater resources are not significantly adversely affected. ~~Land-use Development and discharges of contaminants to avoid further degradation of Freshwater Resources.~~

3.6 Objective Six

To ensure that demands (including social, economic and cultural demands) for fresh water are sustainably managed in a manner that has regard to the following:

- (a) available supply of fresh water;*
- (b) the need to provide for resilience against the biophysical effects of climate change (such as through infrastructure for supply, storage and distribution of fresh water);*
- (c) the adverse effects that arise from those demands.*

3.6.1 Comment:

KCE requests that Objective Six is redrafted. KCE considers that Objective Six is unclear. In particular, provision (c) – ‘*the adverse effects that arise from those demands*’ is extremely vague and open to interpretation. Further, Objective Six does not state how freshwater is to be ‘sustainably managed’ when over-allocation has already occurred. KCE considers that the objective should afford protection / non-derogation to existing uses consistent with High Court decisions on the principle of non-derogation (i.e. *Southern Alps Ltd v Queenstown Lakes District Council [2007]*) and suggests that Objective Six is redrafted to recognise a balance between positive and negative effects.

3.6.2 Relief Sought:

That Objective Six be amended as follows:

REVISED OBJECTIVE SIX

To ensure that demands (including social, economic and cultural demands) for fresh water are sustainably managed in a manner that has regard to the following:

- (a) the available supply of fresh water;*
- (b) the need to provide for resilience against the biophysical effects of climate change (such as through infrastructure for supply, storage and distribution of fresh water);*
- (c) the ~~adverse~~ environmental effects (both negative and positive) that arise from the allocation of water; ~~those demands.~~*
- (d) the need to ensure that the rights of existing users are not derogated by allocation to new applicants; and*

- (e) *the level of investment and community benefit associated with an existing abstraction, particularly in catchments where over-allocation necessitates a review of the water being abstracted.*

3.7 Objective Seven

To ensure that allocated fresh water is used efficiently particularly in terms of the following:

- (a) *avoiding wastage;*
- (b) *avoiding excessive contamination;*
- (c) *facilitating opportunities to increase benefits from the use of fresh water.*

3.7.1 Comment:

With respect to Objective Seven, KCE regard this provision as appropriate and only suggest a minor amendment; in particular the statement “*to ensure that allocated water is used efficiently*” is appropriate. KCE strives to use water efficiently at all of its power stations and monitors its water use accordingly. KCE considers that this Objective appears to allow for the facilitation of transfer of water to ensure efficiency. KCE believes that this is suitable so long as it occurs under the right conditions, for example the transfer of water downstream will not derogate from existing allocations / affect existing users and uses, and allows for any water that is not required to be utilized elsewhere to be put to use. KCE further considers that a minor amendment to Objective Seven is necessary to clarify that facilitating the transfer of water does not affect existing uses.

3.7.2 Relief Sought:

That Objective Seven be amended as follows:

REVISED OBJECTIVE SEVEN

To ensure that allocated fresh water is used efficiently particularly in terms of the following:

- (a) *avoiding wastage;*
- (b) *avoiding excessive contamination; and*
- (c) *facilitating opportunities to increase benefits from the use of fresh water that allows for efficiency of use, while not adversely affecting or derogating from existing uses.*

3.8 Objective Eight

To ensure that iwi and hapū are involved, and Tangata Whenua Values and Interests are identified and reflected, in the management of Freshwater Resources including the matters specified in Objectives 1–7.

3.8.1 Comment:

KCE considers that it is beneficial for tangata whenua values and interests to be identified as suggested within Objective Eight, however, considers that clarification should be provided as to the term ‘interests’ and how this is to be defined. The identification of areas of specific value to tangata whenua will provide a degree of certainty to those who wish to develop new projects in that they know where areas of constraint, or particular value, are located. This will enable the avoidance of areas of constraint or particular value, where possible, and where not possible, for discussions with the appropriate iwi and hapu groups regarding whether remediation

or mitigation can be achieved to occur at an early stage in a project scoping process, for example.

KCE is unclear as to what is intended by iwi and hapu 'involvement' in the management of freshwater resources, and considers that such 'involvement' should be consistent with, and not elevated above, those matters listed in Part II of the RMA. In this regard, the relationship of maori and their culture and traditions with their ancestral lands, water sites, waahi tapu and other taonga, should be recognised and provided for (section 6); particular regard shall be given to kaitiakitanga (section 7); and the principles of the Treaty of Waitangi shall be taken into account (section 8). KCE therefore suggests that the term 'involvement' be deleted from Objective Eight of the proposed NPS, and that Objective Eight instead references sections 6(c), 7(a) and 8 of the Act.

3.8.2 Relief Sought:

That Objective Eight be amended as follows:

REVISED OBJECTIVE EIGHT

To ensure that iwi and hapū ~~are involved~~, and Tangata Whenua Values and Interests are identified and reflected, in the management of Freshwater Resources (in accordance with Section 6(c), 7(a) and 8 of the Resource Management Act 1991) including the matters specified in Objectives 1–7.

3.9 Objective Nine

To ensure that regional councils and territorial authorities undertake effective monitoring and reporting of the matters specified in Objectives 1–8.

3.9.1 Comment:

KCE considers that it is beneficial for regional councils and territorial authorities to undertake 'effective' monitoring and reporting as suggested within Objective Nine, however, KCE is concerned to ensure that such monitoring and reporting is in fact 'effective' and also 'necessary'. KCE requests that an explanation is provided which sets out the thresholds that any monitoring undertaken shall meet as KCE is concerned that consent holders are likely to bear the brunt of increases in monitoring pursuant to their resource consents. Where a considerable level of additional monitoring is required this may mean that compliance charges are increased significantly, which may, in turn, affect the viability of an existing activity. Likewise, new proposals and the re consenting of existing activities, such as hydroelectric power generation schemes may have substantially more restrictive consent conditions imposed upon their resource consents. KCE therefore requests that a minor amendment is made to Objective Nine, and that an explanation is provided.

3.9.2 Relief Sought:

That Objective Nine be amended as follows:

REVISED OBJECTIVE NINE

To ensure that regional councils and territorial authorities undertake effective and necessary monitoring and reporting of the matters specified in Objectives 1–8.

Explanation: effective and necessary monitoring and reporting shall be monitoring and reporting that is required in order to determine whether an

adverse effect is created; or whether a mitigation measure, strategy or regime is successful.

3.10 Polices One, Two and Three

Policy One:

By the second anniversary of the date of commencement of this National Policy Statement, every regional council must notify, in accordance with Schedule 1 of the Act, a proposed regional policy statement or variation to a proposed regional policy statement or change to its operative regional policy statement in order that as soon as practicable thereafter every regional policy statement specifies objectives, policies and methods which –

- (a) Determine and timetable priorities for when regional plans will set Freshwater Quality Standards and Environmental Flows and Levels for all Freshwater Resources of the region; and*
- (b) Identify Notable Values (including potential values) of –
 - (i) Any Outstanding Freshwater Resources; and*
 - (ii) Any Degraded Freshwater Resources; and**
- (c) In accordance with Policy 1(a) and (b), guide and direct the setting in regional plans for all Freshwater Resources of the region of –
 - (i) Freshwater Quality Standards; and*
 - (ii) Environmental Flows and Levels;**including for the protection of Notable Values of any Outstanding Freshwater Resources and the enhancement or restoration of Notable Values of any Degraded Freshwater Resources; and**
- (d) Guide and direct local authorities as to the involvement of iwi and hapū in the management of, and decision-making regarding, all Freshwater Resources of the region, including but not limited to, requiring local authorities to disclose how they are intending to achieve this involvement; and*
- (e) Identify Tangata Whenua Values and Interests in respect of all Freshwater Resources of the region; and*
- (f) Guide and direct regional and district plans (including considerations for the determination of resource consent applications and notices of requirement) in relation to the recognition of Tangata Whenua Values and Interests in respect of all Freshwater Resources of the region; and*
- (g) Guide and direct regional plans (including considerations for the determination of resource consent applications) to restrict existing takes, uses, damming and diversion of fresh water in order to sustain Notable Values and non-consumptive Tangata Whenua Values and Interests in times of low flow; and*
- (h) Guide and direct regional and district plans (including considerations for the determination of resource consent applications and notices of requirement) to effectively manage Land-use Development and discharges of contaminants to control the adverse effects of the discharge of contaminants into fresh water or onto or into land in circumstances where contaminants may enter fresh water; and*
- (i) Guide and direct regional and district plans (including considerations for the determination of resource consent applications and notices of requirement) to manage demands for fresh water, including demands arising from Land-use Development and discharges of contaminants, in a manner which –*

- (i) Provides certainty to communities and water users (including as appropriate through prioritization of allocation for takes of fresh water for reasonably foreseeable Consumptive Use); and
- (ii) Provides priority for reasonably foreseeable domestic water supply, over other competing demands, provided that appropriate demand strategies are established for such supply; and
- (iii) Promotes efficient Freshwater use (including through the transferability of resource consents, where appropriate); and
- (iv) Increases resilience to the effects of climate change; and
- (v) Controls adverse effects; and
- (j) Guide and direct regional and district plans (including considerations for the determination of resource consent applications and notices of requirement) to ensure integrated management of the effects of Land-use Development –
 - (i) by encouraging co-ordination and sequencing of infrastructure for supply, storage and distribution of fresh water; and
 - (ii) by controlling adverse effects (including associated discharges of contaminants) on the quality and available quantity of Freshwater Resources.

Policy Two:

Every regional council must –

- (a) By the date or dates specified in the regional policy statement, notify a proposed regional plan, change or variation, to set Freshwater Quality Standards and Environmental Flows and Levels for the Outstanding, Degraded and other Freshwater Resources of the region to give effect to the regional policy statement in relation to the matters in Policies 1(a) to (c); and
- (b) By no later than 40 working days following the date a regional policy statement or change notified pursuant to Policy 1 is made operative, every regional council must notify a proposed regional plan, change or variation to give effect to the regional policy statement in relation to all other matters in Policy 1; and
- (c) By no later than 40 working days following the date a regional policy statement or change notified pursuant to Policy 1 is made operative, every regional council must notify a proposed regional plan, change or variation to include rules to achieve the following:
 - (i) Require that all water permits for the Consumptive Use of fresh water granted after the date of commencement of this National Policy Statement include conditions for the efficient Consumptive Use of fresh water including, as a minimum, providing for the use of industry good practice and technology to achieve efficient use:
 - (ii) Require that all water permits for the Consumptive Use of fresh water granted after the date of commencement of this National Policy Statement include conditions for, where appropriate, the return of fresh water to Freshwater Resources, in order to achieve the requirements of paragraph (a) of this Policy:
 - (iii) Require that all discharge permits affecting Freshwater Resources granted after the date of commencement of this National Policy Statement include conditions for –

(A) Protection against degradation of the quality of fresh water of Freshwater Resources (including through the management of activities giving rise to stormwater discharges); and

(B) Sustainable management of demands on fresh water in a manner which has regard to available supply of fresh water and adverse effects, both individual and cumulative; and

(C) Integrated management of the effects of Land-use Development and discharges of contaminants on the quality and available quantity of Freshwater Resources;

to be achieved, as a minimum, by the use of industry good practice:

- (iv) Require effective monitoring and reporting on matters relating to paragraphs (c)(i), (ii) and (iii) of this Policy.*

Policy Three:

By no later than 40 working days following the date a regional policy statement or change notified pursuant to Policy 1 is made operative, every territorial authority must notify a proposed district plan, change or variation in order that as soon as practicable thereafter every district plan –

- (a) Gives effect to the regional policy statement; and*
- (b) Includes rules to require that all relevant land-use and subdivision consents granted after the commencement of this National Policy Statement include conditions for –*
 - (i) Protection against degradation of the quality of fresh water of Freshwater Resources (including through the management of activities giving rise to stormwater discharges); and*
 - (ii) Sustainable management of demands on fresh water in a manner which has regard to available supply of fresh water and adverse effects, both individual and cumulative; and*
 - (iii) Integrated management of the effects of Land-use Development and discharges of contaminants on the quality and available quantity of Freshwater Resources; and*

to be achieved, as a minimum, by the use of industry good practice; and

- (c) Includes rules to require that all relevant land-use and subdivision consents granted after the commencement of this National Policy Statement include conditions to require monitoring and reporting on matters relating to paragraph (b).*

3.10.1 Comment:

KCE considered Policies One, Two and Three together as they all related to requirements for policy changes, variations or proposed plans or statements.

Policy One, which further informs Policies Two and Three, is extremely long and overly prescriptive. As presently drafted the commentary on Policy One is of little value.

Policy One would be more simply put / easier to understand if it was broken down into discreet topics. With respect to Policy One, it should be split into separate / specific policies addressing, for example, water quality; water quantity; environmental flows; notable values; tangata whenua values; and water use and efficiency.

KCE considers that together Policies One, Two and Three establish tight timeframes for the drafting of proposed regional and district policy. Policy One states that a regional policy statement; variations to a proposed regional policy statement; or changes to an operative regional policy statement are required to be notified by the second anniversary of the date of commencement of the proposed NPS. Further, proposed regional or district plans; plan changes; or variations are to be notified no later than 40 working days following the date of a regional policy statement, variation, or change being made operative. KCE is concerned that this timeframe will not allow enough time for necessary research and the drafting of appropriate provisions. If inadequate time is allowed, consultation / feedback at an early stage is likely to be limited and as a consequence, more conservative provisions may be notified by regional and district councils. To implement Policy One alone, regional councils are required to identify all the freshwater resources within their region that are considered to be 'outstanding' or 'degraded', and would also need to work with tangata whenua to identify values and interests and update existing iwi and hapu planning documents. The proposed two-year timeframe is considered inadequate to undertake such work. KCE suggests that a timeframe of five years would be more realistic. Further, KCE is also unclear as to who is to decide what is 'outstanding' and what is 'degraded'. KCE considers that it is appropriate for independent experts to be employed, and freshwater resources to be assessed against appropriate criteria. Policy One should establish the applicable criteria for the various values rather than leaving this to case law and the individual interpretation of the various Councils.

KCE believes that environmental flows need to be identified on a case-by-case basis, and that flow setting should not be restricted to a specific methodology / methodologies. Rather a toolbox approach is appropriate. KCE further considers that it is both important and appropriate to be able to adapt the toolbox of preferred options as research is undertaken and technological advances occur.

While KCE considers that the setting of minimum and environmental flows is appropriate, KCE note the setting of upper allocation limits or levels is not something that is universally accepted by the scientific community; therefore KCE oppose the setting of allocation limits or levels. In this regard, KCE is aware of several reputable scientists / aquatic ecologists who do not support the need for universal allocation limits. KCE also made this point in their submission to the proposed National Environmental Standard on Ecological Flows and Water Levels ('**proposed NES**'), and believe that both the proposed NPS and proposed NES, if advanced, should be advanced together.

The setting of inappropriate environmental flows and limits or levels will potentially have an adverse effect on both new and existing activities, and may result in existing activities losing water, in other words, 'clawback' occurring in over allocated areas.

Indeed, the section 32 analysis appears to assume that in the majority of cases environmental flows will be established that are the same or greater than present, meaning there will be the same, or less, water available for consumption, and as a consequence existing uses and users. The section 32 analysis goes on to state that the main economic costs incurred by the introduction of environmental flows will fall on local government taking water for domestic water supply; the agricultural sector

taking water for irrigation and stock water purposes; and industry taking water for industrial processes. The analysis further states that the likely effects of an increase in environmental flows on hydroelectricity takes will be a decrease in the water available for storage, causing a possible resilience of the generation network and in some circumstances an increase in electricity prices. As KCE's hydroelectric power generation schemes are small-scale schemes even an increase in flow of 500 litres per second would have a significant impact which could jeopardise the viability of its schemes. This runs contrary to Section 7(j) of the Act and the National Policy Statement for Renewable Electricity Generation, and is thus inappropriate.

The policies of the proposed NPS are likely to result in objectives, policies and rules at both district and regional levels which impose additional restriction to existing activities (which have already gone through rigorous RMA consenting processes) when they come to be re-consented, thus must be implemented carefully. When activities such as existing hydroelectric power generation schemes have demonstrated a sustainable flow regime then such flows should not be adjusted unless there is a robust reason to do so. KCE considers that Policies One to Three of the proposed NPS should be amended or redrafted to reflect this. For example, KCE's Wairere Hydroelectric Power Generation Scheme has achieved extremely successful fish monitoring results through compliance with its fish passage flow regime resource consent conditions, therefore believes that the flow regime at its Wairere Scheme have proven to be sustainable and should not be changed.

The section 32 analysis states that the 'first in, first served' approach to allocation may not be sustainable and that such an approach '*does little to promote the efficient use of water or the effective management of cumulative effects*'. KCE assumes that this is why the NPS appears to be heading towards a 'catchment-wide' approach. KCE is concerned that the timetabling of priorities to determine when Freshwater Quality Standards and Environmental Flows and levels are set may lead to Council's granting consents for shorter terms. Together with catchment-wide common expiry dates, this could lead to greater cost / more regular re-consenting, which is particularly onerous for large scale projects and leads to a greater level of uncertainty, particularly in over-allocated catchments when a number of resource consents are due to expire at the same time. KCE has recently re-consented its Mokauiti Hydroelectric Power Generation Scheme. The re-consenting of this Scheme under current policy framework took a period of 12 years, which included an environment court appeal. The scheme is only 1.7 Megawatts and the legal fees of the appeal alone were over 15 percent of the annual revenue. Therefore KCE considers that the current system is already onerous enough, without the implementation of common expiry dates and shorter consent terms. KCE considers that steering away from the first in, first served approach is inappropriate, as conveyed to the Crown by a number of parties and discussed in a number of cases (for example; *Fleetwing Farms Limited v Marlborough District Council [1997] NZRMA 385 (CA)*). The first in, first served approach, when coupled with an effective system of consent transfer, is environmentally appropriate and efficient. It also recognises the value of existing investment and the principle of non-derogation. Policies One to Three within the proposed NPS, and indeed all the policies within the proposed NPS need to be amended to recognise this.

As discussed below (within KCE's analysis of Policies Four and Five), it is noted that the term 'notable value' is not well defined within the proposed NPS and that the research to specify notable values may take some time to complete.

KCE is particularly concerned with the wording of Policy One (g) which specifies that provisions are to be implemented which guide and direct regional plans to 'restrict'

existing takes, uses, damming and diversion of fresh water in order to sustain Notable Values and non-consumptive tangata whenua values and interests in times of low flow. KCE is unclear of what exactly is intended by the term 'restrict' and how this restriction will apply. If taken at face value, the use of the term restrict implies that uses will at best, be maintained, and at worst, scaled back. Indeed the term restrict is defined by the Collins English dictionary as meaning to "*limit, bound confine, contain, hamper, handicap, inhibit, regulate and restrain*". While there may be instances where restricting water use may be appropriate, they need to be advanced with considerable care and be thoroughly tested. Put another way, they need to be the 'exception', not the rule. KCE considers that Policy One (g) needs to be amended or redrafted to reflect this.

KCE is also concerned that Policy One (i) seeks to prioritize allocation of consumptive freshwater takes. Again, the Collins English dictionary defines the term priority as meaning "*the most important thing that must be dealt with first, or, the right to be or go before others*". Without understanding what is intended in terms of prioritization by the proposed NPS, KCE seeks an amendment to this provision so that the prioritization of consumptive freshwater takes can only occur on a first in, first served basis.

KCE notes that Policies Two and Three will impose more restrictive conditions and a greater degree of monitoring and reporting upon resource consents. The implication of this is discussed further within KCE's analysis of Policy Six.

3.10.2 Relief Sought:

That Policies One Two and Three be amended or redrafted to:

- clearly define / clarify key terminology used;
- allow for adequate research and consultation to be undertaken prior to provision drafting;
- set appropriate thresholds. KCE considers that it is appropriate for independent experts to be employed, appropriate criteria to be established within the proposed NPS, and freshwater resources to be assessed against such criteria, particularly in terms of assessing the values of freshwater resources;
- recognise that environmental flows need to be identified on a case by case basis and that flow setting should not be restricted to a specific methodology / methodologies;
- delete the requirement for upper allocation limits;
- ensure that the proposed NPS is not contrary to other central government policy;
- take into account the flow regimes that have been established for existing lawfully operating activities, and only adjust such regimes if there is a robust reason to do so and if the benefits of such restrictions outweigh the costs to other aspects of the environment;
- take into account the first in, first served approach to water allocation and recognise that prioritisation of the abstraction, diversion and use of water should occur on a first in, first served basis;
- recognise and provide for the value of existing investment and the principle of non-derogation; and
- recognise that any restrictions imposed in times of low flow should be the exception and not the rule, particularly for activities such as hydroelectric power generation schemes that while technically considered consumptive, do return the water that they use for generation to a freshwater resource.

3.11 Polices Four and Five

Policy Four:

When preparing a regional policy statement or variation or change to give effect to Policy 1 and when preparing a regional plan or variation or change to give effect to Policy 2, every regional council must consider the following:

- (a) The Notable Values of each Freshwater Resource:*
- (b) The sensitivity of each Freshwater Resource and its Notable Values to adverse effects including effects of Land-use Development and the discharge of contaminants:*
- (c) The needs of primary and secondary industry and communities for sustainable fresh water supply:*
- (d) The contribution of existing and potential uses of Freshwater Resources and of existing economic investment to regional and national social, economic and cultural well-being:*
- (e) The importance of avoiding over-allocation of Freshwater for Consumptive Use:*
- (f) Tangata Whenua Values and Interests:*
- (g) Social and economic transition costs:*
- (h) The value of swimmability to the community.*

Policy Five:

When preparing a district plan or variation or change to give effect to Policy 3, every territorial authority must consider the following:

- (a) The importance of controlling Land-use Development in a way and at a rate that minimises the adverse effects on the quality and available quantity of Freshwater Resources:*
- (b) The importance of ensuring that the planning and implementation of Land-use Development applies industry good practice in order to –*
 - (i) Minimise the adverse effects on the quality and available quantity of Freshwater Resources; and*
 - (ii) Maximise efficiency in the use of Freshwater Resources:*
- (c) The importance of ensuring that the planning for and implementation of infrastructure for water supply, wastewater treatment and stormwater are undertaken –*
 - (i) In an integrated manner; and*
 - (ii) At a rate that, as a minimum, keeps pace with the rate of Land-use Development:*
- (d) Tangata Whenua Values and Interests:*
- (e) Social and economic transition costs.*

3.11.1 Comment:

To give effect to Policies One Two and Three, Policies Four and Five list those matters that local authorities must consider when preparing a plan, variation, or change. KCE requests that those matters listed are adjusted so that they are consistent with, and not elevated above, the requirements listed within sections 5, 6, 7 and 8 of the Act. Some of the wording used within Policies Four and Five is not well defined, or not defined at all.

Alternatively, and as a minimum KCE request that the key terms within Policies Four and Five must be defined.

- a. 'notable values' - this term is defined within the proposed NPS, however the definition provided is vague and doesn't provide any particular thresholds that must be met for a freshwater resource to be classified as having 'notable values';
- b. 'sensitivity of the freshwater resource';
- c. tangata whenua 'interests';
- d. social and economic 'transition costs'; and
- e. 'the value of swimmability to the community'.

3.11.2 Relief Sought:

That Polices Four and Five be amended to be more consistent with the wording prescribed in Part II of the Act.

In the alternative, that the terms listed in section 3.11.1 above be defined.

- Notable Values should be defined as a Freshwater Resource which has any of the following attributes;
 - (a) significant indigenous vegetation and / or significant habitats of flora and fauna;
 - (b) nationally recognised recreational values;
 - (c) significant cultural values;
 - (d) nationally significant economic and social values.
- Sensitivity of the Freshwater Resource – means the potential for notable values within a Freshwater Resource to be significantly adversely affected may are affected by a particular activity or activities;
- Tangata whenua interests – means Freshwater Resources that are utilised by tangata whenua for traditional customary activities;
- Social and economic transition costs – means the costs associated with the siting of an activity at an alternative location when compared to the preferred location;
- The values of swimmability to the community – is, whether a Freshwater Resource is utilised for swimming by a community, and if so the level of recognition afforded to the Freshwater Resource in terms of recreational value.

3.12 Policy Six

Without limiting Policies 1 to 3, this National Policy Statement will be achieved also through the inclusion, unless inappropriate, of conditions on any relevant resource consents granted and recommendations on designations confirmed in respect of the following:

- (a) *Efficient Consumptive Use of fresh water (including where appropriate, the return of fresh water to Freshwater Resources):*
- (b) *Protection against degradation of the quality of Freshwater Resources (including through the management of activities giving rise to stormwater discharges):*

- (c) *Sustainable management of demands on fresh water in a manner which has regard to available supply of fresh water and adverse effects, both individual and cumulative:*
- (d) *Integrated management of the effects of Land-use Development and discharges of contaminants on the quality and available quantity of Freshwater Resources: to be achieved, as a minimum, by the use of industry good practice:*
- (e) *Monitoring and reporting on matters relating to paragraphs (a) to (d).*

3.12.1 Comment:

Policy Six directs local authorities to include conditions, unless inappropriate, on any relevant resource consents, or recommendations on designations. KCE considers that conditions included on consents and designations are entirely appropriate where they serve a purpose, and are reasonable and necessary. It is noted however that such conditions should not require developers to exceed industry standards, nor should they impose greater restrictions than those set out within the Act and national and local government policy. KCE requests that Policy Six is amended, and the inclusion of an explanation or advice note is provided which sets out the criteria that a condition must meet in order to be included on a resource consent or designation.

3.12.2 Relief Sought:

That Policy Six be amended as follows:

REVISED POLICY SIX

Without limiting Policies 1 to 3, this National Policy Statement will be achieved also through the inclusion, unless inappropriate, of conditions on any relevant resource consents granted and recommendations on designations confirmed in respect of the following:

- (a) *To ensure ~~e~~Efficient ~~Consumptive~~ Use of fresh water ~~(including where appropriate, the return of fresh water to Freshwater Resources);~~*
- (b) *To ensure that the permanent adverse effects of any activity or discharge of contaminants to fresh water are avoided, remedied or mitigated so that the freshwater resources are not significantly adversely affected; ~~Protection against degradation of the quality of Freshwater Resources (including through the management of activities giving rise to stormwater discharges):~~*
- (c) *To ensure that the demand for freshwater is managed sustainably, while recognising that that rights of existing users are not to be derogated; ~~Sustainable management of demands on fresh water in a manner which has regard to available supply of fresh water and adverse effects, both individual and cumulative~~*
- (d) *To ensure integrated management of the effects of Land-use activities and associated discharges of contaminants such that Freshwater Resources can meet the appropriate water quality standards; ~~Integrated management of the effects of Land-use Development and discharges of contaminants on the quality and available quantity of Freshwater Resources: to be achieved, as a minimum, by the use of industry good practice:~~*
- (e) *To ensure effective and necessary ~~M~~monitoring and reporting on matters relating to paragraphs (a) to (d).*

Explanation: *effective and necessary monitoring and reporting shall*

be monitoring and reporting that is required in order to determine whether an adverse effect is created; or whether a mitigation measure, strategy or regime is successful.

3.13 Policy Seven

In addition to giving effect to Policies 1 to 3 and Policy 6 by regulatory means, regional councils and territorial authorities may give effect to this National Policy Statement through non-regulatory methods (including financial contributions, development contributions under the Local Government Act 2002 and other methods).

3.13.1 Comment:

Policy Seven allows regional councils and territorial authorities to give effect to the proposed NPS through non-regulatory methods. As it is currently worded KCE considers that this policy is vague. It does not direct local government to use non-regulatory methods; rather it states that local government 'may' use such methods. KCE is also particularly concerned with the reference to financial and development contributions within this policy and given that local authorities can require the payment of financial contributions or development contributions in specified circumstances, KCE do not believe that they are strictly 'non-regulatory' methods. KCE considers that more guidance should be provided with regard to methods of use and how these might be implemented, particularly those methods that impose a cost. KCE requests that the reference to financial contributions and development costs is removed from this policy.

3.13.2 Relief Sought:

That Policy Seven be amended as follows:

REVISED POLICY SEVEN

In addition to giving effect to Policies 1 to 3 and Policy 6 by regulatory means, regional councils and territorial authorities may give effect to this National Policy Statement through non-regulatory methods (~~including~~ excluding financial contributions and development contributions under the Local Government Act 2002, and other methods which may impose significant additional cost on existing consent holders).

3.14 Policy Eight

All local authorities will make publicly available (including electronically) a record of the process used to identify the Tangata Whenua Values and Interests in Freshwater Resources of the region as required to give effect to Policy 1(e), including the identification of the relevant iwi and hapū.

3.14.1 Comment:

KCE supports the retention of Policy Eight. This Policy requires all local authorities to make publicly available a record of the processes used to identify the tangata whenua values and interests in freshwater resources within a region, including the relevant iwi and hapu. Further local authorities are to make publicly available an up to date register of the regulatory and non-regulatory methods they have used to give effect to the proposed NPS. Such information will be useful, particularly to developers when undertaking the scoping stage of a new proposal.

3.14.2 Relief Sought:

That Policy Eight be retained unmodified.

3.15 Policy Nine

The Minister for the Environment will seek an independent review of the implementation and effectiveness of this National Policy Statement at achieving all the objectives and policies of the National Policy Statement no later than 10 years after it comes into force and shall then consider the need to review, change or revoke this statement. Collection of data to inform this review will begin at least two years prior to the review.

3.15.1 Comment:

Policy Nine seeks that the Minister for the Environment calls for an independent review of the implementation and effectiveness of the proposed NPS no later than ten years after it comes into force. KCE supports the retention of Policy Nine. The time period specified for review (ten years) is consistent with that specified for regional policy statements and regional and district plans under section 79 of the RMA.

3.15.2 Relief Sought:

That Policy Nine be retained unmodified.

3.16 Summary

In summary, the proposed National Policy Statement for Water Allocation sets out to enhance management of New Zealand's Freshwater resources, so that by 2035 these meet the needs and aspirations of all New Zealander's. While it is recognised that New Zealander's have a common interest in the country's freshwater resources, KCE considers that the proposed NPS requires amendment, such as that set out within this submission, or amendments with similar or like effect. Amendment is required so as not to impose significant costs to existing and new proposals, like hydroelectric power generation schemes that take, use, dam, divert or discharge to freshwater.

4.0 CONCLUSION

To conclude, while KCE recognises that the sustainable management of New Zealand's freshwater resources is crucial in order to achieve the purpose of the Resource Management Act 1991, KCE is concerned that the proposed National Policy Statement for Freshwater Management as currently drafted, will significantly affect both existing and new hydroelectric generation development and enhancement projects in New Zealand.

KCE would welcome an opportunity to meet with Government officials to further discuss it's comments and concerns, ask questions and respond to any questions that Government may have in response to its submission. Please contact KCE's Chief Executive Officer – Kit Wilson should you wish to arrange a meeting to discuss the same.

KCE wishes to be heard in support of this submission.

Kit Wilson

Chief Executive Officer – King Country Energy

Phone: (07) 896 0135 or 0274 458 008

E-mail: kwilson@kcenergy.co.nz