

## APPENDIX ONE

**Table A: King Country Energy Limited ('KCE') Submissions to the Proposed Amendments to the National Policy Statement for Freshwater Management 2011: A Discussion Document**

Proposed Amendment:	Submission:
<b>GENERAL SUBMISSIONS:</b>	
<p><b>1: The Importance of Adequate Consultation</b></p> <p>The Discussion Document states that once all submissions have been received, these will be analysed with a report and recommendations provided to the Minister for the Environment. It is noted in this case, that the Minister for the Environment has chosen to use an alternative process to that normally undertaken, in accordance with section 46A(1)(b) of the RMA, to progress the proposed amendments. As a consequence, there will be no hearing process, or process for others to consider any further modifications to this round of amendments to the NPS FM 2011. Instead, the Minister for the Environment will review the analysis of submissions and recommendations made, before making any changes as she thinks fit, or withdrawing all, or part, of the proposed amendments to the NPS FM 2011. If the Minister for the Environment chooses to progress amendments to the NPS FM 2011, the Minister will recommend that the Governor-General approve the amended NPS FM. Once approved, the Minister for the Environment will issue and notify the amended NPS FM in accordance with section 52(3) of the RMA.</p>	<p><b>Submission 1:</b></p> <p>KCE <b>opposes</b> the use of the alternative RMA planning process by the Minister for the Environment to progress the proposed amendments to the NPS FM 2011.</p> <p>It is stated within Annexure 2 of the Discussion Document that the Minister for the Environment intends to use an alternative planning process to progress the proposed amendments to the NPS FM 2011 (in accordance with section 46A(1)(b) of the RMA). KCE notes that the use of the alternative planning process, that <u>does not allow for any further consultation</u> regarding the proposed amendments before they are finalised, has not been explicitly highlighted on the Ministry for the Environment's website, or in the Minister for the Environment's media release regarding the Discussion Document. The Company considers that this is particularly concerning, given that substantial changes are being contemplated, which may result in a number of potentially significant implications for freshwater users around New Zealand.</p> <p>KCE considers that adequate consultation is crucial to informing the proposed amendments and in turn, adjusting the NPS FM 2011, so that it becomes a more effective document, while still allowing for the sustainable use and development of freshwater resources within New Zealand. As a consequence of the same, KCE urges the Minister for the Environment to follow the typical planning process, which would allow for additional consultation / feedback to be provided, through the further submission and evidence presentation processes. The Company is concerned that following the alternative planning process is inappropriate, inequitable and will lead to sub-optimal decisions being made. Indeed, KCE is concerned that following the proposed pathway will result in further changes having to be made to the NPS FM 2011; in order to correct the sub-optimal decisions that the Company expects to result</p>

	<p>from the alternative planning pathway being employed in this instance.</p> <p><b>Relief Sought:</b></p> <ol style="list-style-type: none"> <li>1. That the Minister for the Environment progress any amendments to the NPS FM 2011 in accordance with section 46A(1)(a) of the Act, which requires a 'typical' planning process, and hence, allows for further public input to be provided.</li> </ol>
<p><b>SPECIFIC SUBMISSIONS</b></p>	
<p><b>Proposed Amendment 1: Requirement to account for water takes and all sources of contaminants</b> (Section CC in the proposed amendments to the NPS FM 2011).</p> <p>The Discussion Document notes that making good decisions on freshwater objectives and limits (and how to manage to meet the same) requires good information on existing resource use. Good information is also required for councils to manage any existing over-allocation. Freshwater accounting requires an assessment of all water takes and all sources of relevant contaminants.</p> <p>With regard to freshwater accounting, the proposed amendments to the NPS FM 2011 will require councils to:</p> <ul style="list-style-type: none"> <li>• Establish and operate a water quality and quantity accounting system (proposed policy CC1(a)). Information may include measurements, modelling results or estimates. Information is to be recorded at the level of the 'freshwater management unit'.</li> <li>• Have accounting systems at a level of detail that is appropriate for the significance of the water quality and quantity issues in each freshwater management unit (proposed policy CC1(b)).</li> <li>• Ensure that accounting information is available when setting (or reviewing) limits, and that the information is updated at least every five years for water quality, and annually for water quantity (proposed policy CC2).</li> </ul>	<p><b>Submission 2:</b></p> <p>KCE <b>supports</b> (in principle) the requirement for councils to account for water takes and all sources of contaminants as proposed by amendment 1 to the NSP FM 2011. KCE considers that the collection of such information will aid in clarifying where there are freshwater quality, or quantity related issues, which will (in turn) assist in reducing a region's overall water management issues, by highlighting where it is necessary to implement issue-specific water management measures. From the Company's perspective and experience with freshwater management related issues within the Waikato region in particular, it is very difficult to gauge the extent of an issue, such as over-allocation and appropriately look to improve the same without accurate accounting measures in place.</p> <p>While KCE supports the intent of the proposal to account for water quality and quantity more thoroughly, the Company notes that there are potential adverse implications associated with the same, such as increased compliance costs or rating costs brought about by the requirement for councils to account for water takes and all sources of contaminants. Depending on the information that the various councils already have available, and the internal capacity that each council has, the practical implications of this proposal could be both costly and time-consuming. As a consequence of the same, KCE notes the importance of ensuring that any costs passed on to resource consent holders / resource users / rate payers by councils in order to account for water takes and all sources of contaminants, are 'fair and reasonable'. Further, and with regard to water takes in particular, the Company is concerned to ensure that 'double-charging' does not occur where resource users already have to meter their water takes in accordance with other resource management (for example</p>

the Resource Management (Measurement and Reporting of Water Takes) Regulations 2010) and resource consent requirements. In addition, KCE requests confirmation that compliance with the Resource Management Regulations will be acceptable in this regime.

In addition, KCE notes that the Discussion Document (on page 14) states that the proposed amendments to the NPS FM 2011 will require councils to “ensure that accounting information is available when setting or (or reviewing) limits, and that the information is updated at least every five years for water quality, and annually for water quantity (policy CC2)”. KCE seeks clarification that the term ‘made available’ means that information is to be made available to the public generally, as opposed to being made available to the relevant personnel within central / local government. The Company considers that without all of the accounting information being made available in a readily discernable and easily understood format, the potential benefits associated with this proposed amendment are greatly reduced. Indeed, the ability to access readily discernable and easily understood freshwater body or freshwater management unit information, would aid existing and potential water users to accurately analyse their use of the water and its impact. It would also enable developers to assess the costs and benefits associated with proceeding with a proposal (or for existing users to consider optimisations to their use of the resource), and subsequently reduce potential litigation during the resource consenting process, associated with the same.

Lastly, KCE seeks clarification on how councils will ‘account for all sources of relevant contaminants’, particularly where water quality within a freshwater management unit is not ‘maintained’ or ‘improved’? Does the meaning of ‘account for all sources of relevant contaminants’ require every single drop of a contaminant to be discerned? Is guidance to be provided with regard to accounting for contaminants by the Ministry for the Environment, or is this to be left to the respective councils to determine? In KCE’s experience, it can be difficult to discern the exact source of diffuse contaminants, particularly when there are multiple diffuse sources and types of pollutants within a particular area, catchment or water management unit, which might not on their own give rise to water quality issues, but together may present cumulative adverse effects. While the Company expects that greater certainty as to the source of contaminants will apply in the future (with greater measurement and the use of tools such as OVERSEER™) it maintains that even with these tools, it will be difficult and extremely costly to precisely ‘account’ for the source of the contaminant.

	<p><b>Relief Sought:</b></p> <ol style="list-style-type: none"> <li>1. That any costs passed on to resource consent holders / resource users / rate payers by councils in order to account for water takes and all sources of contaminants, are 'fair and reasonable';</li> <li>2. That information, excluding confidential information and data, collected in accounting for water takes and all sources of contaminants is made available to the public in a readily discernable and easily understood format; and</li> <li>3. That clarification is provided by the Ministry for the Environment with regard to how councils will account for all sources of relevant contaminants, and further that the Ministry provides comprehensive guidance to councils with respect to the same.</li> </ol>
<p><b>Proposed Amendment 2: The Inclusion of a 'National Objectives Framework' ('NOF').</b></p> <p>The NPS FM 2011 already requires councils to set freshwater objectives and limits in their regional plans. The Discussion Document notes that proposed amendments to the NPS FM 2011 are intended to assist councils in setting freshwater objectives by introducing a National Objectives Framework ('NOF') into regional council planning. The NOF is proposed to provide councils with scientific information and a process for setting freshwater objectives. Further, the Discussion Document notes that leading scientists from across New Zealand have been involved in developing and testing the technical information in the NOF, so that it is provided once in the amended NPS FM to prevent unnecessary cost and duplication.</p> <p>It is anticipated that the NOF will provide a framework for choosing values and uses that protect the freshwater environment while allowing allocation of water and its ability to assimilate substances discharged into it.</p> <p>In addition, the Discussion Document notes that including the NOF in the amended NPS FM will provide councils and communities with:</p> <ul style="list-style-type: none"> <li>• A set of freshwater values and uses with narrative descriptions of each (proposed appendix 1 to the amended NPS FM).</li> <li>• A set of attributes associated with some of the values and uses, and ranges of numbers that represent different states that the attribute may be managed for (proposed appendix 2 to the amended NPS FM).</li> <li>• A process for setting freshwater objectives at the chosen attribute states to</li> </ul>	<p><b>Submission 3:</b></p> <p>KCE <b>supports</b> (in principle) the provision of a NOF, however the Company does not consider that the NOF should be inserted within this round of amendments to the NPS FM 2011, particularly when the NOF attribute tables are only partially populated and it is noted that there are a large number of attributes under development (as discussed on pages 19 and 20 of the Discussion Document). Indeed, when looking at the attribute table provided on page 21 of the Discussion Document, KCE notes that 13 attributes are proposed in this version of the NOF, while some 39 potential attributes are under consideration for 2016 – 2019.</p> <p>In addition, the Discussion Document states that councils should set freshwater objectives for attributes that are not yet in the NOF (for example sediment, heavy metals, pH, temperature, invertebrates, and so forth) as these will be important for safeguarding the life-supporting capacity of freshwater. KCE seeks clarification as to what is to happen when these attributes have also been developed at a national level and are inserted into the NOF? The Company is concerned that, depending on the process undertaken, there could be an inefficient and costly duplication of effort. In this regard, research would need to be advanced to set appropriate objectives and attributes at a regional level, while at the same time research is being advanced at a national level to set equivalent attributes. Consequently, to include the NOF within the NPS FM 2011 when it is obviously in the early stages of development and likely to change and develop significantly over the coming years, as further research is undertaken, would have significant adverse impacts upon business planning and investment certainty. The Company is also concerned that this would result in an</p>

provide for the chosen values of freshwater management units (proposed section CA in the amended NPS FM).

Under the proposed amendments, regional councils would be required to:

- Consider all the values or uses that the freshwater management unit should be managed for, using the set of national values proposed in the amended NPS FM as a starting point, and choose the desired values.
- Identify the appropriate attributes that must be managed to achieve the chosen value. Some may be included in the proposed amendments to the NPS FM 2011, and the council may have to identify others that are not yet included (such as sediment, heavy metals, pH, temperature, and invertebrates).
- Choose a desired attribute state for the attributes in the proposed amended NPS FM.
- Develop numeric freshwater objectives for the freshwater management unit at the chosen attribute state, and for any other relevant attributes that are not included in the proposed amendments to the NPS FM 2011. The NPS FM Discussion Document notes that numeric freshwater objectives for each attribute allow councils to develop limits to achieve the freshwater objectives, and that if numeric freshwater objectives cannot be developed, then narrative freshwater objectives should be set.
- As part of an iterative process, consider the following matters when developing freshwater objectives:
  - The current and anticipated future state of the freshwater management unit on the basis of past and current resource use.
  - The spatial scale at which freshwater management units are defined (for example, a single water body, part of a water body, or a group of similar water bodies).
  - The limits that would be required to achieve the freshwater objective.
  - Any choices between the values that the formulation of freshwater objectives and associated limits would require (for example, balancing divergent values or uses).
  - Any implications of freshwater objectives (and the associated limits) for resource users and communities, including the actions they take, their investments, on-going management changes and social and economic outcomes.
  - The timeframes for achieving the freshwater objectives (to allow for adjustment), including the ability of regional councils to set long timeframes for achieving targets.
  - Such other matters necessary to give effect to the proposed

increased burden imposed on rate and taxpayers, for little discernable benefit.

KCE believes that the NOF must be very carefully considered, and that it is crucial that the process of inserting the same into the NPS FM 2011 is not rushed. As highlighted above, the Company considers that it would be more appropriate to insert the NOF into the NPS FM 2011 when a number of the attributes under consideration at a national level are more developed.

With regard to the setting of attributes, KCE notes that the proposed NOF and associated attributes are intended to assist regional councils in managing their water quality so that overall, they are maintaining or improving water quality across their particular region. The Discussion Document at page 16 states that “*A region may choose to manage an attribute to state A, B or C depending on community aspirations..... Choices about the state must be made in the context of the existing NPS-FM requirement that overall water quality within a region is maintained or improved from the current state.*” KCE believes that there will always be natural variability in freshwater quality and between particular management units. While providing flexibility on the setting of attribute states to help maintain or improve water quality is appropriate, KCE considers that further expanding on, or clarifying what is intended by the terms ‘maintained or improved’ within any amendments would assist in making the NPS FM 2011 a more effective document, and in turn, result in more consistent regional policy documents throughout New Zealand.

**Relief Sought:**

1. That the NOF is not included within the current round of amendments to the NPS FM 2011, but inserted at a later stage when a number of the attributes under consideration at a national level are more developed;
2. That clarification is provided by the Ministry for the Environment as to what is to happen when attributes developed and implemented at a regional level, have also been developed at a national level and are inserted into the NOF; and
3. That clarification is provided by the Ministry for the Environment as to what is intended by the terms ‘maintained’ and ‘improved’ with respect to freshwater management.

<p>amendments to the NPS FM 2011, including the requirement to maintain or improve the overall quality of freshwater within a region.</p>	
<p><b>Proposed Amendments 3 and 4: Compulsory Values of Ecosystem Health and Human Health for Secondary Contact and the setting of ‘National Bottom Lines’</b></p> <p>The Discussion Document notes that some important values are likely to apply to all water bodies. It proposes the inclusion of values to safeguard human health and ecosystem health, as compulsory values. A compulsory value of ecosystem health will contribute to the existing requirement in Objectives A1 and B1 of the NPS FM 2011 to safeguard the life-supporting capacity of freshwater ecosystems.</p> <p>The proposed attributes for ecosystem health are:</p> <ul style="list-style-type: none"> <li>• Chlorophyll a, total nitrogen and total phosphorus for lakes.</li> <li>• Nitrate toxicity and ammonia toxicity for lakes and rivers.</li> <li>• Dissolved oxygen (below point sources) and periphyton for rivers.</li> </ul> <p>To contribute to safeguarding human health, the proposed amendments add a requirement to safeguard human health for secondary contact recreation (for example, boating and wading) to Objective A1 of the NPS FM 2011, and as a compulsory value throughout New Zealand in proposed Section CA.</p> <p>For both rivers and lakes, the proposed attributes for human health for secondary contact recreation are:</p> <ul style="list-style-type: none"> <li>• E. coli; and</li> <li>• Planktonic cyanobacteria.</li> </ul> <p>These are the attributes that have numeric states ready and have been recommended for the first version of the NOF by expert science panels. Further, as previously noted, councils must set freshwater objectives for other appropriate attributes (for example, sediment, temperature, pH, heavy metals, macro-invertebrate communities and so forth) for each freshwater management unit. The compulsory values are also intended to contribute to Te Mana o te Wai (the mana of the water), more clearly articulating tangata whenua values. Proposed Appendix 1 of the amended NPS FM 2011 also sets out additional values, including tangata whenua values that must be considered for managing freshwater. The Discussion Document notes that communities can choose</p>	<p><b>Submission 4:</b></p> <p>KCE <b>supports</b> (in principle) the provision of compulsory values for Ecosystem Health and Human Health for Secondary Contact, and in turn, the setting of National Bottom lines. However, while KCE accepts that the setting of compulsory values and national bottom lines will both provide clarity and assist in improving freshwater management in New Zealand, the Company considers that it is crucial that national bottom lines and objectives associated with the same are appropriate. Further, KCE contends that national bottom lines and associated objectives must be carefully implemented, as the way in which they are implemented may have significant adverse implications for organisations such as KCE and the regions in which its HEPS are located. The Company, which is based in the Ruapehu District, provides jobs for 50 people within the area and its HEPS generate enough power to supply 23,000 homes. KCE’s Schemes provide a range of benefits both to their customers and nationally, including but not limited to additional security of renewable supply of electricity, reduced transmission losses, and in assisting to achieve the Governments renewable electricity generation target (that 90 percent of electricity should be derived from renewable sources by 2025). The Company’s Schemes are embedded in the local electricity generation supply of the region, meaning that all electricity generated at the Scheme sites go to the local area, consequently the on-going operation of the Schemes is particularly important to the Ruapehu District and King Country and Waikato Regions. KCE, which is one of the few energy companies with only renewable energy, represents one and a half percent of the national generation. The Company notes that as its HEPS are long life assets, any changes to the water that they are allowed to take, will affect the way that they operate, the power that they can supply, and will in turn, diminish the viability of the Schemes. Subsequently the setting of any national bottom lines that impose restrictions on KCE in terms of the resource that they utilise will affect not only KCE, but also the Ruapehu District and King Country and Waikato rural economy. This must, in the Company’s opinion, be taken into account and factored in to any analysis of what is the most appropriate means of achieving the Act’s purpose.</p> <p>KCE has sought advice with regard to each of the attributes proposed within the amendments to the NPS FM 2011 to safeguard the intended compulsory values of ecosystem health and human health. With regard to water quality sampling methods,</p>

to manage their water bodies for these values, but they will not be required to do so.

The proposed amendments to the NPS FM 2011 define minimum acceptable states, called 'national bottom lines' for each of the attributes of the two compulsory values. The proposed 'bottom lines' can be found in Appendix 2 of the amended NPS FM. The bottom lines set the minimum level at which the compulsory values are provided for. It is noted that the quality of most water bodies is already above the proposed bottom lines. In the few water bodies where the bottom lines are not currently met, the Discussion Document notes that freshwater objectives will need to be set at the bottom of the C state<sup>1</sup> or better for all attributes relating to ecosystem health and human health for secondary contact recreation, unless the criteria for an 'exception' can be met. Further, the Discussion Document notes that it is not intended that water bodies can be degraded down to the bottom lines. Councils must continue to meet the existing NPS FM 2011 requirement to 'maintain or improve the overall water quality within a region'.

The Discussion Document states that setting national bottom lines is intended to provide a degree of protection for values widely held across New Zealand and to assist councils and communities by providing clarity on the minimum acceptable states required. This is expected to reduce costs and litigation associated with the preparation of regional plans.

Where the quality of a given freshwater management unit is below a national bottom line, the proposed amendments require councils to set a freshwater objective at or above the bottom line, and set an initial limit on resource use. The Discussion Document notes that targets will need to be set so that, over an agreed time period, water quality will improve and the bottom line (and chosen freshwater objective) will be met.

If a council and community are concerned, however, about the impacts of setting freshwater objectives immediately, proposed policy CA3 provides a transitional arrangement that may be utilised. The council and community can approach the Government to ask to temporarily set a freshwater objective below a bottom line for an agreed period. If appropriate, the water body would be listed in proposed Appendix 4 to the NPS FM (which has not yet been developed but is to include Freshwater Management Units and periods of time for transition under new Policy

KCE requests that guidance must be provided in order to obtain accurate and consistent results, as results may vary due to location, thermal stratification and so forth. The Company understands that there are a number of freshwater bodies, where the water quality is currently above the proposed national bottom lines, which are at risk of threatening the same. Further, KCE understands that medium to small lowland rivers, springs, shallow lakes and lagoons which are in a bad or degraded state, receiving water from intensively farmed agriculture catchments, including irrigated catchments, have a greater risk of exceeding the proposed national bottom lines than other water bodies. As a consequence, KCE urges Central Government to carefully consider implementing national bottom lines, particularly where they may have potentially significant adverse social and economic effects. Setting national bottom lines in such circumstances is inconsistent with the purpose and principles of the Act which requires sustainable management of natural and physical resources, while amongst other considerations, enabling people and communities to provide for their social and economic well being. In addition, KCE seeks clarification with regard to the implications of breaching national bottom lines. In such circumstances KCE submits that it would be appropriate, and in keeping with the purpose of the Act, to implement a transitional period in which the breach could be remedied, taking into account social and economic factors associated with the particular freshwater body or freshwater management unit, when considering the appropriate length of the transitional period.

The Discussion Document notes that while the quality of most freshwater bodies is already above the proposed bottom lines there are some freshwater bodies where the bottom lines are not currently met. Where the quality of a given freshwater management unit is below a national bottom line, the proposed amendments require councils to set a freshwater objective at or above the bottom line, and set an initial limit on resource use. The Discussion Document further notes that targets will need to be set so that, over an agreed time period, water quality will improve and the bottom line (and chosen freshwater objective) will be met. If a council and community are concerned, however, about the impacts of setting freshwater objectives immediately, proposed policy CA3, which provides a transitional arrangement, may be utilised. In accordance with this policy, council and community can approach the Government to ask to temporarily set a freshwater objective below a bottom line for an agreed period. KCE supports such an approach as this would assist in reducing the immediate potentially adverse impacts imposed on existing resource users by allowing them time

<sup>1</sup> There are four states proposed (A, B, C and D) with the letters associated with the attribute relating to contaminant load and water quality. A region may choose to manage an attribute to state A, B or C depending on community aspirations. They cannot choose the D state, as this would not adequately provide for the chosen value.

<p>CA3), along with the maximum timeframe for which the transitional arrangement applies. This would need to be done through an amendment to the NPS FM, and would be consulted on.</p>	<p>to adapt and adjust while working towards freshwater objectives</p> <p>Where a limit is set on resource use in order to improve water quality to the extent that requires substantive land use change, or adversely effects existing activities, KCE considers that it is critically important that the limit and implications of the same are very carefully considered prior to being implemented, and that all costs associated with the same are equitable. Further, and with regard to the setting of transitional periods which enable freshwater objectives to be set below a bottom line for an agreed period of time, KCE considers that any transitional periods agreed should be conservatively set to allow for the achievement of the associated freshwater objective, while taking into account the adverse effects to existing activities. Transitional periods that are too short may have significant adverse social and economic implications, and are less likely to be achieved.</p> <p>Overall, KCE considers that community involvement with regard to the setting of freshwater objectives (particularly for freshwater bodies or freshwater management units that currently sit below the proposed national bottom lines) is critical and requests that any amendments advanced regarding the setting of freshwater objectives require that comprehensive collaborative planning processes are implemented.</p> <p>KCE seeks clarification on how the proposed NPS FM 2011 amendments are to fit with the upcoming RMA reforms? The Company considers that it seems more logical and appropriate for all freshwater reforms currently being advanced to be included and assessed as one package. The proposed amendments to the NPS FM 2011, when advanced on their own, do not provide a full picture of what is intended to occur overall to advance and improve freshwater management in New Zealand, and as such, raise more questions than answers. For example, the Freshwater Reform 2013 and Beyond Discussion Document highlighted the issue of costly scientific effort and introduced the need to review the Water Research Strategy published by the Ministry for the Environment in 2009<sup>2</sup> as a key component of the freshwater management reforms (and as recommended by the Land and Water Forum), but the (current) Discussion Document does not provide any further detail on what is to happen and when with regard to the Water Research Strategy? Further freshwater management units are referenced throughout the Discussion Document, however KCE is unclear on the criteria that should be used to designate the same? KCE considers that the Water Research Strategy, RMA Reforms, amendments proposed within the Discussion</p>
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<sup>2</sup> Foundation for Research, Science and Technology and Ministry for the Environment. 2009. *Water Research Strategy*. Wellington: Ministry for the Environment.



Document and national guidance material to support the same should be advanced together, in order to provide clarity, and ensure that all of the various documents, polices and proposed changes, fit together cohesively.

**Relief Sought:**

1. That compulsory values, national bottom lines and objectives associated with the same are appropriate and that they are carefully implemented, taking into account the purpose of the Act, while amongst other considerations, enabling people and communities to provide for their social and economic well-being;
2. That, where a national bottom line is breached, a transitionary period is implemented in which the breach will be remedied, taking into account social and economic factors associated with the particular freshwater body or freshwater management unit;
3. That, with regard to water quality sampling methods, guidance must be provided in order to obtain accurate and consistent results, as results may vary due to location, thermal stratification and so forth;
4. That the transitional arrangement provided for in proposed policy CA3 is inserted within the amended NPS FM and that any transitional periods agreed which enable freshwater objectives to be set below a bottom line for an specified period of time, must be conservatively set so as to allow for the achievement of the associated freshwater objective, while taking into account the adverse effects to existing activities;
5. That where a limit is set on resource use in order to improve water quality to the extent that requires substantive land use change, or adversely effects existing activities, that the limit and implications of the same are very carefully considered prior to being implemented, and that all costs associated with the same are equitable;
6. That any amendments advanced regarding the setting of freshwater objectives require that comprehensive collaborative planning processes are implemented; and
7. That the Water Research Strategy, RMA Reforms, amendments proposed within the Discussion Document and national guidance material to support the same should be advanced together, in order to provide clarity, and ensure that all of the various documents, polices and proposed changes, fit together cohesively.

<p><b>Proposed Amendment 5: An Exceptions Framework</b></p> <p>Proposed policy CA2 in the amended NPS FM allows a regional council to set a freshwater objective below a national bottom line in narrowly defined situations. The Discussion Document states that exceptions are needed to recognise circumstances where it is not ‘feasible’ or ‘possible’ to improve water quality to the required level. The Land and Water Forum acknowledged the need for exceptions to national bottom lines in certain circumstances.</p> <p>The proposed circumstances when an exception might apply are where a freshwater management unit:</p> <ul style="list-style-type: none"> <li>• Is contaminated from natural processes, such as a native bird colony nesting above a river which causes E. coli levels to breach national bottom lines for E. coli; or</li> <li>• Has been subject to historical activities that have created lasting impacts on water quality, and the reversal of those impacts is not reasonably practicable, either physically or ecologically, even in the long term.</li> </ul> <p>Decisions on whether to allow an exception under these grounds are intended to be made by regional councils as part of the regional planning process. The checks and balances of the planning process would apply to exceptions decided by regional councils, including iwi and public input, submissions, hearings, and possible appeals.</p> <p>Exceptions are also proposed where water quality is affected by ‘significant existing infrastructure’. Such exceptions will likely apply to river reaches that cannot meet bottom lines due to established infrastructure such as hydroelectric power generation or drinking water dams that are authorised to take most, or all, of the water out of a stretch of river. These sorts of exceptions would only be used in limited situations and would be decided by the Government rather than regional councils. The NPS FM Discussion Document notes that an amendment to the NPS FM would be required to create an exception for significant existing infrastructure, and the freshwater management unit would be listed in proposed Appendix 3 to the NPS FM (which is yet to be developed but would include all Freshwater Management Units or freshwater bodies and watercourses eligible for exception under proposed Policy CA2(c). The process would involve public consultation for each exception proposed.</p> <p>Where an exception to bottom lines is proposed to allow for significant existing</p>	<p><b>Submission 5:</b></p> <p>KCE <b>supports</b> the inclusion of a proposed ‘exceptions framework’ which allows for regional councils to set freshwater objectives below national bottom lines where certain circumstances exist and, in addition, <b>supports</b> the concept of providing for exceptions for significant existing infrastructure in the amended NPS FM, where the imposition of a national bottom line induces significant adverse effects on the aforementioned infrastructure.</p> <p>KCE considers that the proposed exceptions framework will provide limited, but none-the-less much needed flexibility to regional councils; in order to ensure that realistic objectives are set by regional councils. Allowing for exceptions to the national bottom lines in carefully defined situations will ensure that practicable considerations are assessed, and all considerations are weighed when determining how fast a use, or collection of uses must transition towards the achievement of the bottom lines. This will be particularly important, where in order to reach / exceed a national bottom line, substantive resource use changes, which will adversely affect existing activities, are required. As previously noted, when providing for an exception, KCE considers that any transitional periods agreed should be conservatively set to allow for the achievement of the associated freshwater objective, while taking into account the adverse effects to existing activities. Providing a conservative period will allow resource users to adapt, while still providing for their social and economic well being. Not providing an exceptions framework, or providing for the framework but implementing transitional periods that are too short, will likely have significant adverse social and economic implications. Further, short impractical timeframes are less likely to be achieved. Lastly, KCE considers that the exceptions framework is both a critical inclusion within the proposed amendments and is in keeping with the purpose of the Act, which requires sustainable management of natural and physical resources, while amongst other considerations, enabling people and communities to provide for their social and economic well being.</p> <p><b>Relief Sought:</b></p> <ol style="list-style-type: none"> <li>1. That a framework, which provides for exceptions to national bottom lines in carefully defined situations, including situations where a national bottom line may impose significant adverse effects on significant existing infrastructure, is included within the amended NPS FM.</li> </ol>
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<p>infrastructure, the Government will assess the situation using a set of criteria. The Discussion Document highlights what could be construed as the beginnings of such criteria, namely:</p> <ol style="list-style-type: none"> <li>1. The need for an exception must arise because of limited efficient or effective management options for significant existing infrastructure.</li> <li>2. The significant existing infrastructure affecting the water body must enable economic benefits that have a significant impact on national or regional GDP.</li> <li>3. The economic benefits can only be realised if the objectives for the water body are set below bottom lines (that is, setting a long-term objective at or above bottom lines will not provide the same or similar economic benefit).</li> </ol> <p>The Discussion Document notes that the Government anticipates there will be very few instances that need an exception and that it expects that communities will instead be able to put a plan in place to work toward bottom lines over time.</p>	
<p><b>Proposed Amendment 6: Clearer Articulation of Tangata Whenua Values for Freshwater</b> (preamble and Appendix 1 in the proposed NPS FM)</p> <p>The Discussion Document notes that one of the clear messages presented to Government during consultation on the potential water reforms in March 2013 was the need for ‘Te Mana o te Wai’ to be expressed in the NPS FM 2011. ‘Te Mana o te Wai’ represents the innate relationship between te hauora o te wai (the health and mauri of water) and te hauora o te taiao (the health and mauri of the environment), and their ability to support each other, whilst sustaining te hauora o te tangata (the health and mauri of the people). For Maori, and many in the community, this is a primary outcome for managing water and is seen as an overriding goal. Without explicit recognition of Te Mana o te Wai in the NPS FM 2011, it is suggested that there is potential for a lack of recognition of the inherent ‘mana’ of the water to follow through into regional plans, and then be lost in consideration of resource consent applications.</p> <p>The Discussion Document notes that Te Mana o te Wai could be expressed in a number of different ways and different places in the amended NPS FM. The proposed amendments to the NPS FM 2011 to express Te Mana o te Wai include:</p> <ul style="list-style-type: none"> <li>• Expanding the preamble to articulate the importance of Te Mana o te Wai and how the NPS FM will contribute to Te Mana o te Wai, recognising the relationship that tāngata whenua have with freshwater.</li> <li>• Adding Te Mana o te Wai as a national value in proposed Appendix 1 through te</li> </ul>	<p><b>Submission 6:</b></p> <p>KCE <b>supports</b> (in principle) the requirement for clearer articulation of tangata whenua values for freshwater to be provided within the amended NPS FM, however the Company <b>opposes</b> the ‘option’ proposed that would see ‘Te Mana o te Wai’ included as a matter that must be ‘safeguarded’ within Objective A1 of the amended NPS FM.</p> <p>KCE considers that the requirement for clearer articulation of tangata whenua values for freshwater to be provided within the amended NPS FM is appropriate and in keeping with Part 2 of the Act, specifically section 6(e) which requires that <i>‘the relationship of Maori and their culture and traditions with their ancestral lands, water sites, waahi tapu and other taonga’</i> is recognised and provided for.</p> <p>The Company considers however, that there is a need for further research and consultation to be undertaken before proceeding with the further ‘option’ for expressing Te Mana o te Wai within Objective A1, as a matter that must be safeguarded alongside the life-supporting capacity, ecosystem processes and indigenous species including their associated ecosystems, of freshwater. KCE is unclear of the implications that the optional amendment may induce, this uncertainty causes substantial concern. Indeed, it is noted that the Discussion Document states that the implications for expressing Te Mana o te Wai within Objective A1 are less clear than for other ways of expressing Te Mana o te Wai and other aspects of the proposed amendments. KCE considers that if Te Mana o te Wai was included as a matter that must be safeguarded, this in turn may lead to further national values (in</p>

<p>hauora o te wai (the health and mauri of water), te hauora o te taiao (the health and mauri of the environment), and te hauora o te tangata (the health and mauri of people), which relate to ecosystem health, human health for secondary contact recreation, and natural form and character and their water quality attributes. The national value relating to 'natural form and character' is optional, rather than compulsory.</p> <p>A further 'option' is to include Te Mana o te Wai in Objective A1 in the amended NPS FM. Should this occur, Objective A1 would require 'Te Mana o te Wai' to be safeguarded, alongside the life supporting capacity, ecosystem processes and indigenous species, including their associated ecosystems of freshwater. The Discussion Document states that this option has been included in square brackets in the proposed amendments to the NPS FM 2011 however, because the implications of expressing Te Mana o te Wai in this way are less clear than for other ways of expressing Te Mana o te Wai, and other aspects of the proposed NPS FM amendments.</p>	<p>addition to those for Ecosystem Health and Human Health for Secondary Contact) being made compulsory, the obvious value being 'Natural Form and Character'. Subsequently, this would lead to the establishment of additional national bottom lines and associated regional policy and would likely induce further restrictions on freshwater resource use and in consequently freshwater resource users.</p> <p><b>Relief Sought:</b></p> <ol style="list-style-type: none"> <li>1. That the option of expressing Te Mana o te Wai within Objective A1 is not advanced within the current round of amendments to the NPS FM 2011, or considered until such time that further research and consultation has been undertaken and Central Government has a clear understanding of the costs, benefits and practical implications associated with implementing the same.</li> </ol>
<p><b>Proposed Amendment 7: Requirement to Monitor Progress towards achieving Freshwater Objectives</b> (proposed section CB in the amended NPS FM)</p> <p>An amendment regarding monitoring plans is proposed in Section CB of the amended NPS FM. The changes proposed provide an approach for monitoring of progress against freshwater objectives over time, and complementing the accounting requirements. Regional councils already have monitoring systems in place and could continue to use these. The Discussion Document notes that the changes proposed require regional councils to identify a range of representative sites at which to monitor progress towards (or achievement of) freshwater objectives. The additions also recognise that water quality needs to be monitored for changes in long-term trends.</p> <p>The tables in proposed Appendix 2 of the amended NPS FM provide consistency for measuring and monitoring attributes by providing the relevant statistic(s) for each attribute (for example, a median value for an average year, which is averaged over a specified number of years (such as five years)). Guidance on monitoring will also be provided in the context of the Ministry for the Environment's broader national environmental monitoring and reporting initiative. It is stated within the Discussion Document that the new requirement in the amended NPS FM links to this monitoring</p>	<p><b>Submission 7:</b></p> <p>KCE <b>supports</b> (in principle) the requirement for councils to monitor progress towards achieving freshwater objectives. The Company considers however, that it will be important to ensure that the site or sites at which monitoring is to be undertaken are representative of each freshwater management unit and are carefully chosen so as not to skew the monitoring results provided. Improperly located sites will present an inaccurate picture of the progress that has been made towards achieving particular freshwater objectives and may in turn lead to incorrect decisions being made regarding current and future freshwater resource use, which could affect the resource users associated with the same. As such, KCE requests that the Ministry for the Environment provide guidance around choosing appropriate monitoring sites so as to ensure national consistency and that appropriate monitoring sites are chosen.</p> <p><b>Relief Sought:</b></p> <ol style="list-style-type: none"> <li>1. That the Ministry for the Environment provides guidance around the setting of appropriate and representative monitoring sites in order to accurately</li> </ol>

<p>initiative and can be integrated with councils' existing monitoring programmes. The results of the monitoring are intended to aid public understanding of the existing states of freshwater management units in terms of the national bottom lines, and indicate the progress over time of councils' efforts to maintain or improve the quality of freshwater in their regions.</p>	<p>monitor progress towards achieving freshwater objectives.</p>
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