

1 May 2015

Media Release: Latest decision on Hawke's Bay Dam project

EDS has undertaken a preliminary assessment of the latest draft decision of the Board of Inquiry to allow Plan Change 6 and grant resource consent for the Ruataniwha Dam project in Hawke's Bay. The decision was released by the EPA today.

Fish & Game, Forest & Bird and EDS had earlier successfully appealed the original decision of the Board to the High Court. The High Court found in favour of the appellants and referred the decision back to the Board for reconsideration.

"In the High Court Justice Collins found that the Board had made a material error of law when it inserted the "deeming provision" which exempted farms from complying with the limit on the level of dissolved inorganic nitrogen (DIN) in the waterways if the farm was complying with the land use capability leaching limits," said EDS Chairman Gary Taylor.

"The Court agreed with us that the deeming provision created a "factual fiction" that assumed compliance when there was none. The decision failed to give effect to the National Policy Statement for Freshwater Management.

"The scope of the referral back to the Board was limited to the rule in PC6 and the condition of consent for the Ruataniwha Dam relating to the DIN limit.

"In its new draft decision, the Board has deleted the deeming provision, and made changes to Rule TT(1)(j) intended to achieve the required environmental outcomes, while ensuring resource consents are only required by those actually contributing to over allocation of dissolved inorganic nitrogen.

"Low intensity farming systems and plantation forestry have been excluded from the operation of the rule on the basis these operations do not contribute significantly to the threat to waterways and have limited means to further reduce nitrogen leaching rates.

"The Board has also made amendments which require DIN to be measured at the monitoring point nearest to the relevant property. The intention behind the change is to define more accurately where measurement should take place and to more accurately target cause and effect.

"With respect to the dam, the Board has determined that including a condition that landowners comply immediately with the DIN limit would frustrate the dam consent because a significant portion of the area covered by the RWSS is already over allocated. Instead the Board has amended the conditions to require consent holders to report on the monitoring and provide the HBRC with the power to review the leaching rates if necessary. It has also inserted a requirement that land use be managed in a manner consistent with achieving the DIN limit.

"The Board has incorporated a number, but not all, of the amendments supported by EDS. Our preliminary view is that the Board has addressed these quite complex issues in a thorough manner. We are especially pleased to see the DIN limit retained – a central plank of our case.

"However we are concerned as to whether there are gaps remaining in the conditions of consent that would enable on-going degradation through to the target year for compliance with the DIN limit of 2030.

"New condition 12A which addresses the obligations between now and then relies on the regional council acting if exceedances are found. But the regional council will have invested hundreds of millions into the Dam project and so will be conflicted in its regulation role.

“There are still questions over the viability of the irrigation scheme and we would be dismayed if a scenario unfolds where the dam goes ahead and pressure then comes on to ease the compliance regime to help make it work. Poor water quality should not be an outcome from this project.

“We will need to properly consider the consequences of the decision over the next few days,” Mr Taylor concluded.

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