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Greater Wellington is the promotional name of the Wellington Regional Council

Submission on Proposed National Environment Standard for Human Drinking-water Sources

Thank you for the opportunity to comment on the Proposed National Environment Standard for Human Drinking-water Sources ("the standard").

We have made this submission after consideration of our Local Government Act 2002 responsibilities, our responsibilities under the Resource Management Act 1991 ("RMA"), and our responsibilities for water supply under the Wellington Regional Water Board Act 1972.

In summary, Greater Wellington does not consider this standard is needed. It does not meet RMA tests for efficiency and effectiveness, and it duplicates what we already do in this region under the RMA. The standard duplicates responsibilities of water suppliers to implement the Drinking-water Standards for New Zealand ("NZDWS: 2005"). It will also be costly to implement for little gain. The "narrative" wording of the standard and unclear definitions will make implementation uncertain. Further details are provided in the paragraphs below.

If the government decides to proceed with this standard, we recommend that it be applied to permanent communities of greater than 500 people rather than to communities of 25 people at least 60 days of the year. The reason for this suggestion is that we don't think the standard will be workable if applied untested to small communities, whereas it could be made to work for larger communities.

In our view, all the outcomes the standard seeks can be achieved by putting appropriate provisions in regional plans and by good consent procedures.

1. The standard duplicates NZDWS: 2005, which requires water supply authorities to assess the quality of their raw water and treat it accordingly. While NZDWS: 2005 is not currently compulsory, we understand that legislation is currently being prepared that will make it mandatory.

2. DWSNZ: 2005 also requires all water suppliers to prepare Public Health Risk Management Plans that include risk assessment of their source catchments. This requirement duplicates the standard. The preparation of Public Health Risk Management Plans is expected to be mandatory in the new drinking water legislation. We understand the draft legislation requires Public Health Risk Management Plans to be approved by District Health Boards acting as agents for the Ministry of Health.

3. The standard will duplicate many aspects of the approach Greater Wellington already takes in managing public water supply catchments in its Regional Freshwater Plan. We identify the main water supply areas in the region and make public water supply the purpose for managing water in these catchments. Provisions that make public water supply a priority ensure that due regard is given to it when resource consents applications are made for any other purpose.

4. The standard will also duplicate requirements in section 35 of the RMA for regional councils to review and report on the efficiency and effectiveness of rules in regional plans every 5 years. The efficiency and effectiveness of having rules, or not, must be looked at in the context of outcomes that the plan is seeking. Our Regional Freshwater Plan identifies outcomes for water supply catchments. In effect, the review of plan provisions is the same as what's in the standard. The standard requires periodic assessment of permitted activities to ensure they do not cause impacts beyond the performance of the affected treatment facilities. Relying on existing provisions in the RMA will avoid uncertainty in the standard over what "periodic assessment" means and what tests should be applied when assessing permitted activities.

5. In water supply catchments, control of point source discharges to water or land is relatively straightforward compared with diffuse source contaminants that result from land use practices. The latter are also likely to create the greatest risk in water supply catchments, particularly where the supply is taken from groundwater. A national environment standard is going to be little use in reducing the risks associated with diffuse source contaminants because it will be management practices rather than rules or standards that will achieve the greatest benefits.

6. A national standard must be complied with and unclear terms create opportunities for litigation, especially when liability issues arise. Conditions must be clear and unambiguous. The definition of "drinking water catchment" is uncertain, particularly where water supply is taken from groundwater, because catchment boundaries can be difficult to determine. In many instances groundwater catchments that supply water are not well defined. There will be difficulties deciding whether notification should occur, whether resource consents should be granted and what monitoring there should be.

7. It will be costly to apply the standard to groundwater resources used for drinking water, particularly where not much is known about the resource. Investigation will be needed where there is insufficient information on groundwater response to contaminants - it can take from two to 60 years for contamination to show up in groundwater - and to provide knowledge of recharge zones and shallow groundwater aquifer characteristics.

8. The standard requires that "new consents in drinking water catchments shall only be granted if the proposed activity does not result in drinking-water catchments being non-potable or unwholesome following treatment". There is confusion here about the order of when things are supposed to happen. The terms "potable" and "wholesome" are taken from NZDWS: 2005. They are helpful when applying NZDWS: 2005 because, if water is "non potable" or "unwholesome" the water supplier can take steps to make the water potable and wholesome. In the standard, the potability or wholesomeness of drinking water in response to an activity in the catchment has to be assessed prior to the activity occurring. If consent for the activity is granted and drinking water is subsequently found to be non-potable or unwholesome, the standard will have failed. However, it's unclear what remedies are available to any of the parties involved, particularly as current RMA case law makes it clear that conditions on resource consents cannot relate to a third party.

9. Terms used in the proposed standard such as, "appropriate action" and "periodically assess" are also unclear and do not provide the certainty that this type of standard needs. These terms need to be defined because they have implications for the amount of work (and cost) for regional councils when implementing the standard.

10. Use of the terms "potable" and "wholesome" are also treated inconsistently in the standard compared with NZDWS: 2005. The standard says that new consents in drinking water catchments shall only be granted if the activity does not result in drinking water being non-potable or unwholesome following treatment. NZDWS: 2005 requires water suppliers to "take all practical steps" to achieve potable water and "all reasonable steps" to achieve wholesome water.

11. Application of the standard to community drinking water supply that serves more than 25 people for at least 60 days of the year means that it will apply to at least 71 water suppliers in our region based on the *Register of Community Drinking-Water Supplies in New Zealand 2005*. Our resource consent database tells us that there are a lot more communities of this size that are not registered and the number of communities that the standard applies to will be a lot higher. The cost to regional councils of administering, implementing and monitoring the standard for so many communities will be very high.

12. The definition of community drinking water supply is inconsistent with criteria for "small water supply" in NZDWS: 2005. The standard uses water supply that serves more than 25 people at least 60 days of the year, whereas NZDWS: 2005 refers to supplies providing drinking water for less than 1500 person days each year. Inconsistencies like this between any standard and DWSNZ: 2005 will result in uncertainty and confusion about which applies.

13. To implement the standard, regional council staff processing resource consents will be required to have a greater understanding than at present of water treatment systems and what constitutes "potable" and "wholesome" water. As well as duplicating this role of water suppliers, it will involve upskilling of staff and additional costs.

14. The standard requires resource consents within drinking-water catchments to have a condition that any unauthorised activity be notified to the water supplier immediately. Such a condition would not be lawful, according to current case law.

15. The standard requires resource consents to include a condition requiring action by the water supplier, including turning off the supply, if notified of events or activities that make the drinking water non-potable. If there is a serious water problem, or the treated water does not meet water supply standards, there are already adequate mechanisms in place involving water suppliers and health authorities to take appropriate action. It would be inappropriate for any response to be prescribed by consent conditions. It is also doubtful whether such a condition could be applied lawfully.

16. Appendix 2 would provide little help in applying the standard. It provides no indication of risks associated with activities and includes contaminants that pose no risk at all to drinking water. Others that pose a risk are readily treatable. We would be concerned if such an appendix was included in the standard.

Thank you again for the opportunity to comment on the Proposed National Environment Standard for Human Drinking-water Sources. If you have any questions about this submission, please feel free to contact Murray McLea on (04) 801 1033 or murray.mclea@gw.govt.nz.

Yours faithfully

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