

Practice Note: Stacking of Water Takes

This practice note outlines guidance for activities involving water takes from multiple locations on the same waterbody and on the same property.

Summary

Under the Regional Plan: Water for Otago (RPW) and S14(3) of the Resource Management Act 1991 (RMA), there are permitted activity rules and authorisations for the taking of water. The below summarises how these different authorisations can be considered when they are taken on the same property:

- Multiple takes on the same property which share the same waterbody/source cannot exceed 25,000L/day in total when operating under the permitted activity rules in the RPW.
- Multiple takes on the same property which do not share the same waterbody/source can occur, within the limit of 25,000/day per water body when operating under the permitted activity rules in the RPW.
- Separate water takes on the same property which share the same water body/source can occur under the RPW (e.g. irrigation) and RMA s14(3) (e.g. stock water) as long as the takes are for different purposes e.g irrigation and stock water.
- A resource consent/water permit cannot be aggregated with a take under a permitted activity rule for the same purpose, from the same source waterbody (i.e. you cannot take irrigation water under both a permitted activity rule and under a water permit from the same waterbody; it is one or the other). Dual takes are inconsistent with the scheme of the Act and the RPW.
- A resource consent/water permit cannot be aggregated with a take under s14(3) for the same purpose, from the same source waterbody (i.e. you cannot take stock water under both a resource consent/water permit and under s14(3) from the same water body. It is one or the other.
- All permitted takes need to adhere to all conditions of each permitted rule including any requirement to cease in accordance with Rule 12.1.4.9
- A retake of water from a storage pond/reservoir that meets the permitted rules or s14(3) where all water taken is water that has previously been taken from a water body and delivered to the storage reservoir (under a resource consent or permitted rule) can occur in conjunction with permitted activity/s14(3) takes from neighbouring water bodies and reservoirs *E.g. you can take out of a river using permitted activity rule/s14(3) and put into a storage reservoir and then retake from that reservoir using permitted activity rules/s14(3) and that is not considered unlawful stacking of takes.*

Permitted activity rules under the RPW

How you are taking	Amount you can take	Considerations
If the takes are from the same waterbody:	Maximum take of 25,000 L/day	If the takes are from the same source or they flow into

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		<p>the same water body: Maximum of 25,000 L/day in total from all takes under permitted rules.</p> <p>If cumulative takes from the same waterbody/flow into same waterbody exceed the permitted activity rule limit, a resource consent will be required.</p>
<p>If the takes are from separate waterbodies that are not connected:</p>	<p>Separate takes of 25,000 L/day will be lawful if you can meet all conditions of the permitted rule.</p>	<p>If the takes are from different sources (e.g.</p> <ol style="list-style-type: none"> 1. groundwater not connected to surface water and surface water; or 2. two different aquifers or 3. two unconnected rivers <p>then it is lawful to take 25,000 L/day from each take.</p> <p>If all the conditions of the permitted activity rule cannot be complied with in full, then the taking of water is unlawful, unless the take is authorised by a resource consent or s14(3)(b) of the RMA.</p>

s14(3) Resource Management Act 1991

[s14\(3\)](#) of the RMA states:

(3) A person is not prohibited by subsection (2) from taking, using, damming, or diverting any water, heat, or energy if—

(a) the taking, using, damming, or diverting is expressly allowed by a national environmental standard, a rule in a regional plan as well as a rule in a proposed regional plan for the same region (if there is one), or a resource consent; or

(b) in the case of fresh water, the water, heat, or energy is required to be taken or used for—

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(i) an individual's reasonable domestic needs; or
(ii) the reasonable needs of a person's animals for drinking water,—
and the taking or use does not, or is not likely to, have an adverse effect on the environment;

Please note that to meet the requirements for a take under this rule, there are three limitations:

- The taking is “required” for either an individual’s domestic needs or for a persons need for stock drinking water; and
- Those needs must be “reasonable”; and
- The taking and use must not have an actual or potential adverse effect on the environment.

All three of these requirements need to be met and they will be case specific. If you are operating under s14(3), it is recommended that you have assessed the take in accordance with the above.

What is reasonable?

There are industry standards and guidelines for stock drinking water and Council has guidance in [section 7.7 of Form 4E](#) on what is considered ‘efficient’ and hence what is likely to be reasonable for various stock types. The Council also typically considers 1,000 litres per household per day during winter and 3,000 litres per summer to be reasonable for domestic use. However, there may be reasons why a reasonable volume could be more or less than the above.

What level of adverse effects?

Case law suggests that anything more than a trivial adverse effect is not permitted and comparison against the RPW permitted activity rule is not relevant (i.e. the rates or volumes could be much higher or less than a permitted activity rule when the adverse effect occurs). It is the actual or potential effects of a specific take in its own circumstances that must be considered. Factors to be considered include the flows in the water body at the time of the take, the natural and human use values of the water body, the location of other takes and water body users and the relationship to the location, rates and volumes of water taken.

Permitted activity rules + s14(3)(b) RMA

You cannot take water under both s14(3)(b) of the RMA and the permitted activity rules RPW, if the purpose of the take is the same. You may only take water under both s14(3)(b) RMA and the RPW if the purpose of those takes is different e.g. stock drinking water under s14(3) and, domestic and/or irrigation under permitted activity rules.

Resource consent + s14(3)(b) RMA

You cannot take water under both a resource consent under the RPW and s14(3)(b) RMA, if the purpose of the take is the same e.g. stock drinking water. You may only take water under both a

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resource consent and s14(3)(b) if the purpose of the take is different e.g., the resource consent is for irrigation, and the s14(3)(b) RMA take is for stocking drinking water.

Resource consent + permitted activity rules

You cannot take water under both a resource consent under the RPW and permitted rules, if the purpose of the take is the same e.g. stock drinking water. You may only take water under both a resource consent and permitted rule if the purpose of the take is different e.g., the resource consent is for irrigation, and the permitted take is for stock drinking water.

Questions?

If you have any questions regarding the information provided, please do not hesitate to get in touch with the Consents or Compliance team on 0800 474 082 or email us at public.enquiries@orc.govt.nz.

A more detailed practice note on stacking with examples will be available on Council's website shortly.

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