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## Media Release

### EDS will not seek leave to appeal the Ruataniwha High Court decision

Late last year the High Court found substantially in favour of the environmental groups that lodged appeals relating to the proposed Ruataniwha Irrigation Dam in Hawke's Bay.

The Court confirmed that the Board of Inquiry made two errors of law in its decision to allow plan changes and grant resource consents for the Ruataniwha Dam and referred the matter back to the Board for reconsideration. But it also found against an EDS allegation that the Board of Inquiry made a third error of law relating to the interpretation of the National Policy Statement on Freshwater Management 2011.

"We have had a careful look at that third issue and respectfully consider that the High Court may be wrong in its interpretation of the NPS," said EDS Executive Director Gary Taylor.

"However the finding is moot because the 2011 NPS has now been replaced with the 2014 version. Any appeal would therefore be somewhat academic. Any remaining ambiguity is also capable of being fixed by the expected further review of the NPS scheduled for 2016.

"An appeal is also not required because the High Court has referred the matter back to the Board of Inquiry for further consideration. Our primary concern, which was that the in-stream nitrogen limit was incapable of enforcement, has been accepted by the Court, and the linkage between that limit and the land use rules will have to be fixed.

"The High Court found the Board erred by including a rule which created a 'factual fiction.' The Judge said: *The principal consequence of the Board's final version ... is that farms over four hectares which comply with the LUC leaching rates are deemed to comply with the in-stream DIN limits even though those farms are in fact not complying with the DIN limits.*

"This meant that the regional council had no way of ensuring compliance with the in-river nitrogen limit, a key indicator of pollution.

"EDS will participate in the fresh hearing before the Board, along with the other appellants Fish & Game and Forest & Bird, and will be seeking enforceable rules to protect the ecosystem health of the catchment.

"If the presence of such rules makes the dam uneconomic, then so be it. The days when we allowed land use intensification to pollute our waterways are over.

"EDS was represented by Auckland Barrister Robert Enright and in-house solicitor Nicola de Wit," concluded Mr Taylor.