

## Draft ~~Upper~~ Ngaruroro River Water Conservation Order

### 1. Title

This order is the Water Conservation (~~Upper~~ Ngaruroro River) Order 20~~20~~15.

### 2. Commencement

This order comes into force on the 28th day after the date of its notification in the New Zealand Gazette.

### 3. Interpretation

In this order, unless the context otherwise requires:

**Act** means the Resource Management Act 1991.

**damming** means the artificial impounding of all or part of the natural flow of any water, including but not limited to circumstances involving:

a. that may involve an associated temporary or permanent structure, or and

b. includes any intake or diversion/deflection structure, structure in the river bed or modification of the river bed that impedes the passage of any fish or navigation by personal watercraft.

a. any intake or deflection structure that does not (including cumulatively with any other intake or deflection structure):

- i. Materially reduce rainbow trout habitat quality or trout fishery values;
- ii. Materially reduce the use of the waters for white water raft or kayaking;
- iii. Intrude visually to the extent that it reduces wild scenic values, or

b. otherwise causes no more than a minor adverse effect.

**waters** means the rivers, tributaries, wetlands, and hydraulically connected groundwaters identified in Schedules 1, 2, and 23.

**upper Ngaruroro waters** means the mainstem of the Ngaruroro and its tributaries, (including wetlands, lakes) from its source in the Kaimanawa Ranges down to Whanawhana cableway (at or about NZTopo50 BK37:918-158) as identified in Schedules 1A and 1B.

lower Ngaruroro waters means the mainstem of the Ngaruroro River from Whanawhana cableway (at or about NZTopo50 BK37:918-158) downstream to the Chesterhope Bridge (as identified in Schedule 2).

**existing water take** means any water permit granted, or any water take or activity lawfully established or authorised and being undertaken, in respect of the Schedule 1A, 1B, 2, or 32 waters, prior to this order being made.

**replacement water permit** means any water permit granted to authorise an existing water take into the future, including:

- a. A change of conditions of a water permit authorising the existing water take; and
- b. A water permit which replaces one or more existing water permits; and
- c. Any further or successive replacement consents;

provided:

- d. Application for the replacement consent is made prior to the expiry or surrender of the existing water permit, or within 6 months after the date on which the rule which requires previously permitted activities to obtain consent became operative; and
- e. The replacement consent, and any conditions imposed on it, result in effects that are the same or similar in character, intensity, and scale to those arising from or associated with the existing water take.

#### 4. Outstanding characteristics, features and values

The waters identified in Schedules 1A, 1B, 2 and 32 include or contribute to, to the extent specified in Schedules 1A, 1B, 2 and 32, the following outstanding characteristics and features:

- a. ~~amenity and intrinsic values afforded by natural state;~~
- b. habitat for rainbow trout;
- c. rainbow trout fishery;
- d. angling amenity and recreation;
- e. ~~habitat for avifauna;~~

~~e-e. habitat for indigenous fish;~~

~~d-f. whitewater kayaking and rafting amenity and recreation;~~

~~e-g. wild, scenic and natural characteristics.~~

~~h. natural characteristics – water quality~~

#### 5. Waters to be retained in natural state

Because they are in their natural state, and because of the outstanding characteristics, features and values identified in clause 4 and in Schedule 1A, the Upper Ngaruroro waters specified in Schedule 1A are to be retained ~~as far as possible~~ in their natural

state including but not limited to the quality, quantity, level and rate of flow of the waters through the protection provided in clause 7, subject to clauses 9, 12 and 13.

**6. Waters to be protected**

Because of the outstanding characteristics, features and values identified in Schedules 1B and 2 and the contribution made to waters supporting outstanding characteristics, features and values, the Upper Ngaruroro waters identified in Schedule 1B and the lower Ngaruroro waters identified in Schedule 2 are to be protected in accordance with the relevant conditions in clauses 8, 9, and 10.

**~~6.7.~~ Waters to be protected as contributing to outstanding characteristics**

Because of their contribution to outstanding characteristics, features and values identified in Schedules 1A, 1B and 2, the waters specified in Schedule 3-2 are to be protected in accordance with the relevant conditions in clauses 8, 9, and 10, and 11, subject to clauses 1-2 and 1-3.

**~~7.8.~~ Restriction on damming of waters**

No resource consent may be granted, or rule included in a regional plan authorising the damming of the upper or lower Ngaruroro waters.

**~~9.~~ Restriction on alterations of river flow and form of Upper Ngaruroro waters**

**~~(1) - Upper Ngaruroro waters~~**

~~(a) No resource consent may be granted or rules included in a regional plan that provide for abstraction of surface water from the waters specified in Schedule 1A or 1B, or rule included in any plan that, either itself or in combination with other consents, rules or permitted takes authorising the use of water, that will have more than minor stream depletion effect on Schedule 1 waters.~~

~~b. a.~~

~~c. Resource consents may be granted or rules included in a regional plan authorising water uses other than for damming, provided that their exercise does not detract from the outstanding characteristics and features described in clauses 4 and 5 and meets the requirements of clauses 7 and 8(a). Any intake or deflection structure must be screened and maintained in accordance with the minimum standards for fish screens and intakes in accordance with the relevant conditions in clause 9, and as specified in Schedule 3 or other equivalent means adopted to prevent the entrapment and impingement of fish.~~

~~d. (b) No rule may be included in a regional plan that provides for abstraction of hydraulically connected groundwater to the upper Ngaruroro Schedule 4~~

waters as specified in Schedule 3 that will have a more than minor stream depletion effect on upper Ngaruroro Schedule 4 waters.

**Commented [AL1]:** Needs an appropriate quantifier, noting that this restriction relates to rules only and is further guided by (c) below

(c) When managing the taking of hydraulically connected groundwater in accordance with clause 9(1)(b), the regional council may take account of the degree of hydraulic connection and any delay between taking of water and stream depletion effects in determining whether a stream depletion effect is generated on Schedule 1 waters.

## **(2) Lower Ngaruroro waters**

**a-**

(a) No resource consent may be granted or rule included in a plan that, either itself or in combination with other consents, rules or permitted takes authorising the use of water existing at the time of the resource consent decision, that:

(i) — Would allow a more than minor effect on the channel cross-section, longitudinal sections, gradient steps, meandering pattern, braided channel character, or gravel or sediment transport capacity of the Ngaruroro River mainstem between Whanawhana and Fernhill (NZTopo50 BK230-114).

(i) — Would generate an adverse effect demonstrated by an overall or component NCI score of less than [0.95] for the Ngaruroro River mainstem between Whanawhana and Fernhill, as measured against a [2020] baseline using the approach outlined in Fuller et al. (2020).

(ii) — Would allow surface water to be abstracted from the Lower Ngaruroro River and tributaries, identified in Schedules 2 and 3, when flows exceed three times the median flow at Fernhill.

(iii) — Would allow water to be abstracted from the Lower Ngaruroro River, tributaries and hydraulically connected groundwater as identified in Schedules 2 and 3, unless flow variability above the minimum flow is provided for, to ensure that there is a no more than minor reduction in the ability of flows to scour and flush periphyton and cyanobacteria accumulations, mobilise and transport sediment and bed material, clear terrestrial vegetation, and trigger flow-dependent aquatic life-cycle processes such as fish migration.

(iv) — Would allow water to be abstracted from the Lower Ngaruroro River, tributaries and hydraulically connected groundwater as identified in Schedule 2 or 3, unless this is in accordance with a minimum flow or allocation regime that:

A. will not result in further loss of habitat suitability at mean annual low flow for the indigenous fish and macro-invertebrate communities; and

B. will not result in greater frequency or duration of minimum flow events affecting indigenous fish; and

C. will not result in an increased risk of terrestrial predator incursion onto avifauna island habitat; and

D. includes a minimum flow of no less than 2400L/s at Fernhill

When managing the taking of hydraulically connected groundwater in accordance sub-clauses (iii) and (iv), the regional council may take account of degree of hydraulic connection and any delay between taking of water and stream depletion effects

(v) This clause does not restrict a regional plan from imposing rules that set higher minimum flows or that reduce the allocable volume for any of the waterbodies referred to in this Order.

#### **8.10. Requirements for fish screens**

No resource consent may be granted or rule included in a regional plan in respect of the taking or diversion of the waters specified in Schedules 1A, 1B and 2, ~~or taking or diversion of the waters specified in Schedule 4~~ as exempted by clauses 124 and 132, unless all associated intakes are screened and maintained in accordance with the minimum standards for fish screens and intakes contained in Schedule 43.

#### **9.11. Requirements to protect water quality**

a. No rule may be included in a regional plan authorising the discharge of contaminants onto land or into waters specified in Schedules 1A, 1B and 32 that will cause, either by itself or in combination with any existing consents, activities or rules, the limits in Schedule 4 to be exceeded the quality of those waters to be degraded beyond the existing state.

b. For the purposes of clause 11(a), "degraded beyond the existing state" means a negative long-term trend in any of the following parameters, as determined using the methods in clause 11(c):

(i) Water clarity - black disk;

(ii) Nitrogen – NNN, DIN, NH3-N, TN;

(iii) Phosphorus – DRP, TP;

(iv) Faecal contamination – *E. coli*;

(v) MCL.

c. The assessment of trends for the purposes of clause 11(b) shall be in accordance with the following methods:

**Commented [AL2]:** Need to include location(s) of assessment

- (i) The assessment shall use the most robust trend analysis approach available at the time it is undertaken;
- (ii) Trend analyses should use all available data, and from the commencement of this Order shall include at least monthly monitoring of the parameters contained in clause 11(b)(i)-(iv) and annual macroinvertebrate sampling;
- (iii) Trend analyses may involve the inclusion of climate and flow indices to help remove any 'natural' causes for water quality variation.
- (iv) Non-local unnatural changes should be excluded for compliance purposes. For example, if anthropogenic climate change contributed to a change in water quality parameters (e.g. rising water temperature affecting MCI scores, increased storm frequency generating more landslips and decreased water clarity).

~~for the following parameters, at the time the Order was applied for:~~

- ~~a.— Dissolved inorganic nitrogen (DIN) (Total oxidized nitrogen (nitrate + nitrite) + ammoniacal N)~~
- ~~b.— Ammoniacal nitrogen (unadjusted for pH and temperature)~~
- ~~c.— Ammonia (adjusted for pH of 8 and temperature of 20°C)~~
- ~~d.— Dissolved reactive phosphorus (DRP)~~
- ~~e.— Escherichia coli (E.coli) cfu/100ml~~
- ~~f.— Dissolved oxygen (DO) concentration % saturation~~
- ~~g.— Dissolved oxygen (DO) concentration mg/L2~~
- ~~h.— Temperature-Cox-Rutherford Index (CRI)~~
- ~~i.— Clarity (horizontal visibility of a black disc)~~
- ~~j.— Deposited fine sediment (maximum %)~~
- ~~k.— Macroinvertebrate Community Index (MCI, average)~~
- ~~l.— Periphyton weighted composite cover (%PeriWCC, annual maximum)~~
- ~~m.d Cyanobacteria mat cover (benthic cover, %)~~
- ~~n.e. No resource consent may be granted that is inconsistent with the regional plan with respect to water quality in the waters specified in Schedules 1A, 1B and 32.~~

This clause does not restrict a regional plan from imposing water quality standards that set more stringent conservative limits for the purpose of improving water quality where it is not ina-natural state.

#### **10.12. Scope of Order**

- a. This Order does not limit sections 14(3)(b) and (e) of the Act relating to the take and use of water for an individual's reasonable domestic needs, or for the reasonable needs of an individual's animals for drinking water, or ~~taken or used~~ for firefighting purposes, provided that all intakes (other than those for emergency fire-fighting) be

screened to be designed and maintained to comply with the minimum standards specified in Schedule 34 to prevent the entrapment or impingement of fish.

b. Subject to clause 124(c) this Order does not restrict or prevent the grant of resource consents or inclusion of a rule in a regional plan for the purpose of:

- i. research into, and protection or restoration, rehabilitation or enhancement of, water quality, cultural, spiritual and tikanga Māori values, fisheries and wildlife habitats; or
- ii. the operation, maintenance, removal, protection or replacement of any existing road, ford or bridge, or network utility operation (as defined in section 166 of the Act); temporary construction dewatering activities; or the maintenance or operation of the Ngaruroro Flood Protection and Drainage Scheme; or the protection of human or animal health; or
- iii. Minor activities necessary for the management of land administered by the Department of Conservation.

c. No resource consent may be granted or rule included in a regional plan that would allow activities specified in clause 124(b) if exercise of any such resource consent or rule would compromise the protection of the outstanding characteristics and features identified for the waters specified in the Schedules.

d. This Order does not prevent the granting of replacement water permits. For clarity, this clause does not provide that replacement water permits will be granted, and does not prevent the regional plan from imposing provisions which may affect the grant of, or terms and conditions imposed on, any replacement water permit.

Note: This clause does not constitute grandparenting.

#### **44.13. Exemptions**

a. Nothing in this Order prevents the grant of a resource consent that would otherwise contravene conditions set out in clauses 5,6,7,8,9, 10 and 11 if a consent authority is satisfied that:

i. the exercise of any such consent would not compromise the protection of the outstanding characteristics and features identified for the waters specified in the Schedules; and

ii. the consent is for:

- A. a discharge that is of a temporary nature; or
- B. the consent is for: an activity that is associated with necessary removal, maintenance or replacement works for works and structures not otherwise prohibited by this order; or

~~C. at the consent is for~~ discharge of herbicides for control of pest plants.

~~ii. the exercise of any such consent would not compromise the protection of the outstanding characteristics and features identified for the waters specified in the Schedules.~~

~~b.e. Nothing in this Order prevents the exercise of kawenata listed in the schedule set out below. The Order acknowledges the rights and interests of Maori landowners, the exercise of their manawhenua and kaitiaki obligations in this regard.~~

~~The relevant kawenata are as follows:~~

~~Ngā Whenua Rāhui kawenata~~

- ~~i. Owhaoko C Trust – Minister of Conservation~~
- ~~ii. Owhaoko B and D Trust – Minister of Conservation~~
- ~~iii. Owhaoko A East and A1B Blocks Trust – Minister of Conservation~~

#### **12.14. Existing Consents**

Nothing in this order shall affect or restrict any resource consent granted prior to this Order coming into force in respect of the protected waters, until the expiry of that consent.

**SCHEDULE 1A:**

**Waters to be retained in Natural State**

Waters	Outstanding Characteristics or Features	Conditions to apply
<p>The mainstem of the Ngaruroro River and of its tributaries (including wetlands and Kaweka Lakes) from its source in the Kaimanawa Ranges down to Whanawhana cableway (at or about NZTopo50 Bk37:948-158) [waters to be included for discussion]; - 'upper Ngaruroro waters'.</p>	<p>Amenity and intrinsic values afforded by natural state</p> <p>Habitat for rainbow trout</p> <p>Rainbow trout fishery</p> <p>Angling amenity and recreation</p> <p><u>Habitat for avifauna</u></p> <p><u>Habitat for indigenous fish</u></p> <p>Whitewater rafting and kayaking amenity and recreation</p> <p>Wild and scenic characteristic</p> <p><u>Natural characteristics — water quality</u></p>	<p>Natural state (cl 5)</p> <p>Prohibit damming (cl 87)</p> <p>Fish screens (cl 109)</p> <p>Water quality (cl 114)</p> <p><u>Restrictions on alterations of river flow and form (cl 9(1))</u></p>

**SCHEDULE 1B**

**Protected waters – Upper Ngaruroro**

<u>Waters</u>	<u>Outstanding Characteristics or Features</u>	<u>Conditions to apply</u>
<p><u>Any parts of the Tararua and tributaries – for discussion]</u></p>	<p><u>Amenity and intrinsic values</u></p> <p><u>Habitat for rainbow trout</u></p> <p><u>Rainbow trout fishery</u></p> <p><u>Angling amenity and recreation</u></p> <p><u>Wild and scenic characteristic</u></p>	<p><u>Prohibit damming (cl 87)</u></p> <p><u>Fish screens (cl 109)</u></p> <p><u>Water quality (cl 110)</u></p> <p><u>Restrictions on alterations of river flow and form (cl 9(1))</u></p>
<p><u>Any parts of the mainstem and tributaries of the Ngaruroro River- for discussion]</u></p>	<p><u>Amenity and intrinsic values</u></p> <p><u>Habitat for rainbow trout</u></p>	<p><u>Prohibit damming (cl 87)</u></p> <p><u>Fish screens (cl 109)</u></p>

	<a href="#">Rainbow trout fishery</a>	<a href="#">Water quality (cl 1110)</a>
	<a href="#">Angling amenity and recreation</a>	<a href="#">Restrictions on alterations of river flow and form (cl 9(1))</a>
	<a href="#">Whitewater rafting and kayaking amenity and recreation</a>	
	<a href="#">Wild and scenic characteristic</a>	

**SCHEDULE 2**

**Protected Waters – lower Ngaruroro**

<u>Waters</u>	<u>Outstanding Characteristics or Features and contribution to outstanding characteristics and features</u>	<u>Conditions to Apply</u>
<u>The mainstem of the Ngaruroro River from Whanawhana cableway (at or about NZTopo50 BK37:918-158) downstream to the Chesterhope Bridge, located on the mainstem Ngaruroro River (at or about NZTopo50 -39.596626, 176.873191) 'lower Ngaruroro waters'.</u>	<u>Habitat for avifauna</u> <u>Habitat for indigenous fish</u> <u>Contribution to outstanding habitat for indigenous fish in the Upper Ngaruroro Waters</u>	<u>Prohibit damming (cl 8)</u> <u>Restrictions on alterations of river flow and form (cl 9(2))</u> <u>Fish screens (cl 10)</u>

**SCHEDULE 32**

**Waters to be protected for their contribution to outstanding characteristics**

Waters	Outstanding Characteristics or Features <u>contributed to</u>	Conditions to apply
Hydraulically connected groundwater to the waters specified in Schedules <u>1A</u> and <u>1B</u>	Amenity and intrinsic values afforded by natural state Habitat for rainbow trout Rainbow trout fishery <u>Habitat for avifauna</u> <u>Habitat for indigenous fish</u> Angling amenity and recreation Whitewater rafting and kayaking amenity and recreation Wild and scenic characteristic <u>Natural characteristics—water quality</u>	<del>Effects to be determined by Council Abstraction of hydraulically connected water</del> (cl 9(1)(b)–(c)8-4) <u>Water quality (cl 11)</u>
<u>Tributaries to the Lower Ngaruroro River from Whanawhana cableway (at or about NZTopo50 BK37:918- 158) to the inland limit of the coastal marine area (at or about NZTopo50 BK39:368-1285</u>	<u>Habitat for avifauna</u> <u>Habitat for indigenous fish</u>	<u>Restriction on alteration of river flow and form (cl 9(2)(ii)–(iv))</u>
<u>Hydraulically connected groundwater to the waters specified in Schedule 2</u>	<u>Habitat for avifauna</u> <u>Habitat for indigenous fish</u>	<u>Restriction on alteration of river flow and form (cl 9(2)(ii)–(iv))</u>

## SCHEDULE 43

### Minimum requirements for fish screens and intakes

Feature	Outstanding Characteristics or Features
Screen location	At the point of water diversion from the river (or as close as practicable)
Screen size (aperture)	Aperture size not exceeding <ul style="list-style-type: none"><li>• 2mm in diameter for profile bar screens</li><li>• 3mm in diameter for woven mesh screens</li><li>• 3.2mm in diameter for perforated plate screens (round opening)</li></ul>
Approach velocity	No greater than 0.12 metres per second
Sweep velocity (parallel to the face of the screen)	Equal to or greater than the approach velocity at all times
Return of fish to an active flowing channel of the water from which they were diverted	Effective bypass structure
Screen maintenance and operation	To ensure that the screen remains effective at all times