

Water Conservation (Motueka River) Order 2004

(SR 2004/258)

Pursuant to sections 214 and 423 of the Resource Management Act 1991, Her Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following order.

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Note

This order is administered in the Ministry for the Environment.

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- 1 Title**
This order is the Water Conservation (Motueka River) Order 2004.
- 2 Commencement**
This order comes into force on the 28th day after the date of its notification in the *Gazette*.
- 3 Interpretation**
In this order, unless the context otherwise requires,—
Act means the Resource Management Act 1991
flow means the running average flow measured over the 7 preceding days
Nephelometric Turbidity Unit means a measure of cloudiness (turbidity) based on the scattering of light by suspended particles
NTU means Nephelometric Turbidity Unit
reasonable mixing means the mixing that occurs within—
(a) a maximum radius of 200 m from a discharge into a still water body; or
(b) a maximum distance of 200 m downstream from a discharge into a river
river means the main stem of those waters that are—
(a) identified in Schedule 1, Schedule 2, or Schedule 3; and
(b) referred to as the main stem on the Infomap 260 series topographical maps between specified lower and upper limits as defined by map references in Schedule 1, Schedule 2, or Schedule 3.

4 Outstanding characteristics, features, and values

The waters identified in either Schedule 1, Schedule 2, or Schedule 3 include or contribute to, to the extent specified in Schedule 1 or Schedule 2, all or any of the following outstanding characteristics, features, and values:

- (a) outstanding recreational characteristics:
- (b) outstanding fisheries and wildlife habitat features:
- (c) outstanding scientific values:
- (d) outstanding wild and scenic characteristics.

5 Waters to be retained in natural state

Because of their outstanding characteristics and features, the quality, quantity, level, and rate of flow of the waters identified in Schedule 1 are to be retained in their natural state.

6 Waters to be protected

Because of their outstanding characteristics and features, the waters identified in Schedule 2 are to be protected in accordance with the relevant conditions in clauses 8 to 11, as specified in Schedule 2.

7 Waters to be protected as contributing to outstanding features

Because of their contribution to outstanding characteristics and features, the waters identified in Schedule 3 are to be protected in accordance with the relevant conditions in clauses 8 to 11, as specified in Schedule 3.

8 Restrictions on damming of waters

- (1) No resource consent may be granted or rule included in a regional plan permitting the damming of the waters identified in Schedules 2 and 3.
- (2) For the purposes of subclause (1), **damming** includes the taking or deflecting of water via an intake or deflection structure that—
 - (a) prevents the passage of brown trout; or
 - (b) adversely affects the spawning of brown trout.

9 Restrictions on alterations of river flows and form

No resource consent may be granted or rule included in a regional plan that—

- (a) will cause the material alteration of the channel cross-section, meandering pattern, and braided river channel characteristics of the form of any river specified in Schedule 2; or
- (b) will cause, for those rivers specified in Schedule 2 at any time of year, or for those rivers as specified in Schedule 3 that drain Separation Point granites during the months of May to October inclusive, either by itself or in combination with other existing consents or rules, a 50% or greater increase in the deposition of fine sediment (less than 2 mm diameter) on the bed of the river after reasonable mixing from the point immediately upstream to which the resource consent or rule relates; or
- (c) will cause, either by itself or in combination with any other existing consents or rules, alteration of the flow of that part of the Motueka River specified in Schedule 2 by more than 12% as measured by the residual flow at Woodstock; or
- (d) will cause, either by itself or in combination with any other existing consents or rules, alteration of the flow of water in any part of the Wangapeka River by more than 6% as measured by the residual flow at Walter's Peak; or
- (e) will cause, either by itself or in combination with any other existing consents or rules, including existing surface and groundwater takes, reduction of the naturally occurring instantaneous flow of that part of the rivers specified in Schedule 3 below the following threshold minimum flows during the months of May to October inclusive:
 - (i) 1 000 l/second in the Motueka River immediately above its confluence with the Motupiko River (at N28: 961 731);
 - (ii) 500 l/second in the Motupiko River immediately above its confluence with the Motueka River (at N28: 961 731);

- (iii) 250 l/second in the Tadmor River at the Mudstone Recorder.

10 Requirement to maintain fish passage

No resource consent may be granted or rule included in a regional plan relating to the waters identified in Schedules 2 and 3, unless that resource consent or rule ensures adequate natural or artificial passage for trout through those waters, where Schedule 2 or Schedule 3 identifies trout habitat or trout spawning as an outstanding characteristic or as contributing to an outstanding characteristic.

11 Restrictions on alteration of water quality

- (1) No resource consent may be granted or rule included in a regional plan permitting a discharge into any of the waters identified in Schedule 2 at any time, or into any of the waters identified in Schedule 3 during the months of May to October inclusive, if, after allowing for reasonable mixing of the discharge with the receiving waters, the discharge would—
 - (a) alter the concentration of suspended solids or turbidity in the receiving waters by more than 1 mg/l or 1 NTU where the ambient concentration of suspended solids or turbidity is less than or equal to 10 mg/l or 10 NTU respectively; or
 - (b) alter the ambient concentration of suspended solids or turbidity in the receiving waters by more than 10 mg/l or 10 NTU where the concentration of suspended solids or turbidity is more than 10 mg/l or 10 NTU respectively; or
 - (c) alter the visual clarity of the waters by more than 20%; or
 - (d) alter the natural temperature of the receiving waters—
 - (i) by more than 3°C; or
 - (ii) by increasing the water temperature to more than 20°C.
- (2) No resource consent may be granted or rule included in a regional plan permitting the discharge into any of the waters identified in Schedule 2 at any time, or into any of the waters identified in Schedule 3 during the months of May to October

inclusive, unless, after allowing for reasonable mixing of the discharge with the receiving waters,—

- (a) any change in the acidity or alkalinity in the receiving waters, as measured by the pH and attributable to that discharge, either—
 - (i) maintains the pH within the range of 6 to 9 units; or
 - (ii) allows the pH to change by no more than 0.5 units when the natural pH lies outside the range of 6 to 9 units; and
 - (b) there would be no undesirable biological growths attributable to the discharge including (but not limited to)
 - (i) bacterial or fungal slime growths that are visible to the naked eye; or
 - (ii) seasonal maximum covers of streams or river beds by—
 - (A) periphyton as filamentous growth or mats (longer than 20 mm) exceeding 30%; or
 - (B) biomass exceeding 120 mg of chlorophylla per square metre; or
 - (C) 35 g ash-free dry weight per square metre of exposed surface area; and
 - (c) aquatic organisms are not rendered unsuitable for human consumption through the accumulation of excessive concentrations of contaminants; and
 - (d) the water is not made unsuitable for recreation by the presence of contaminants, or the median bacterial level of 5 samples or more taken over a period of 30 days does not exceed 126 E coli per 100 ml.
- (3) No resource consent may be granted or rule included in a regional plan permitting a discharge into any of the waters identified in Schedule 2 or Schedule 3 if, after allowing for reasonable mixing of the discharge with the receiving waters, the discharge would reduce the concentration of dissolved oxygen below 80% of saturation.
- (4) For the purposes of subclause (3), if the natural concentration is less than 80% of saturation, the natural level must be maintained or increased.

Subclause (2)(d) was amended, as from 27 April 2006, by clause 3 Water Conservation (Motueka River) Amendment Order 2006 (SR 2006/72) by inserting the word “not” after the word “does”.

12 Scope of order

- (1) This order does not limit section 14(3)(b) and (e) of the Act, which relates to the taking or use of water for domestic needs, for the needs of animals, and for fire-fighting purposes.
- (2) This order does not restrict or prevent the grant of resource consents to the Department of Conservation or rules being included in a regional plan that would permit minor water uses if those minor uses are necessary for the management of land administered by the Department of Conservation.
- (3) This order does not restrict or prevent the grant of resource consents for the purpose of—
 - (a) research into, and enhancement of, fisheries and wild-life habitats; or
 - (b) hydrological or water quality investigations; or
 - (c) the construction, removal, maintenance, or protection of any road, ford, or bridge, or the maintenance or protection of any other network utility operation (as defined in section 166 of the Act); or
 - (d) the construction or maintenance of soil conservation and river protection works undertaken in accordance with the Soil Conservation and Rivers Control Act 1941.
- (4) Despite clause 9(c), this order does not prevent the exercise of current resource consents or the granting of resource consents for any activity where more than the amount of water being taken is released from a water augmentation scheme from—
 - (a) water permitted to be stored within the Motueka River catchment; or
 - (b) water outside the Motueka River catchment.

13 Exemptions

Nothing in this order prevents the grant of a resource consent that would otherwise contravene the conditions set out in clauses 8 to 11 if—

- (a) a consent authority is satisfied that—

- (i) there are exceptional circumstances to justify the grant of the resource consent; or
 - (ii) the permit is for a discharge that is of a temporary nature; or
 - (iii) the permit is for a discharge that is associated with necessary construction and maintenance work for works and structures not otherwise prohibited by this order; and
- (b) the exercise of the resource consent would not compromise the preservation and protection of the outstanding characteristics and features identified for the waters identified in Schedules 1, 2, and 3.

Schedule 1

cls 3-5 and 13(b)

Waters to be retained in natural state

Waters	Outstanding feature	Conditions
North and South branches of the Wangapeka River above their confluence (M28: 665 708), Rolling River upstream of its confluence with the Wangapeka River (M28: 749 736), Skeet River upstream of M27: 822 873	Blue duck habitat	Natural state

Waters	Outstanding feature	Conditions
<p>Upper Motueka River above upper Gorge (N28: 052 517), Rainy River upstream of the Conservation Land boundary (N29: 946 440), upper Dart River upstream of M28: 807 686, Baton River upstream of M27: 839 889, Pearse River upstream of M27: 898 985, Graham River upstream of N27: 903 017, Pokororo River upstream of N27: 968 058, and Rocky River upstream of N27: 004 079 within Kahurangi National Park</p>	Wild and scenic	Natural state
<p>Streams emerging from Mt Arthur marble and northern Arthur Range being the Pearse (from M27: 882 995), Ellis (from M27: 833 951), north branch of the Graham (from N27: 921 034), and streams draining the northern part of the Mt Owen massif being the Granity, Blue, and Nuggetty Creeks</p>	Karst (scientific and recreational values)	Natural state

Waters	Outstanding feature	Conditions
upstream of M28: 737 709		

Schedule 2
cls 3, 4, 6, 8(1), 9(a)-(c),
10, 11(1)-(3), and 13(b)**Protected waters**

Waters	Outstanding feature	Conditions
Motueka River from Shaggery River confluence (N26: 068 111) to Wangapeka River confluence (N27: 922 864)	Brown trout fishery	cls 6, 8, 9(a)-(c), 10, and 11
Wangapeka River from its source to the Motueka River confluence (N27: 922 864)	Brown trout fishery	cls 6, 8, 9(a) and (b), 10, and 11

Schedule 3
cls 3, 4, 7, 8(1), 9(b) and
(e), 10, 11(1)-(3), and 13(b)**Waters to be protected for contribution to
outstanding features**

Waters	Contribution to outstanding features in Schedules 1 and 2	Conditions
<p>Flows in the Motueka River between the Wangapeka River confluence (N27: 922 864) and the Blue Glen Creek confluence, including the upper Motueka, Motupiko, and Tadmor Rivers; trout spawning and rearing: Blue Glen Creek, Rainy River, Motupiko River, Tadmor River, Stanley Brook downstream of Sunday Creek Road Bridge (N27: 950 871), Dove River downstream of Thorpe Bridge (N27: 997 919), Pearse River down-stream of M27: 898 985, Graham River below the North and South branch confluence at N27: 943 008, Pokororo River down-stream of N27: 968 058, and Little Pokororo River</p>	<p>Adequate water of sufficient quality for the outstanding adult brown trout habitat in the Motueka River below the Wangapeka River confluence; fish passage and trout spawning in spawning tributaries during the months of May to October inclusive</p>	<p>cls 7, 8, 9(b) and (e), 10, and 11</p>

Diane Morcom,
Clerk of the Executive Council.

Explanatory note

This note is not part of the order, but is intended to indicate its general effect.

This order, which comes into force on the 28th day after the date of its notification in the Gazette, declares that—

- the waters identified in Schedule 1 are to be retained in their natural state because of their outstanding characteristics and features:
- the waters identified in Schedule 2 are waters to be protected in accordance with relevant conditions because of their outstanding characteristics and features:
- the waters identified in Schedule 3 are to be protected waters because of their contribution to outstanding characteristics and features.

The order specifies how the waters are to be preserved and protected. The order also specifies the scope of the preservations and protections.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in Gazette: 26 August 2004.
