

Water Conservation (Buller River) Order 2001

(SR 2001/139)

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.

1 Title

This order is the Water Conservation (Buller River) Order 2001.

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

NTU means Nephelometric Turbidity Unit

reasonable mixing means the mixing that occurs—

- (a) within a maximum radius of 200 metres from a discharge into a still water body; or
- (b) within a maximum distance of 200 metres downstream from a discharge into a river

river means the main stem of the waters specified in Schedule 1, 2, or 3; and includes any unnamed naturally occurring still water bodies that lie along the main stem

tributaries means all the tributaries of the rivers or sections of rivers identified in Schedule 1, 2, or 3.

4 Outstanding characteristics and features

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

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

5 Waters to be retained in natural state

Because of the outstanding characteristics, features, and values identified in clause 4, the quality, quantity, level, and rate of flow of the waters specified in Schedule 1 are to be retained in their natural state.

6 Waters to be protected

Because of the outstanding characteristics, features, and values identified in clause 4,—

- (a) the waters specified in Schedule 2 are to be protected in accordance with the restrictions and prohibitions in clauses 7 to 11, as specified in Schedule 2:
- (b) the waters specified in Schedule 3 are to be protected in accordance with the restrictions and prohibitions in clauses 7 and 12, as specified in Schedule 3.

7 Restrictions on damming of waters

- (1) For the purposes of this clause, damming does not include any intake or deflection structure that does not—
 - (a) harm any salmonid fish spawning or prevent the passage of any fish; or
 - (b) prevent the use of the waters for rafting or canoeing; or
 - (c) reduce the wildlife habitat; or
 - (d) intrude visually to the extent that it reduces wild and scenic values.
- (2) No resource consent may be granted or rule included in a regional plan permitting the damming of the waters specified in Schedule 2 whenever any of the characteristics in subclause (1) are listed as outstanding in Schedule 2 and that schedule refers to this clause.

8 Restrictions on alterations of river flows and form

- (1) No resource consent may be granted or rule included in a regional plan—
 - (a) if the effect of the resource consent or rule would not generally maintain the channel cross-section, meandering pattern, and braided river channel characteristics of the form of any river specified in Schedule 2:
 - (b) if the effect of the resource consent or rule would alter the naturally occurring instantaneous flow of the water in any river specified in Schedule 2 by more than 5%.
- (2) The restriction in subclause (1)(a) does not apply in respect of dams, weirs, roads, fords, bridges, access ways, or fish passes lawfully existing on the date this order comes into force.
- (3) Despite anything in subclause (1),—

- (a) any change in flow permitted in that part of the Buller River specified in item 2 of Schedule 2 must not be greater than 10% of the naturally occurring instantaneous flow:
- (b) any change in flow permitted in that part of the Buller River specified in item 3 of Schedule 2 must not be greater than 15% of the naturally occurring instantaneous flow:
- (c) any change in flow permitted in the Gowan River, item 11 of Schedule 2, must not be—
 - (i) greater than 15% of the naturally occurring instantaneous flow whenever that flow is 9 cumecs or more; or
 - (ii) greater than 5% of the naturally occurring instantaneous flow whenever that flow is less than 9 cumecs.

9 Restrictions on alteration of lake levels

No resource consent may be granted or rule included in a regional plan for the waters of Lake Rahuī, item 22 of Schedule 2, if the effect of that resource consent or rule would alter the mean natural level of the lake or allow a daily fluctuation that exceeds—

- (a) 10% of the natural annual fluctuation; or
- (b) the natural limits of fluctuation.

10 Requirement to maintain fish passage

No resource consent may be granted or rule included in a regional plan for the waters specified in Schedule 2 unless that resource consent or rule maintains—

- (a) adequate natural or artificial passage for trout through those waters where Schedule 2 identifies trout as an outstanding characteristic; and
- (b) adequate natural or artificial passage through those waters for those native fish that require such passage where Schedule 2 identifies native fish as 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 specified in Schedule 2 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 milligram per litre or 1 NTU where the ambient concentration of suspended solids or turbidity is less than or equal to 10 milligrams per litre or 10 NTU respectively; or
 - (b) alter the ambient concentration of suspended solids or turbidity in the receiving waters by more than 10 milligrams per litre or 10 NTU where the concentration of suspended solids or turbidity is more than 10 milligrams per litre 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 degrees Celsius; or
 - (ii) by increasing the water temperature to more than 20 degrees Celsius; or
 - (iii) so as to adversely affect, during their spawning season, the spawning of—
 - (A) rainbow and brown trout:
 - (B) inanga:
 - (C) koaro:
 - (D) giant, banded, and short-jawed kokopu:
 - (E) alpine, long-jawed, dwarf, and common galaxias.
- (2) No resource consent may be granted or rule included in a regional plan permitting the discharge into any of the waters specified in Schedule 2 or Schedule 3 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, would either—
 - (i) maintain the pH within the range of 6 to 9 units;or

- (ii) not allow a change by 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—
 - (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 (larger than 3 millimetres thick) exceeding 40%; or
 - (B) biomass exceeding 100 milligrams of chlorophyll-a per square metre; or
 - (C) 40 grams ash-free dry weight per square metre of exposed surface area; and
 - (c) aquatic organisms are not made 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 would not exceed 126 E coli per 100 millilitres.
- (3) No resource consent may be granted or rule included in a regional plan permitting a discharge into any of the waters specified in Schedule 2 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.

12 Conditions applying to Lake Matiri and Matiri River

- (1) No resource consent may be granted or rule included in a regional plan for the waters of Lake Matiri, item 1 of Schedule 3, if the effect of the resource consent or rule would—
 - (a) allow the level of Lake Matiri to exceed the natural range; or

- (b) allow the mean level of Lake Matiri to exceed 0.5 metres above the naturally occurring mean level.
- (2) A resource consent may be granted or a rule included in a regional plan that has the effect of allowing the level of the waters in Lake Matiri to be controlled within its natural range if—
 - (a) the maximum daily lake level fluctuation, caused by artificial control, would not exceed 50% of the existing natural range; and
 - (b) fluctuations in lake level, caused by artificial control, would not significantly affect riparian vegetation.
- (3) No resource consent may be granted or rule included in a regional plan for a structure in any of the waters specified in Schedule 3 unless the structure allows for the passage of eels and koaro in both directions.

13 Scope of order

- (1) This order does not limit section 14(3)(b) and (e) of the Act, which relates to the use of water for domestic needs, for the needs of animals, and for, or in connection with, 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.
- (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 wildlife habitats; or
 - (b) hydrological or water quality investigations; or
 - (c) the construction, maintenance, or protection of any road 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) This order does not prevent the granting of further resource consents for the Maruia Springs Thermal Resort on similar terms and conditions to those imposed on the resource consents held on the date this order comes into force.

14 Exemptions

Nothing in this order prevents the grant of a resource consent that would otherwise contravene the conditions set out in clauses 7 to 12 if—

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

Schedule 1

cl 5

Waters to be retained in natural state

Item	Waters	Outstanding characteristics or features
1	Travers River	Headwater trout fishery Wild and scenic
2	Lake Rotoiti	Trout fishery Wild and scenic Canoeing

Item	Waters	Outstanding characteristics or features
		Eel fishery
3	Sabine River	Headwater trout fishery
		Wild and scenic
4	Lake Constance	Wild and scenic
5	D'Urville River	Headwater trout fishery
		Wild and scenic
6	Lake Rotoroa	Trout fishery
		Eel fishery
		Wild and scenic
7	Owen River and all tributaries upstream of and including Halfway Creek and Fyfe River upstream of the boundary of the public conservation estate and private land (map reference M28 698 550)	Headwater trout fishery
		Karst features (scientific values)
8	Matiri River upstream of map reference M28 550 517	Wild and scenic
		Native fishery

Item	Waters	Outstanding characteristics or features
9	Matakitaki River upstream of the boundary between conservation estate and private land (map reference M30 700 070)	Headwater trout fishery Wild and scenic
10	Nardoo Creek	Trout spawning habitat Wild and scenic
11	Glenroy River upstream of Granity Creek (map reference M30 546 004)	Wild and scenic
12	Maruia River and all tributaries upstream of Alfred River confluence	Blue duck Wild and scenic
13	Lake Daniells	Rainbow trout fishery Wild and scenic Native fishery
14	Deepdale River	Headwater trout fishery
15	Te Wharau Creek (Stony River)	Headwater trout fishery
16	Blackwater River and Ohikaiti River	Wild and scenic Blue duck Native fishery

Item	Waters	Outstanding characteristics or features
17	Ohikanui River and all its tributaries	Headwater trout fishery Wild and scenic Native fishery Blue duck

**Schedule 2
Protected waters**

cl 6

Item	Waters	Outstanding characteristics or features	Restrictions and prohibitions
1	Buller River from Lake Rotoiti to Gowan confluence	Trout fishery Canoeing (Lake Rotoiti to Teetotal Creek map reference N29 916 383)	cls 7, 8(1), 8(2), 10, and 11
2	Buller River from Gowan confluence to map reference M29 537 350	Trout fishery Canoeing Rafting	cls 7, 8(1)(a), 8(2), 8(3), 10, and 11

Item	Waters	Outstanding characteristics or features	Restrictions and prohibitions
3	Buller River from map reference M29 537 350 to Maruia confluence	Trout fishery Canoeing Rafting Wild and scenic	cls 7, 8(1)(a), 8(2), 8(4), 10, and 11
4	Buller River from Maruia confluence to Iron Bridge	Canoeing Rafting Wild and scenic	cls 7, 8(1), 8(2), 10, and 11
5	Buller River from Iron Bridge to Te Kuha	Rafting Wild and scenic	cls 7, 8(1), 8(2), 10, and 11
6	Speargrass Creek	Trout spawning habitat	cls 7, 8(1), 8(2), 10, and 11
7	Maggie Creek	Trout spawning habitat	cls 7, 8(1), 8(2), 10, and 11
8	Maud Creek	Trout spawning habitat	cls 7, 8(1), 8(2), 10, and 11
9	Station Creek	Trout spawning habitat	cls 7, 8(1), 8(2), 10, and 11

Item	Waters	Outstanding characteristics or features	Restrictions and prohibitions
10	Gowan River	Rafting	cls 7, 8(1)(a), 8(2), 8(3)(c), 10, and 11
11	Mangles River	Headwater trout fishery Wild and scenic	cls 7, 8(1), 8(2), 10, and 11
12	Tutaki River and its tributary, the Tiraumea River	Headwater trout fishery	cls 7, 8(1), 8(2), 10, and 11
13	Owen River downstream from the confluence of Halfway Creek	Headwater trout fishery	cls 7, 8(1), 8(2), 10, and 11
14	Fyfe River downstream of map reference M28 698 550, Sandstone Creek, Johnstons Creek, Brewery Creek, and their tributaries	Trout spawning habitat	cls 7, 8(1), 8(2), 10, and 11
15	Mole Stream	Blue duck Trout spawning habitat Wild and scenic	cls 7, 8(1), 8(2), 10, and 11

Item	Waters	Outstanding characteristics or features	Restrictions and prohibitions
16	Maruia River downstream of Alfred River confluence and including the Alfred River to the upper end of the Mainstem Gorge at the Jones Creek confluence (map reference L30 434 017)	Headwater trout fishery	cls 7, 8(1), 8(2), 10, and 11
		Wild and scenic	
17	Maruia River Mainstem Gorge from the Jones Creek confluence (map reference L30 434 017) to the Aerial Ropeway (map reference L30 429 120)	Headwater trout fishery	cls 7, 8(1), 8(2), 10, and 11
		Canoeing	
		Rafting	

Item	Waters	Outstanding characteristics or features	Restrictions and prohibitions
18	Maruia River from Aerial Ropeway (map reference L30 429 120) to the confluence of the Buller River	Headwater trout fishery	cls 7, 8(1), 8(2), 10, and 11
		Canoeing	
19	Flat Creek, Warwick Creek, Rappahannock River, Station Creek, Woolley River, and Rahu River	Headwater trout fishery	cls 7, 8(1), 8(2), 10, and 11
		Trout spawning habitat	
		Native fishery	
20	Lake Rahu	Wildlife habitat	cls 9, 10, and 11

Schedule 3
Protected waters (Lake Matiri)

cl 6

Item	Waters	Outstanding characteristics or features	Restrictions and prohibitions
1	Lake Matiri and Matiri River downstream from map reference	Wild and scenic	cls 11 and 12

Item	Waters	Outstanding characteristics or features	Restrictions and prohibitions
	M28 550 517 to Lake Matiri outlet	Wildlife habitat Native fishery	

Marie Shroff,
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—

- (a) the waters described in *Schedule 1* are to be retained in their natural state because of the outstanding characteristics, features, and values of the waters:
- (b) the waters described in *Schedule 2* are waters to be protected because of the outstanding characteristics, features, and values of the waters:
- (c) the waters described in *Schedule 3* are to be protected waters because of the outstanding characteristics, features, and values of the waters.

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

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 21 June 2001.
