

**Title:** The Lake Wairarapa National Water Conservation Order

**Purpose:** To assist the Ruamāhanga Whaitua Committee to understand the history and implications of the National Water Conservation (Lake Wairarapa) Order 1989

**Author:** Emily Greenberg, Policy Advisor, Greater Wellington Regional Council

**Date:** November 2014



**Contact the Ruamāhanga Whaitua Committee**

34 Chapel Street

Masterton

PO Box 41

[Ruamāhangawhaitua@gw.govt.nz](mailto:Ruamāhangawhaitua@gw.govt.nz)

T 0800 496 734

F 06 378 2146

# The Lake Wairarapa National Water Conservation Order

## Contents

1. Introduction.....	3
2. Brief history of National Water Conservation Orders .....	3
3. The Lake Wairarapa WCO.....	3
3. Interpretation of the Lake Wairarapa WCO and Regional Rules.....	5
Operative Regional Plans.....	5
Draft Natural Resources Plan .....	6
4. Lessons from the Te Waihora/Lake Ellesmere WCO.....	7
5. Implications for the Ruamāhanga Whaitua Implementation Programme.....	8
6. For more information.....	9
Appendix A: Water bodies with WCOs.....	10
Appendix B: National Water Conservation (Lake Wairarapa) Order 1989.....	11
Appendix C: Lake Wairarapa lake levels during 2013 .....	14

## 1. Introduction

Lake Wairarapa has been protected, in part, by a National Water Conservation Order since 1989. The National Water Conservation Order (WCO) specifically protects the wildlife habitat on the eastern shoreline of the lake from reclamation and altered lake water levels. The WCO is specific to the open water and does not cover the wetlands associated with the shoreline.

## 2. Brief history of National Water Conservation Orders

The purpose of a WCO is to recognise and sustain outstanding amenity or intrinsic values of a water body in either its natural or modified state.

Legislation that enabled the creation of WCOs was enacted in 1981. This legislation was under the Wild and Scenic Rivers Amendment to the Water and Soil Conservation Act 1967. This Act is now a part of the Resource Management Act 1991. Today the WCOs are regulated under Part 9 of the Resource Management Act 1991.

There are 13 rivers and 2 lakes protected by WCOs (see **Appendix A**). The last WCO was granted in 2008. In 2011, the Lake Ellesmere (Te Waihora) WCO was amended following Treaty Settlements with Ngāi Tahu.

## 3. The Lake Wairarapa WCO

In 1981, an interagency group comprised of the Ministry of Works and Development, Wairarapa Catchment Board (dissolved in 1989 with the formation of Greater Wellington Regional Council), Lands and Survey, and the Ministry of Agriculture and Forestry was formed to pursue the potential reclamation of Lake Wairarapa as part of the Lower Wairarapa Valley Development Scheme (for a complete history see McLean 2001).

The recommendation of this committee was for the reclamation of 2,365 hectares of the eastern shoreline of the lake with a system of polders (stopbanks) to create 43 dairy units.

There was opposition to this scheme, and in response the Wildlife Service commissioned a survey of wetland habitat and birds in 1982. From this survey, the Wildlife Service recommended that the remaining wetlands be retained along the shoreline of the lake. To achieve these objective, the Wildlife Service recommended that Lake Wairarapa water levels should not go below 10.0m and not go above 10.3 m for long periods, even though they also noted that regular variations in water levels are essential at all times of the year to maintain a healthy ecosystem (from McLean 2001).

In 1986, the local, regional and national societies that are now known as Fish & Game New Zealand, lodged an application for a WCO covering Lake Wairarapa and its tributaries. The WCO was gazetted on March 1989 (see **Appendix B**).



The application for the Lake Wairarapa WCO was assessed by a committee of the National Water and Soil Conservation Authority (NWASCA) - the lead agency authorised to approve or decline WCOs under the Water and Soil Conservation Act 1967. The recommendations in the committee's report (NWASCA Committee 1986) noted that:

1. The main issue was the need to prevent reclamations and the construction of polders (an area of low-lying land that has been reclaimed from a body of water and is protected by dikes) around the lake which would reduce the area of the lake and wildlife habitat. The WCO therefore should prevent the diversion of water within Lake Wairarapa and the taking of water and control of lake levels that would significantly diminish the outstanding wildlife habitat (see Section 4 of this report for more discussion on how this recommendation has been interpreted).
2. The WCO should not recognise or protect the tributaries, although water takes from these tributaries would need to consider its effects on the outstanding wildlife habitat protected in the lake. The WCO also should not recognise or protect the Simmonds Lagoon complex, the JK Donald Reserve and the Wairio Ponds, as the protection of wetlands was beyond the scope of the legislation for WCOs.
3. Lake Wairarapa qualifies for a WCO for the following reasons:
  - It contains important habitat for a variety of endemic, migrant and other bird species
  - The lake itself (excluding the areas considered by the committee to be wetland) satisfies the International Union of the Conservation of Nature (IUCN) for a wetland of international importance [as identified by the criteria in the Ramsar Convention].
  - It is the largest wetland of its type in New Zealand – a lowland freshwater lake surrounded by marshland and sandflats.
4. There is no mention of Māori values in the report.
5. At the time of the application, the Wairarapa Catchment Board had a water right to operate the Barrage Gates with no expiry date and no conditions. However, this management of the lake was not an issue in the WCO application for the lake. The committee report stated that the application supported the current operation of the barrage gates, which used target lake levels of between 9.9 and 10.15 m. These lake levels are required for the engineering and hydraulic maintenance of the opening of the Lake Onoke spit, which allows the lake to function as an integral part of a flood management system. The committee concluded that the WCO should provide for the issue of water rights in connection with the barrage gates.
6. In addition, the committee concluded that an order should not impose target level and minimum and maximum lake levels. However, an order should protect the wildlife habitat by preventing the issue of water rights that allow the damming or diversion of any water within the lake. It should also prevent the granting of water rights and



general authorisations if their effect would be that any part of the lake ceased to contain outstanding wildlife habitat features.

### 3. Interpretation of the Lake Wairarapa WCO and Regional Rules

Clause 4 of the Lake Wairarapa WCO (see Appendix B) makes it clear that it is prohibited to “divert any water within Lake Wairarapa”.

Clause 5 deals with all other water rights and states:

*No water right shall be granted and no general authorisation shall be made in respect of any part of Lake Wairarapa if the effect would be significantly diminish the outstanding wildlife habitat features of any part of the lake.*

Legal opinion to the GWRC is that the outright ban in Clause 4 applies only to reclamation activities within Lake Wairarapa, such as poldering.

Clause 5 does not prohibit water use, rather it requires that water takes and discharges be assessed on a case-by-case basis in order to assess their impact on wildlife values.

#### Operative Regional Plans

Regional policy statements, regional plans and district plans must be consistent with the provisions of a WCO. The GWRC considers that the current rules and policies in the operative Regional Freshwater Plan (RFP) are consistent with the Lake Wairarapa WCO.

In particular, **Policy 4.2.10** of the RFP refers to Appendix 2, which includes Lake Wairarapa. The policy is worded as:

*To avoid adverse effects on wetlands, and lakes and rivers and their margins, identified in Appendix 2 (Parts A and B) when considering the protection of their natural character from the adverse effects of subdivision, use and development.*

Although the Lake Wairarapa WCO does not impose target level and minimum and maximum lake levels, **Policy 6.2.12** of the RFP establishes a water level management regime for Lake Wairarapa that is consistent with the WCO and which gives effect to the order:

*To provide water levels in Lake Wairarapa using the minimum water levels for the time periods specified in Table 6.6 below, and*

- *As soon as practicable, to lower the lake level when the lake level is over 10.3 metres; and*
- *As far practicable, to maintain the outflow of water from Lake Wairarapa until the seasonal minimum is reached.*



**Table 6.6 Lake Wairarapa minimum Levels**

<b>Time Period</b>	<b>Water level (chart datum)</b>
1 December to 29 February	10.15 metres
1 March to 31 May	10 metres
1 June to 30 September	9.95 metres
1 October to 30 November	10 metres

The minimum water levels in the RFP come from the Lake Wairarapa Wetlands Management Guidelines (Robertson 1991). These guidelines were developed by the Lake Wairarapa Co-ordinating Committee which was set up to help implement the WCO. The Committee was facilitated by the prominent ornithologist Dr Hugh Robertson and included iwi, recreational users, landowners, commercial fishers and environmental groups.

The barrage gates are now operated under a resource consent which refers to Table 6.6. In reality the lake levels fluctuate considerably depending on weather patterns (Appendix C). This consent expires in 2019.

**Rule 16** in the RFP requires a resource consent for a Discretionary Activity for water takes pertaining to Lake Wairarapa.

**Rule 5** in the RFP requires a resource consent for a Discretionary Activity for discharges to Lake Wairarapa.

**Rule 51** in the RFP specifies that reclamation of the bed of Lake Wairarapa is a Prohibited Activity.

## **Draft Natural Resources Plan**

Although the policies and rules that give effect to the Lake Wairarapa WCO in the draft regional plan (draft Natural Resources Plan for the Wellington Region) are modified from the current provisions, they manage to the same environmental outcomes as the policies and rules in the current plan.

**Draft Schedule A2** identifies Lake Wairarapa as an outstanding water body

**Draft Policy GP.P26** refers to avoiding adverse effects of use and development on the significant values of outstanding water bodies identified in Schedule A.

**Draft Rule LW.63** makes the discharge of water or contaminants into water in Schedule A (outstanding water bodies), which includes Lake Wairarapa, a non-complying activity.

**Draft Rule LW.R132** makes reclamation of an outstanding lake in Schedule A2, which includes Lake Wairarapa, a prohibited activity.

**Draft Policy RW.P1 (d)** in the Ruamāhanga Whaitua Chapter (Chapter 7) carries forward the water level management regime (in Table 7.2) from the operative RFP for managing water takes and other authorisations, as recommended in the Lake Wairarapa Wetlands Management Guidelines 1991.

**Draft Policy RW.P2** incorporates the use of catchment-specific limits for water takes, which refers to Lake Wairarapa in Table 7.7.

**Draft Rule RW.R1** requires a resource consent for a restricted discretionary activity for water takes pertaining to Lake Wairarapa.

**Draft Rule RW.R3** prohibits water takes from Lake Wairarapa that exceed the water levels in Table 7.2 or the limits in Table 7.7.

The amount of water taken from the lake is currently at its allocation limit.

## 4. Lessons from the Te Waihora/Lake Ellesmere WCO

Over the years several comparisons have been made between Lake Wairarapa and Te Waihora/Lake Ellesmere on the South Island. Both lakes are protected by a WCO and both lakes are managed for lake levels and periodic openings to the sea. Both lakes are surrounded by agricultural land use. Both lakes support significant bird populations. Both lakes supported historical tuna (eel) fisheries and both lakes are the subject of Treaty settlements.

The Lake Ellesmere WCO 1990 was amended in 2011 and renamed Te Waihora/Lake Ellesmere. An application to amend the WCO was made by Te Rūnanga o Ngāi Tahu and the Department of Conservation to allow the lake to be managed for a wider range of values than was provided for in the original WCO. The amendments:

- Include the words Te Waihora in front of Lake Ellesmere in the title of the Water Conservation Order and throughout the document, in line with current accepted practice.
- Expand the list of the lake's "outstanding features" to include habitat for indigenous wetland vegetation and fish and significance in relation to tikanga Maori in respect of Ngāi Tahu history, mahinga kai and customary fisheries. The 1990 Water Conservation Order only referred to wildlife habitat.
- Allow additional lake openings at any level, primarily to aid eel migration, from April 1 to June 15.

The process for the Te Waihora/Lake Ellesmere WCO amendment was simplified through the ECan Act 2010, which provides for a separate regime in the Canterbury region.

The first major response to the amended WCO was a new opening consent, which is held jointly by Ngāi Tahu and Environment Canterbury. In recognition of the wider benefits from managing



for a wider set of values the maintenance costs have been spread to a wider base of rate payers and less is asked from the land owners immediately surrounding the lake. Secondly, Whakaora Te Waihora was established, which is a joint project between Ngāi Tahu, Ministry for the Environment and Environment Canterbury, to restore and rehabilitate the lake. Thirdly, the Selwyn-Waihora Zone Committee aims to address the lake and catchment deterioration by addressing nutrient management across the Canterbury Plains (Hughey et al 2013).

## 5. Implications for the Ruamāhanga Whaitua Implementation Programme

The Ruamāhanga Whaitua Committee is tasked with preparing a Whaitua Implementation Programme (WIP) report, which will contain recommendations for the integrated management of land and water resources, including specific provisions in the Natural Resources Plan for the Wellington Region to achieve water quantity and quality limits and allocations. The WIP can also include recommendations for work programmes outside of the regional plan.

The recommendations in the WIP will need to consider and give effect to the WCO for Lake Wairarapa. This includes the prohibition on reclamation of the lake bed and the restrictions on water takes and discharges that could affect the outstanding wildlife habitat features of the lake.

The current restrictions on discharges in the regional plan are only in relation to the management of point source discharges. The Ruamāhanga Whaitua Committee's WIP is likely to also contain recommendations on the management of non-point (diffuse) discharges. This is because the WIP must implement the National Policy Statement for Freshwater Management 2014, which requires council to set limits for contaminant loads to meet freshwater objectives.

Although the WCO does not impose target levels and minimum and maximum lake levels, the lake levels specified in the RFP, and carried over to the new Natural Resources Plan were developed in 1991 and justified as consistent with the WCO. If the WIP were to contain alternative recommended lake levels, these levels would also need to be justified as consistent with the intent of the WCO (the protection of outstanding wildlife habitat).

Although lake levels are managed by the barrage gates, the barrage gates do not have complete control over the minimum water level of lake, as shown in Appendix C. As a result the lake does drop below its minimum level.

Any potential amendment to the Lake Wairarapa WCO would need to follow the special tribunal, notification, submission, hearing and inquiry process, as set out in Part 9 of the RMA, rather than the more streamlined process that was available for the amendment to the Te Waihora/Lake Ellesmere WCO.

The Ruamāhanga Whaitua Committee may want to review the existing lake level regime and consider a broader range of values associated with the lake, but also continue to give effect to the existing WCO.



## 6. For more information

Hughey, K.F.D., Johnston, K.A., Lomax, A.J., and Taylor K.J.W. (eds). 2013. *Te Waihora/Lake Ellesmere: State of the Lake 2013*. Technical Report No.1, Waihora Ellesmere Trust, Christchurch. <http://www.wet.org.nz/wp-content/uploads/2013/10/2013-Nov-State-of-the-Lake-report1.pdf>

McClellan Robert A. 2001. *Wairarapa 20<sup>th</sup> century environmental overview report: Inland waterways*. Report for the Wai 863, Wairarapa ki Tararua Inquiry. 202 pp <https://www.google.co.nz/webhp?sourceid=chrome-instant&ion=1&espv=2&ie=UTF-8#q=Wairarapa+20th+century+environmental+overview+report>

Ministry for the Environment website on Water Conservation Orders  
<http://www.mfe.govt.nz/issues/water/freshwater/water-conservation/>

NWASCA Committee. 1986. Report of the National Water and Soil Conservation Authority Committee on the Water Conservation Order Application Lake Wairarapa and its Tributaries. Item no 169. <https://www.mfe.govt.nz/sites/default/files/media/Lake%20wairarapa-%20NWASCA%20report.pdf>

Robertson, Hugh (editor). 1991. Lake Wairarapa Wetlands Management Guidelines. Attachment 1 to report 05.617. ISBN: 0-473-01613-3. 62 pp [http://www.gw.govt.nz/assets/council-reports/Report\\_PDFs/2005\\_617\\_2\\_Attachment.pdf](http://www.gw.govt.nz/assets/council-reports/Report_PDFs/2005_617_2_Attachment.pdf)

---

Report prepared by  
*Emily Greenberg*      Date

---

Report approved by  
*Alastair Smill*      Date

## Appendix A: Water bodies with WCOs

Name	Reference number
<b>Pre RMA</b>	
Motu River	<a href="#">1984/20</a> [New Zealand Legislation website]
Rakaia River	<a href="#">1988/241</a> [New Zealand Legislation website] <a href="#">National Water Conservation (Rakaia River) Amendment Order 2013</a> [New Zealand Gazette website]
Lake Wairarapa	<a href="#">1989/51</a> [New Zealand Legislation website]
Manganuioteao River	<a href="#">1989/52</a> [New Zealand Legislation website]
Te Waihora/Lake Ellesmere	<a href="#">1990/155</a> [New Zealand Legislation website]
Ahuriri River	<a href="#">1990/156</a> [New Zealand Legislation website]
Grey River	<a href="#">1991/132</a> [New Zealand Legislation website]
<b>Under the RMA</b>	
Rangitikei River	<a href="#">1993/15</a> [New Zealand Legislation website] <a href="#">1997/38</a> [New Zealand Legislation website]
Kawarau River	<a href="#">2013/450 (Water Conservation (Kawarau) Amendment Order 2013)</a> [New Zealand Legislation website]
Mataura River	<a href="#">1997/126</a> [New Zealand Legislation website]
Buller River	<a href="#">2001/139</a> [New Zealand Legislation website]
Motueka River	<a href="#">2004/258</a> [New Zealand Legislation website]
Mohaka River	<a href="#">2004/397</a> [New Zealand Legislation website]
Rangitata River	<a href="#">2006</a> [New Zealand Gazette website]
<a href="#">Oreti River</a>	<a href="#">2008</a>

---

# Appendix B: National Water Conservation (Lake Wairarapa) Order 1989

## Reprint as at 10 March 1989



### National Water Conservation (Lake Wairarapa) Order 1989 (SR 1989/51)

Paul Reeves, Governor-General

#### Order in Council

At Wellington this 6th day of March 1989

Present:

His Excellency the Governor-General in Council

---

#### Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

**This order is administered by the Ministry for the Environment.**

---

Pursuant to section 20D of the Water and Soil Conservation Act 1967, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following order.

---

## Order

### *1 Title and commencement*

(1) This order may be cited as the National Water Conservation (Lake Wairarapa) Order 1989.

(2) This order shall come into force on the 28th day after the date of its notification in the *Gazette*.

### *2 Interpretation*

In this order, unless the context otherwise requires,—

**Act** means the Water and Soil Conservation Act 1967

**Lake Wairarapa** means the more or less continuous area of water commonly known as Lake Wairarapa, including the Ruamahanga Cut-off, in Featherston County, the shoreline of which is the outer edge of the area within which the vegetation changes from predominantly aquatic to predominantly terrestrial, except at the outlet of the lake, where the shoreline is the lakeward foot of the barrage gates. For the avoidance of doubt it is declared that the shoreline adjacent to the land known as Lots 1 and 2 on Deposited Plan 4547 (Wellington Land District) is the lakeward foot of the stopbank on that land.

### *3 Outstanding features*

It is hereby declared that the wildlife habitat created in part as a consequence of the natural fluctuations of water levels, particularly over the eastern shoreline, is an outstanding feature of Lake Wairarapa.

### *4 Prohibition on water rights*

(1) No right to divert any water within Lake Wairarapa shall be granted under section 21 of the Act.

(2) No general authorisation to divert any water within Lake Wairarapa shall be made under section 22 of the Act.

### *5 Water rights and general authorisations*

(1) No water rights shall be granted, and no general authorisation shall be made, in respect of any part of Lake Wairarapa if the effect would be to diminish significantly the outstanding wildlife habitat features of any part of the lake.

(2) Nothing in this order shall be construed as limiting the effect of the second proviso to section 21(1) of the Act relating to the use of water for domestic needs, for the needs of animals, and for or in connection with fire-fighting purposes.

(3) Nothing in this order shall prevent the renewal of any water right or general authorisation which is current on the commencement of this order.

(4) Subject to subclause (1), nothing in this order shall prevent the issue from time to time of water rights in connection with the barrage gates at the outlet of Lake Wairarapa.

Marie Shroff  
Clerk of the Executive Council.

---



**Ruamāhanga  
Whaitua  
Committee**



**greater WELLINGTON**  
REGIONAL COUNCIL  
Te Pane Matua Taiao

**Explanatory note**

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

This order declares that the wildlife habitat created in part as a consequence of the natural fluctuations of water levels, particularly over the eastern shoreline, is an outstanding feature of Lake Wairarapa.

The order also includes various provisions to preserve and protect the wildlife habitat.

---

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 9 March 1989.

## Appendix C: Lake Wairarapa lake levels during 2013

The graph (Figure 1) below shows the 2013 lake levels recorded for the operation of the Barrage Gate. These levels are reported as part of the monitoring requirements for the resource consent.

The black line indicates the actual lake levels.

The red line indicates the seasonal minimum lake levels of 10.15m, 10.0m and 9.9m which are the target lake levels for the operation of the Barrage Gate.

As the graph shows, the management of lake levels in Lake Wairarapa does not result in a constant lake level during the four seasonal management periods. This is because there are other influences on lake levels in addition to the operation of the barrage gates.

The other influences on lake levels include rainfall and river flow into the lake, backflow of Lake Onoke and the Ruamahanga River, and the relatively minor difference in elevation between the lake and the sea.



Figure 1. Lake Wairarapa lake elevations at Burlings during 2013 and the minimum lake levels of 10.15m, 10.0m and 9.9m.