# Submission to RMA Reform Select Committee

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Background

FAMA was formed in response to the application for, and subsequent gazettal, of a Water Conservation Order for Te Waikoropupu Springs (WCO for TWS) 21 September 2023.

FAMA members are 14 dairy farmers in the recharge area for the aquifer that feeds TWS. The waters at TWS are pristine and have exceptional visual clarity. It is a fundamental requisite for a WCO for there to be outstanding water quality. The WCO for TWS reflects the directives of the NPSFM 2020 and gives full effect to the hierarchy of obligations Te Mana O Te Wai (TMOTW).

The WCO for TWS is the first WCO to require an improvement from the existing state of an already pristine groundwater system. In practice, this represents a regulatory claw-back that transfers residual scientific uncertainty and natural system variability directly onto a small number of landholders, regardless of proportional contribution or demonstrated capacity for further reduction.

FAMA submitted to the Resource Management Reform- Package 3 Freshwater.

Position

FAMA is aware of, and broadly aligns with, IrrigationNZ's concern that Water Conservation Orders may continue to operate as a parallel regulatory pathway that is not subject to the procedural safeguards, evidentiary thresholds, and balancing tests proposed under the Resource Management reform package.

**Schedule 4, clause 4(1) of the Natural Environment Bill** allows any person, on payment of a fee, to apply for a Water Conservation Order. This differs from the reform intent to confine the identification and participation of affected persons primarily to plan-making stages, rather than to processes or decisions relating to individual consents, permits, or land-use activities.

In practice, Water Conservation Orders entrench a pathway whereby third parties can trigger binding, site-specific regulatory outcomes outside the plan framework, without being subject to the same proportionality, evidentiary, or adaptive-management expectations placed on landowners and resource users through consent or permit processes.

Where the RM reforms are intended to improve spatial planning and support more balanced consideration of environmental, economic, and social outcomes, the continued operation of Water Conservation Orders in their current form risks undermining that intent.

**Schedule 4 of the Natural Environment Bill** largely carries forward the existing WCO framework unchanged from the RMA 1991 and this creates an inconsistency within the reform package itself.

Primary Feedback

FAMA supports the intentions of the RMA reform to:

- rebalance TMOTW by recognising the importance of socio-economic impacts in regulatory decision making
- use sound evidence-based science as a key component of individualised Freshwater Farm Plans
- include the provision of 'relief' in instances where significant impacts to landowners occur due to regulation changes

FAMA is strongly of the view that WCO's require the addition of a review mechanism.

In their current form WCO's:

- are structurally locked to the findings and assumptions that applied at the time of gazettal, with no corresponding obligation on the original applicant to engage in review or adaptation as new evidence and monitoring information emerges
- cannot accommodate new or evolving science or technical advancements
- provide no pathway to appeal a tribunal decision explicitly on appeal points without triggering a full rehearing of the WCO
- nor have the capacity to reflect changes in national policy statements

The absence of a proportionate review mechanism for Water Conservation Orders runs counter to the adaptive, learning-by-doing approach being promoted elsewhere in the reform, particularly through future Freshwater Farm Plans. While FWFPs are intended to evolve as new information, monitoring, and management practices emerge, Water Conservation Orders remain effectively fixed to the assumptions and evidence available at the time of gazettal. This misalignment risks constraining adaptive improvement pathways on farms, even where the proposed FWFPs demonstrate responsible management and continuous improvement.

Recommendation

We would propose amending **clause 15(4) of Schedule 4 of Natural Environment Bill** to read as follows (proposed amendment underlined):

> (4) Except as provided in subclause (3), an application made under subclause (2) for the revocation or amendment of a water conservation order must, unless sub-clause (4A) applies, be dealt with in the same manner as an application for an order under clause 4.
>
> (4A) Upon receiving an application to amend any water conservation order, the Minister may:
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> a. direct that scope of any hearing relating to that proposed amendment must be limited solely to whether or not the proposed amendment should be made or whether the water conservation order should remain in its current form;
>
> b. refuse to accept any further application to amend the same water conservation order until any earlier application for amendment is finally determined.

Reasoning

Our stance is derived from first-hand experience of the 7-year Environment Court hearing process to establish the WCO for TWS and the significant impacts of the findings on our farming businesses.

The karst geology of the Takaka valley is complex. Recharge and nutrient contribution via the karst are still being investigated and remain poorly understood. The levels of the key contaminant nitrogen at TWS are almost at the detection limits of testing and fluctuate constantly. Current nitrate-nitrogen concentrations (approximately) 0.45- 0.48 mg/L are above the WCO target of 0.41 mg/L by 2038. For context, the NZ drinking water Maximum Acceptable Value (MAV) for nitrates in drinking water is set at 50 mg/L (or 11.3 mg/L for nitrate-nitrogen. This drinking water human health standard should not be confused with an environmental limit.

Despite only having a 10% footprint in the catchment, farming is tasked to make a material improvement to an already pristine water body. Aspirational water quality targets were sought by the hearings' Commissioners to protect the natural attributes and values. A shortage of verifiable scientific evidence at the time of the hearings necessitated the Commissioners' heavy use of the precautionary principal.

Failure to meet the required water quality improvements will prevent our unitary authority, Tasman District Council (TDC), from issuing irrigation consents and trigger

restrictions on land use irrespective of where the relative nutrient contributions arise from, or a farm's ability to make further nutrient loss reductions whilst maintaining financial viability.

The WCO for TWS required TDC to undertake a water quality monitoring review. The results of the subsequent extensive testing program will provide significant additional insight into the functioning of the aquifer. However, there is no easy way for this new scientific understanding to be used to check that the water quality improvements required by the WCO continue to be appropriate. This is material to the restrictions Council will place on farming.

Nor is there any mechanism to consider the significant body of evidence of farming changes in the recharge area that has been voluntarily amassed since the hearings. FAMA members have now completed multi-year Overseer nutrient budgets by an independent expert to understand and appreciate the risks of their individual farms.

The WCO hearing process was long, complex, expensive and adversarial. The findings have created ongoing uncertainty and have fostered an unfounded and unrealistic impression within our community that farming has a direct, rapid and major effect on water quality.

Rather than enhancing a collaborative effort to maintain our outstanding of water quality, the WCO has established a rigid and punitive regime that is being used to drive division and blame.

FAMA has always accepted that farming will have effects on the environment. What was lacking through the WCO process under TMOTW was an inherent lack of obligation to understand the extent to which farming was contributing, the capacity for improvement, whether that was likely to affect a material improvement in already pristine water and what the cost on farmers, the community and council would be to do so.

TWS is a taonga. FAMA supports efforts to protect it and are highly motivated to minimise nutrient loss. Through wide ranging and conscientious efforts, a 20% reduction of nitrogen loss has been achieved over the past 10 years, (as modelled in Overseer by an independent expert). This is in line with what the Commissioner's suggested would be required using the mass balance models relied on at the hearings. Yet there are no discernable changes in nitrogen levels at TWS, which continue to fluctuate.

The WCO, as it stands, has created an existential threat to our livelihoods, our farms and our heritage. Regulatory uncertainty has negatively impacted our land values and eroded confidence in our ability to invest in our farming futures or to continue to support the local economy.

The cost born by the 14 FAMA members during the WCO hearings was $550,000 for barristers and expert witnesses. Many hundreds of hours of work by members to follow proceedings, brief barristers and support witnesses would double those costs.

The provision in the RMA reform package to provide relief to impacted landowners is welcome. Significant work is required to quantify the value of that redress. FAMA is concerned that to properly reflect equitable market rates that include the loss of ongoing earning potential will be substantially more than our small regional council can afford.

What is less easy to quantify is the impact of the chronic stress, uncertainty and the loss of the quiet enjoyment of farming that has been stripped away.

The requirement to have the original applicant's approval to seek amendments or minor changes is significantly biased towards the status quo. A full Environment Court process is prohibitively difficult, time consuming and expensive. Once established there is nothing to compel an applicant to consider the wider community impacts of their inaction.

There is no process of checks and balances in the WCO to test if it is possible to achieve without the loss of productive and financially viable generational farming businesses, nor to include advances in scientific understanding.

Summary

FAMA strongly believes that the RMA reform needs to amend the WCO legislation to provide a simpler review mechanism to accommodate advancement of scientific knowledge without the need for a full hearing process.

Due to their lack of responsiveness, FAMA does not support the use of WCOs as a primary mechanism to drive improvements in water quality.

FAMA supports the provision of 'relief' on the basis that it is of fair and equitable value.

FAMA wish to speak to their submission

Appendix 1 (Page 6) For context, is the map taken from the WCO showing the TWS recharge zone near Takaka, in Golden Bay.

Appendix 1 TWS recharge zone in Golden Bay.

