



# Victoria Government Gazette

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## Water Act 1989

### YARRA ENVIRONMENTAL ENTITLEMENT 2006

I, John Thwaites, Minister for Water, as Minister administering the **Water Act 1989**, make the following instrument –

#### COMMENCEMENT

1. This instrument comes into operation on the day it is published in the Government Gazette.

#### EMPOWERING PROVISIONS

2. This instrument is made under section 48B of the **Water Act 1989**.

#### DEFINITIONS

3. In this instrument –

“**Act**” means the **Water Act 1989**;

“**authorities**” means the authorities holding bulk entitlements granted under Division 1 or 3 of Part 4 of the Act;

“**Department**” means the Department of Sustainability and Environment;

“**environment Minister**” has the same meaning as in s 48A of the Act;

“**licence**” means any licence granted under Part 4 of the Act;

“**management plan**” means a management plan prepared for an area of the waterway under s 32A of the Act;

“**Melbourne headworks system reservoirs**” means the reservoirs of the Yarra headworks system and Thomson Reservoir;

“**Melbourne Water**” means Melbourne Water Corporation, in its capacity as Storage Operator appointed pursuant to s 43A of the Act;

“**Millgrove Gauging Station**” means the stream gauging station, number 229212 located on the Yarra River at Millgrove;

“**Minister**” means the Minister administering the **Water Act 1989**, and in relation to a provision, includes any person authorised by the Minister to act on the Minister’s behalf in relation to that provision, or to whom the Minister has delegated the relevant power, discretion, function, authority or duty under s 306 of the Act;

“**Storage Management Rules**” means any rules from time to time adopted by Melbourne Water for the operation of the headworks system;

“**waterway**” means the Yarra River and its tributaries in the Yarra Basin upstream of Dights Falls;

“**Yarra Basin**” means the area of land designated as Basin Number 29 in the South East Coast Division of the Australian Water Resources Council’s Australian Continental Drainage Divisions;

“**Yarra headworks system**” means the Upper Yarra, Maroondah, O’Shannassy, Sugarloaf, Silvan, Cardinia, Toorourrong, Yan Yean, and Greenvale Reservoirs and the associated weirs, tunnels, transfer conduits and other water supply works owned by Melbourne Water;

“**year**” means the 12 months commencing 1 July; and

“**Yering Pumps Gauging Station**” means the stream gauging station, number 229270B, located on the waterway.

**SPECIAL**

**QUANTIFYING THE ENTITLEMENT**

4. The environment Minister is entitled to:
  - (a) the water in the waterway that is specified in Schedule 1 to this Instrument; and
  - (b) subject to satisfying the requirements of paragraph (a) of this Instrument, for the 12 month period from 1 July of each year commencing from 2007, the first 17,000 ML of net inflow into the Yarra headworks system.
5. For the purpose of sub-clause 4(b), net inflow is the inflow to the Yarra headworks system less outflow to river where outflow to river excludes releases accounted for under clause 21.

**WATER ACCOUNTING PROCEDURES****Share of Storage Capacity**

6. The environment Minister is entitled to:
  - (a) a storage capacity of 17,000 ML in the Melbourne headworks system reservoirs; and
  - (b) subject to clause 8, any storage capacity in Melbourne headworks system reservoirs not being used by authorities.
7. At the commencement of this instrument, the volume stored by the environment Minister in its share of the Melbourne headworks system reservoirs is deemed to be nil.
8. When the Melbourne headworks system reservoirs spill, Melbourne Water must reduce the amount stored by the environment Minister in its share of storage capacity in excess of 17,000 ML, by the amount of the spill.
9. For the purpose of clause 8, the Melbourne headworks system reservoirs are deemed to spill when the amount of water in both the Upper Yarra and Thomson reservoirs exceeds the maximum operating capacity as specified in Schedule 2.

**Data**

10. The Minister will use the Minister's best endeavours to ensure that all hydrological and other data required by the environment Minister to comply with this entitlement are made available to the environment Minister.
11. The environment Minister must make available to any person data collected by or on behalf of the environment Minister for the purpose of clause 10 subject to the person paying any fair and reasonable access fee imposed by the environment Minister to cover the costs of making the data available to that person.

**OPERATION AND MANAGEMENT CONDITIONS****Operating Arrangements**

12. Within six months of the commencement of this instrument, the environment Minister must consult with Melbourne Water and the authorities to develop and propose to the Minister, agreed –
  - (a) operational arrangements for water stored in and released from the Yarra headworks system under this allocation, with the intent to provide the recommended environmental flow regime prepared under clause 16; and
  - (b) arrangements for reporting under clause 32.
13. The Minister may –
  - (a) approve a proposal made under sub-clause 12; or
  - (b) require the environment Minister to amend the proposal; or
  - (c) not approve the proposal.
14. The Minister may, at any time, require the environment Minister to –
  - (a) review all or part of any proposal approved by the Minister if, in the Minister's opinion, it is, at any time, no longer fair, reasonable or representative; and
  - (b) make an amended proposal to the Minister.

15. The environment Minister must obtain the agreement of Melbourne Water and other Authorities for any amendments proposed under sub-clause 14.

**Recommended Environmental Flow Regime**

16. The environment Minister must prepare a recommended environmental flow regime for the Environmental Water Reserve in the Yarra Basin which –
- (a) describes the characteristics of recommended environmental flows for river reaches within the basin including their volume, timing, duration, and rate of change;
  - (b) has regard to environmental, social and economic benefits and costs;
  - (c) is consistent with the Environmental Water Reserve Objective defined in Section 4 of the Act.
17. For the purpose of clause 16, the environment Minister must upon commencement of this Order adopt the environmental flow regime recommended in the report Determination of the Minimum Environmental Flow Requirements for the Yarra River, Final (SKM, 2005), excluding recommendations for bankfull and overbank environmental flows.
18. The environment Minister must review and update the recommended environmental flow regime established under clause 16 at least every five years in consultation with the Department.
19. The environment Minister must supply the Department, Storage Operator, Resource Manager, and the authorities, with the most up-to-date version of the recommended environmental flow regime.

**Releases**

20. Melbourne Water must –
- (a) release water from the Yarra Headworks System as required to maintain the flows specified in Schedule 1 at –
    - (i) the offtake points, rates and times specified in Schedule 1 and within the tolerances set out in the Operating Arrangements; or
    - (ii) such other offtake points, rates, times and tolerances as are, at the request of the environment Minister, agreed to in writing by Melbourne Water after taking the interests of all other entitlement holders into account;subject to the Storage Management Rules; and
  - (b) release the water stored in the environment Minister's share of storage capacity in accordance with the Operating Arrangements.
21. Melbourne Water must deduct from the volume of water held in the environment Minister's share of storage capacity the amount released to the waterway for environmental flows under paragraph 20(b).

**Payments in relation to services provided in relation to this entitlement**

22. The environment Minister is not required to make any payment to any person in relation to services provided by that person in relation to this entitlement.

**Dispute Resolution**

23. If a difference or dispute arises between the environment Minister, the Minister, the other entitlement holders and Melbourne Water, or any of them (the "parties"), concerning the interpretation or application of this instrument, a party may give written notice to another party requiring the matter to be determined by an independent expert.
24. The notice requiring that the matter be determined by independent expert may only be given 14 days after the matter has arisen. The independent expert may only commence to determine the matter a further 14 days after the giving of that notice.
25. The other Authorities and Melbourne Water will only be subject to the resolution procedure set out in this clause if they consent to the procedure.

26. The independent expert will be either –
  - (a) a person agreed to by the parties to the difference or dispute; or
  - (b) if the parties cannot agree, a person nominated by the President of the Institute of Arbitrators, Australia.
27. The independent expert must reach a conclusion on the matter within 30 days of it being referred, but has power to extend the period for reaching a conclusion on the matter by a further 30 days.
28. The independent expert must send a copy of the conclusion and its supporting reasons to each party to the difference or dispute.
29. In any difference or dispute to which the Minister is a party –
  - (a) the independent expert must express the conclusion as a recommendation; and
  - (b) the Minister must consider any recommendation made under paragraph (a) before deciding whether there are grounds for giving a direction pursuant to s 48J(2) of the Act.
30. In any difference or dispute to which the Minister is not a party, any conclusion by an independent expert is final and binding on the parties.
31. The environment Minister may request the Minister to determine the apportionment of the costs of and incidental to every reference, including the costs of the independent expert.

**Reporting Requirements**

32. The Minister may require the environment Minister to report on all or any of the following:
  - (a) the daily environmental flows under this entitlement at each of the offtake points;
  - (b) the annual volume of environmental flows under this entitlement at each of the offtake points;
  - (c) the extent to which actual environmental flows have met the recommended environmental flow regime prepared under clause 16;
  - (d) any assignment of all or part of this allocation;
  - (e) any bulk entitlement, licence or water right, temporarily or permanently transferred to the environment Minister;
  - (f) any amendment to this instrument;
  - (g) any new environmental entitlement allocated to the environment Minister in respect of the headworks system;
  - (h) any failure by the environment Minister to comply with any provision of this instrument; and
  - (i) any existing or anticipated difficulties experienced by the environment Minister in complying with this instrument and any remedial action taken or proposed.
33. The Minister may require the environment Minister to report on all or any of the matters set out in sub-clause 32 –
  - (a) in writing, or in such electronic form as may be agreed between the environment Minister and the Minister; and
  - (b) within 14 days of receiving the Minister's written request or such longer period as the Minister may determine.

Dated 25 October 2006

Responsible Minister  
JOHN THWAITES  
Minister for Water

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Note: An explanatory note that accompanies this instrument is available from the Department.

**SCHEDULE 1 - MINIMUM ENVIRONMENTAL FLOWS**

<b>Waterway</b>	<b>Environmental flow</b>
Armstrong Creek West Branch below the weir	(a) The lesser of 5 ML/day and the natural flow; and (b) maintain the practice of ceasing diversions on the rising limb of high flows.
Armstrong Creek East Branch below the weir	The lesser of 1 ML/day and the natural flow
McMahons Creek below the weir	(a) The lesser of 2 ML/day and the natural flow; and (b) maintain the practice of ceasing diversions on the rising limb of high flows.
Micks Creek below the weir	10% of the daily inflow to the weir.
Starvation Creek below the weir	(a) The lesser of 2 ML/day and the natural flow; and (b) maintain the practice of ceasing diversions on the rising limb of high flows
Big Flume Creek below the weir	10% of the daily inflow to the weir
O'Shannassy River below the Reservoir	The lesser of 8 ML/day and the natural flow. The water can be provided as an average of the lesser of 8 ML/day or natural over any 28 day period, with a minimum on any day of the lesser of 4 ML/day and the natural flow.
Cement Creek East Branch below the weir	The lesser of 3 ML/day and the natural flow.
Cement Creek West Branch below the weir	The lesser of 3 ML/day and the natural flow.
Cardinia Creek below Cardinia Reservoir	5 ML/day
Coranderrk Creek below the weir	3 ML/day and the natural flow
Graceburn Creek below the weir	Subject to Note 1 – (a) the lesser of 3 ML/day and the natural flow if $F_R < 15$ ML/day; or (b) 6 ML/day if $F_R =$ or $> 15$ ML/day; where "F <sub>R</sub> " means the inflow to the weir.
Watts River below Maroondah Reservoir	1 ML/day
Donnelly Creek below the weir	(a) The lesser of 2 ML/day and the natural flow if $F_R < 7$ ML/day; or (b) 5 ML/day if $F_R =$ or $> 7$ ML/day
Olinda Creek via Stoneyford Creek below Silvan Reservoir	2 ML/day

<b>Waterway</b>	<b>Environmental flow</b>
Plenty River East Branch below Toorourrong Reservoir	The lesser of 1 ML/day and the natural flow, released from the Clear Water Channel
Yarra River at Doctors Creek Gauging Station	10 ML/day
Yarra River at Millgrove Gauging Station	Subject to Note 2 –  (a) 80 ML/day between Dec and May, inclusive; and (b) 350 ML/day between June and November, inclusive.
Yarra River at Yarra Grange Gauging Station	Subject to Note 2 –  (a) 150ML/day between Dec and May, inclusive; and (b) 350 ML/day between June and November, inclusive.
Yarra River at Yarra Glen Gauging Station	Subject to Note 2 –  (a) 200ML/day between Dec and May, inclusive; and (b) 350 ML/day between June and November, inclusive.
Yarra River at Yering Pumps Gauging Station	Subject to Note 2 –  (a) 200ML/day between Dec and May inclusive; and (b) 350 ML/day between June and November inclusive.
Yarra River at Chandler Highway Gauging Station	Subject to Note 2 –  (a) 200 ML/day between Dec and May inclusive; and (b) 350 ML/day between June and November inclusive.

## Notes

1. If the environmental flow is reduced to 3 ML/day under paragraph (a), Melbourne Water must recalculate the environmental flow within a period of 28 days.
2. In meeting the environmental flows in paragraphs (a) and (b), Melbourne Water is required to release a total flow from Upper Yarra and O'Shannassy reservoirs of up to the lesser of 80 ML/day or the sum of the natural inflows to the two reservoirs.

**SCHEDULE 2 – MAXIMUM OPERATING CAPACITY OF THE  
MELBOURNE HEADWORKS SYSTEM RESERVOIRS**

<b>Reservoir</b>	<b>Maximum operating level (metres AHD)</b>	<b>Maximum operating capacity<sup>1</sup> (ML)</b>
Thomson	453.5	1,123,089 <sup>2</sup>
Upper Yarra	364.1	185,000

## Notes

1. Operating capacities include dead storage volumes
2. Includes Southern Rural Water's and the environment's share of storage capacity.

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**Water Act 1989**

**BULK ENTITLEMENT (YARRA RIVER – MELBOURNE WATER FOR  
CITY WEST WATER LIMITED) CONVERSION ORDER 2006**

**PART 1 – INTRODUCTORY STATEMENTS**

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**SCHEDULE 1 – SHARE OF RESOURCES**

**SCHEDULE 2 – PRIMARY ENTITLEMENTS**

**SCHEDULE 3 – WATER HARVESTING CAPACITY**

The Minister, under the provisions of the **Water Act 1989**, makes the following Order –

**PART 1 – INTRODUCTORY STATEMENTS**

**1. CITATION**

This Order may be cited as the Bulk Entitlement (Yarra River – Melbourne Water for City West Water Limited) Conversion Order 2006.

**2. EMPOWERING PROVISIONS**

This Order is made under s 43 and s 47 of the **Water Act 1989**.

**3. COMMENCEMENT**

This Order comes into operation on the day it is published in the Government Gazette.

**4. DEFINITIONS**

In this Order –

“**Act**” means the **Water Act 1989**;

“**Authority**” means Melbourne Water Corporation;

“**bulk transfer system**” means the system of transfer pipes and balancing storages that transports water from the headworks to the Melbourne retail authorities’ supply points;

“**Bulk Transfer System Operator**” means Melbourne Water Corporation in respect of its role to operate and maintain the bulk transfer system;

“**City West Water**” means City West Water Limited, ABN 70 066 902 467;

“**Department**” means the Department of Sustainability and Environment;

“**diversion limit**” means an upper limit on the amount of water that can be taken from the waterway as described in clause 10;

“**environmental flow**” means an amount of flow referred to in Yarra River Environmental Entitlement 2006 which the Storage Operator is obliged to pass at nominated points on the waterway;

“**Goulburn Basin**” means the area of land designated as Basin Number 5 in the Murray Darling Drainage Division of the Australian Water Resources Council’s Australian Continental Drainage Divisions;

“**harvesting storage**” means –

- (a) Maroondah Reservoir located on Watts River; or
- (b) O’Shannassy Reservoir located on O’Shannassy River; or
- (c) Sugarloaf Reservoir located on Sugarloaf Creek; or
- (d) Toorourrong Reservoir located on Plenty River East Branch; or
- (e) Upper Yarra Reservoir located on Yarra River;

“**headworks system**” means the Upper Yarra, Maroondah, O’Shannassy, Sugarloaf, Silvan, Cardinia, Toorourrong, Yan Yean, and Greenvale Reservoirs and the associated weirs, tunnels, transfer conduits and other water supply works owned by Melbourne Water;

“**licence**” means any licence granted under Part 4 of the Act;

“**Management Agreement**” means the agreement referred to in clause 11.

“**Management Plan**” means a management plan prepared for an area of the waterway under s 32A of the Act;

“**Management Rules**” means the agreement referred to in clause 12;

“**Melbourne retail authorities**” means any or all of –

- (a) Yarra Valley Water;
- (b) South East Water; and
- (c) City West Water;

“**Melbourne bulk entitlement holders**” means the holders of –

- (a) Bulk Entitlement (Yarra River – Melbourne Water for South East Water Limited) Conversion Order 2006;
- (b) Bulk Entitlement (Yarra River – Melbourne Water for City West Water Limited) Conversion Order 2006; and
- (c) Bulk Entitlement (Yarra River – Melbourne Water for Yarra Valley Water Limited) Conversion Order 2006;

acting jointly;

“**Melbourne supply system**” means the waterways, headworks and bulk transfer system works which supply water to the Melbourne retail authorities and primary entitlement holders and includes water harvested for Melbourne from the Yarra, Thomson and Goulburn Basins;

“**Melbourne Water**” means Melbourne Water Corporation;

“**Minister**”, in relation to a provision, includes any person authorised by the Minister to act on the Minister’s behalf in relation to that provision, or to whom the Minister has delegated the relevant power, discretion, function, authority or duty under s 306 of the Act;

“**other authority**” means an authority other than the Authority, or any other person holding a bulk entitlement granted under Division 1 or 3 of Part 4 of the Act in the Yarra Basin;

“**primary entitlement**” means an entitlement referred to in clause 7;

“**Resource Manager**” means a person appointed by the Minister under s 43A of the Act to do all or any of the tasks set out in sub-clause 17.1;

“**seasonal storage**” means –

- (a) Cardinia Reservoir located on Cardinia Creek; or
- (b) Silvan Reservoir located on Olinda Creek; or
- (c) Greenvale Reservoir located on Yuroke Creek; or
- (d) Yan Yean Reservoir located adjacent to Plenty River;

“**South East Water**” means South East Water Limited, ABN 89 066 902 547;

“**Storage Management Rules**” means any rules from time to time adopted for the operation of the headworks system, pursuant to the instrument appointing the Storage Operator;

“**Storage Operator**” means a person appointed by the Minister under s 43A of the Act to operate the headworks system, or to manage or measure the flow into the headworks system or the waterway, or to do a combination of those things;

“**Thomson Basin**” means the area of land designated as Basin Number 25 in the South East Coast Division of the Australian Water Resources Council’s Australian Continental Drainage Divisions;

“**waterway**” means the Yarra River and its tributaries in the Basin upstream of a point downstream of the confluence of the Yarra River and the Plenty River including pools formed by and immediately upstream of Melbourne Water’s reservoirs and weirs;

“**Yarra Basin**” means the area of land designated as Basin Number 29 in the South East Coast Division of the Australian Water Resources Council’s Australian Continental Drainage Divisions;

“**Yarra Basin Water Accounts**” means an annual report, required by the Minister, on compliance by entitlement holders and licensees, respectively, within the Yarra System, with the terms of their bulk entitlements or licences;

“**Yarra Valley Water**” means Yarra Valley Water Limited, ABN 93 066 902 501;

“**year**” means the 12 months commencing 1 July; and

“**Yering Pumps Gauging Station**” means the stream gauging station, number 229270B, located on the waterway.

## PART 2 – ENTITLEMENT

### 5. CONVERSION TO A BULK ENTITLEMENT

Only that part of the Authority’s entitlement to water from the waterway to supply City West Water Limited’s retail customers is converted to a bulk entitlement on the conditions set out in this Order.

### 6. BULK ENTITLEMENT

6.1 The Authority may take from the waterway in any year, for the purpose of supplying entitlements, its share of the water resources available under the diversion limit.

6.2 The Authority’s share, together with shares allocated under –

(a) Bulk Entitlement (Yarra River – Melbourne Water for Yarra Valley Water Limited) Conversion Order 2006; and

(b) Bulk Entitlement (Yarra River – Melbourne Water for South East Water Limited) Conversion Order 2006;

as described in Schedule 1, make up 100% of the water allocated to the Melbourne supply system from the waterway.

### 7. OBLIGATIONS TO SUPPLY PRIMARY ENTITLEMENTS

7.1 Water taken from the waterway under this bulk entitlement together with the bulk entitlements listed in sub-clause 6.2 must be used to supply the primary entitlements described in Schedule 2.

7.2 The Authority, jointly with the holders of bulk entitlements listed in sub-clause 6.2, within seven days of becoming aware that the supply by the Melbourne retail authorities to their customers is likely to be the subject of water restrictions, must notify primary entitlement holders in writing of that event.

### 8. SHARE OF STORAGE CAPACITY

The Authority, jointly with the holders of bulk entitlements listed in sub-clause 6.2, is entitled to store water in the reservoirs set out in Table 1 of Schedule 3 –

(a) up to the reservoir capacities and full supply levels listed in Table 1 of Schedule 3; less

(b) any storage capacity reserved for the environment or other purposes under another bulk entitlement;

subject to the Storage Management Rules.

### 9. SHARE OF FLOW

9.1 Subject to clause 10, and after the Storage Operator has released or set aside, as the case may be, water required to meet the environmental flows, the Authority, jointly with the holders of bulk entitlements listed in sub-clause 6.2, may –

(a) store all the inflow to the reservoirs and weirs; and

(b) take the inflow via the transfer conduits and pumps;

at the locations and rates listed in Tables 1, 2 and 3 of Schedule 3 and subject to the Storage Management Rules.

- 9.2 The Authority must not take, as part of this bulk entitlement, any flow of water in the waterways which is being transferred by the holder of any other bulk entitlement, environmental entitlement or licence.

### PART 3 – AVAILABLE WATER RESOURCES

#### 10. DIVERSION LIMIT

- 10.1 The amount of water taken in any year by the Authority, jointly with the holders of bulk entitlements listed in sub-clause 6.2 –
- (a) may vary from year to year, depending on climate; and
  - (b) must not exceed a long term average amount estimated at the date of this Order to be –
    - (i) 400,000 ML from the Yarra Basin; and
    - (ii) 555,000 ML from the Yarra, Thomson and Goulburn Basins for the Melbourne supply system.
- 10.2 The Authority must use reasonable endeavours to ensure that the method by which the water is taken complies with the recommended environmental flow regime described in clause 16 of the Yarra Environmental Entitlement.
- 10.3 For the purpose of calculating the amount taken under sub-clause 10.1, the Authority, jointly with the holders of bulk entitlements listed in sub-clause 6.2, must include the amount taken by primary entitlement holders.
- 10.4 The Authority, jointly with the holders of bulk entitlements listed in sub-clause 6.2, and in consultation with the Storage Operator, must propose to the Minister within twelve months of the commencement of this Order, the method it will use to show its compliance with sub-clauses 10.1 and 10.2.
- 10.5 The method proposed in sub-clause 10.4 must include –
- (a) the locations where water use is to be measured for the purpose of showing compliance with the diversion limit;
  - (b) an agreed base-line hydrologic model of the Melbourne water supply system;
  - (c) an annual diversion limit target which varies with climate and is determined by hydrologic modelling;
  - (d) continuous accounting of the difference between the diversion limit target and the recorded total use;
  - (e) the process to determine compliance with the diversion limit target;
  - (f) the process to determine the extent of compliance with the recommended environmental flow regime; and
  - (g) provisions to ensure that water use does not exceed the diversion limit; unless another method is approved by the Minister.
- 10.6 The Minister may –
- (a) approve the proposal under sub-clause 10.4; or
  - (b) require the Authority to amend the proposal; or
  - (c) require the Authority to –
    - (i) review the method approved by the Minister if, in the Minister's opinion, it is, at any time, no longer appropriate; and
    - (ii) propose an amended method.

**PART 4 – GENERAL CONDITIONS AND PROVISIONS****11. MANAGEMENT AGREEMENT**

The Authority, jointly with the holders of bulk entitlements listed in sub-clause 6.2, must, within three months of the commencement of this Order, establish agreed arrangements for collaborative management of this bulk entitlement between themselves and –

- (a) other authorities;
- (b) the Storage Operator; and
- (c) the Bulk Transfer System Operator.

**12. MANAGEMENT RULES**

12.1 The Authority, jointly with the holders of bulk entitlements listed in sub-clause 6.2, may establish rules for managing the Melbourne retail authorities' bulk entitlements.

12.2 The rules established in sub-clause 12.1 –

- (a) must be prepared –
  - (i) with the objective of achieving least community cost;
  - (ii) in accordance with management arrangements established under clause 11;
  - (iii) in consultation with other authorities and the Minister for Environment whose entitlements are likely to be affected by the rules; and
  - (iv) having regard to achievement of the recommended environmental flow regime described in clause 16 of the Yarra Environmental Entitlement;
- (b) may address any matters with the potential to affect this bulk entitlement or the bulk entitlements of other authorities, including –
  - (i) water quality in the headworks system;
  - (ii) the filling of Sugarloaf Reservoir from the Yarra River and Maroondah aqueduct;
  - (iii) the use of hydro-electric power generation facilities;
  - (iv) the impacts of drought on Melbourne's water supply; and
  - (v) emergency situations.

12.3 The Authority, jointly with the holders of bulk entitlements listed in sub-clause 6.2, and in accordance with the provisions of sub-clause 12.2, may vary the management rules from time to time.

**13. TRANSFER OF ENTITLEMENT AND ADJUSTMENT OF SCHEDULES**

13.1 Subject to s 46 of the Act and sub-clause 13.2 of this Order, and with the agreement of the holders of bulk entitlements listed in sub-clause 6.2, this bulk entitlement may be transferred –

- (a) temporarily or permanently;
- (b) in whole or in part;
- (c) for any purpose, including an in-stream use of water.

13.2 The Minister may, on the application of the Authority jointly with the holders of bulk entitlements listed in sub-clause 6.2, at any time, alter any provision of this Order to reflect trading of this or any other bulk entitlement by the Authority jointly with the holders of bulk entitlements listed in sub-clause 6.2.

- 13.3 An application under sub-clause 13.2 must set out –
- (a) the objectives of, and reasons for the proposed amendment;
  - (b) the results of an assessment of the likely effect of that amendment on both the security of primary entitlements and the environment.
- 13.4 The Minister may –
- (a) approve part or all of any application under sub-clause 13.2; or
  - (b) require the Authority, jointly with the holders of bulk entitlements listed in sub-clause 6.2, to –
    - (i) provide further information; and
    - (ii) re-submit the application in a different form; or
  - (c) not approve the application.

#### 14. DISPUTE RESOLUTION

- 14.1 If a difference or dispute arises between the Authority, the Minister, the other entitlement holders, the Storage Operator and the Resource Manager, or any of them (the "parties"), concerning the interpretation or application of this Order, a party may give written notice to another party requiring the matter to be determined by an independent expert.
- 14.2 The notice requiring that the matter be determined by independent expert may only be given 14 days after the matter has arisen. The independent expert may only commence to determine the matter a further 14 days after the giving of that notice.
- 14.3 The other entitlement holders, the Storage Operator and the Resource Manager will only be subject to the resolution procedure set out in this clause if they consent to the procedure.
- 14.4 The independent expert will be either –
- (a) a person agreed to by the parties to the difference or dispute; or
  - (b) if the parties cannot agree, a person nominated by the President of the Institute of Arbitrators, Australia.
- 14.5 The independent expert must reach a conclusion on the matter within 30 days of it being referred, but has power to extend the period for reaching a conclusion on the matter by a further 30 days.
- 14.6 The independent expert must send a copy of the conclusion and its supporting reasons to each party to the difference or dispute.
- 14.7 In any difference or dispute to which the Minister is a party –
- (a) the independent expert must express the conclusion as a recommendation; and
  - (b) the Minister must consider any recommendation made under paragraph (a) before deciding whether there are grounds for issuing a notice of contravention under s47 A of the Act.
- 14.8 In any difference or dispute to which the Minister is not a party, any conclusion by an independent expert is final and binding on the parties.
- 14.9 The Authority may request the Minister to determine the apportionment of the costs of and incidental to every reference, including the costs of the independent expert.

**PART 5 – DEMONSTRATING COMPLIANCE****15. REPORTING REQUIREMENTS**

- 15.1 The Minister may require the Authority, jointly with the holders of bulk entitlements listed in sub-clause 6.2, to report on all or any of the following –
- (a) the status of this bulk entitlement to water in the headworks system including the amount of water taken by the Authority, jointly with the holders of bulk entitlements listed in sub-clause 6.2, from the waterways;
  - (b) compliance with the diversion limit;
  - (c) any temporary or permanent transfer of all or part of this bulk entitlement;
  - (d) any temporary or permanent transfer of a bulk entitlement or other entitlement under the Act to the Authority, or to the Authority jointly with the holders of bulk entitlements listed in sub-clause 6.2, which does or may alter the flow of water in the waterway;
  - (e) any amendment to this bulk entitlement;
  - (f) any new bulk entitlement of water granted to the Authority, or to the Authority jointly with the holders of bulk entitlements listed in sub-clause 6.2;
  - (g) any failures either by the Authority or those that are joint with the other Melbourne retail authorities, to comply with any provision of this bulk entitlement; and
  - (h) any difficulties experienced or anticipated either by the Authority or those that are joint with the other Melbourne retail authorities, in complying with this bulk entitlement and any remedial action taken or proposed.
- 15.2 The Minister may require the Authority, jointly with the holders of bulk entitlements listed in sub-clause 6.2, to report on all or any of the matters set out in sub-clause 15.1 –
- (a) in writing, or in such electronic form as may be agreed between the Authority and the Minister; and
  - (b) within 14 days of receiving the Minister's written request or such longer period as the Minister may determine.
- 15.3 The Authority must, in its Annual Report, report on each of the matters referred to in sub-clause 15.1.
- 15.4 The Resource Manager may require the Authority, jointly with the holders of bulk entitlements listed in sub-clause 6.2, to report from time to time, on all or any of the matters set out in sub-clause 15.1.
- 15.5 Any report under sub-clause 15.4 be made –
- (a) in such form as may be agreed between the Authority, jointly with the holders of bulk entitlements listed in sub-clause 6.2, and the Resource Manager; and
  - (b) within such period of time as may be agreed between the Authority, jointly with the holders of bulk entitlements listed in sub-clause 6.2, and the Resource Manager.

**16. DATA**

- 16.1 The Minister will use the Minister's best endeavours to ensure that all hydrological and other data required by the Authority to comply with this bulk entitlement are made available to the Authority.
- 16.2 The Authority must make available to any person data collected by or on behalf of the Authority for the purpose of clause 15, subject to the person paying any fair and reasonable access fee imposed by the Authority to cover the costs of making the data available to that person.

**PART 6 – COSTS****17. RESOURCE MANAGER**

- 17.1 Subject to sub-clause 17.3, the Authority must pay the Resource Manager a fair and reasonable proportion of the costs incurred by the Resource Manager to –
- (a) prepare the Yarra Basin Water Accounts;
  - (b) report on whether entitlement holders in the Yarra Basin comply with the conditions of their bulk entitlements;
  - (c) report on disputes between entitlement holders in the Yarra Basin;
  - (d) report on significant unauthorised uses of water in the Yarra Basin; and
  - (e) co-ordinate the process for application and implementation of the qualification of any rights to water made by the Minister during periods of declared water shortage under s 13 or s 33 of the Act.
- 17.2 Subject to sub-clause 17.3, the proportion of the costs referred to in sub-clause 17.1 is to be determined by the Resource Manager.
- 17.3 Where the Resource Manager provides a regulated service for the purposes of s 4A of the Water Industry Act 1994, the charges to be paid by the Authority to the Resource Manager are to be determined by the Essential Services Commission in accordance with Part 1A of the **Water Industry Act 1994**.

**PART 7 – FURTHER WORK****18. REVIEW OF THE BULK ENTITLEMENTS**

- 18.1 Within 24 months of the commencement of this Order, the Authority, jointly with the holders of bulk entitlements listed in sub-clause 6.2, and in consultation with the Storage Operator, other authorities and the Department, must propose to the Minister amendments to the bulk entitlements of the Authority and the holders of bulk entitlements listed in sub-clause 6.2 that would achieve a long-term supply-demand balance for the Melbourne supply system with the least economic, environmental and social costs.
- 18.2 The Minister may –
- (a) approve the proposal under sub-clause 18.1; or
  - (b) require the Authority, jointly with the holders of bulk entitlements listed in sub-clause 6.2, to amend the proposal.

**19. MANAGEMENT PLANS**

- 19.1 The Authority will participate in good faith in developing Management Plans for the waterway, including negotiation of any changes to flow sharing arrangements.
- 19.2 The Authority must apply to the Minister to amend this Order under s 44 of the Act to implement the recommendations of a Management Plan approved by the Minister under s 32A of the Act.

Dated 25 October 2006

Responsible Minister  
JOHN THWAITES  
Minister for Water

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Note: An explanatory note that accompanies this Order is available from the Department.

**SCHEDULE 1 – SHARE OF RESOURCES**

<b>Bulk entitlement</b>	<b>Share of resources</b>
Bulk Entitlement (Yarra River – Melbourne Water for South East Water Limited) Conversion Order 2006	As determined by the bulk entitlement and other statutory and non-statutory instruments <sup>1</sup> .
Bulk Entitlement (Yarra River – Melbourne Water for City West Water Limited) Conversion Order 2006	As determined by the bulk entitlement and other statutory and non-statutory instruments <sup>1</sup> .
Bulk Entitlement (Yarra River – Melbourne Water for Yarra Valley Water Limited) Conversion Order 2006	As determined by the bulk entitlement and other statutory and non-statutory instruments <sup>1</sup> .
<b>Total</b>	<b>100% of the water available to the Yarra system</b>

## Notes:

1. The instruments include –
  - (a) the Melbourne Drought Response Plans for the Melbourne retail authorities;
  - (b) Bulk entitlement (Yarra River – Western Water) Order 2006;
  - (c) Yarra River Environmental Entitlement 2006;
  - (d) the Yarra Drought Response Plan.

**SCHEDULE 2 – PRIMARY ENTITLEMENTS**

Bulk water entitlements held by other authorities as primary entitlements –

<b>Other authorities</b>	<b>Details of entitlement</b>
Western Region Water Authority	Towns supplied by Western Water under the Bulk Entitlement (Yarra River – Western Water) Order 2006.

**SCHEDULE 3 – WATER HARVESTING CAPACITY****Table 1** Reservoir and transfer capacities

<b>Reservoir</b>	<b>Reservoir capacity (ML)</b>	<b>Reservoir full supply level to Australian Height Datum (metres)</b>	<b>Transfer conduit</b>	<b>Transfer capacity (ML/day)</b>
Cardinia Reservoir	288,964	167.03	NA	
Greenvale Reservoir	27,501	167.15	NA	
Silvan Reservoir	40,581	246.50	NA	
Sugarloaf Reservoir	99,222	178.0	NA	
Yan Yean Reservoir	33,085	183.18	NA	
Maroondah Reservoir	28,199	139.44	Maroondah Aqueduct	250
O'Shannassy Reservoir	3,123	363.50	O'Shannassy Reservoir Outlet Main	550
Toorourrong Reservoir	300	227.2	Clear Water Channel	510
Upper Yarra Reservoir	204,985	366.63	Upper Yarra Aqueduct	820
			Yarra Valley Conduit	910

**Table 2** Weirs and transfer capacities

<b>Weir</b>	<b>Transfer conduit</b>	<b>Transfer capacity (ML/day)</b>
Armstrong Creek East weir	Armstrong Creek Diversion Main	300
Armstrong Creek West weir		
Coranderrk weir	Coranderrk Aqueduct	140
Cement Creek weir east	Cement Creek Diversion Main	70
Cement Creek weir west		
Donnelly's Creek weir	Diversion to Maroondah Aqueduct	5 <sup>1</sup>
Graceburn Creek weir	Graceburn Aqueduct	50
McMahons Creek weir	McMahons Creek Diversion Main	220
Mick's Creek weir		
Starvation Creek weir	Starvation Creek Diversion Main	120
Big Flume Creek weir		

**Note 1:** The transfer capacity can be increased to 8 ML/day if the supply from the Maroondah Aqueduct is interrupted by an emergency.

**Table 3** Pumps

<b>Water source</b>	<b>Pump</b>	<b>Pump capacity (ML/day)</b>
Yarra River	Yering Gorge Pump Station	1,093
Maroondah Aqueduct	Maroondah Aqueduct Pump	250

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**Water Act 1989**

**BULK ENTITLEMENT (YARRA RIVER – MELBOURNE WATER FOR  
SOUTH EAST WATER LIMITED) CONVERSION ORDER 2006**

**PART 1 – INTRODUCTORY STATEMENTS**

1. Citation
2. Empowering Provisions
3. Commencement
4. Definitions

**PART 2 – ENTITLEMENT**

5. Conversion to a Bulk Entitlement
6. Bulk Entitlement
7. Obligations to Supply Primary Entitlements
8. Share of Storage Capacity
9. Share of Flow

**PART 3 – AVAILABLE WATER RESOURCES**

10. Diversion Limit

**PART 4 – GENERAL CONDITIONS AND PROVISIONS**

11. Management Agreement
12. Management Rules
13. Transfer of Entitlement and Adjustment of Schedules
14. Dispute Resolution

**PART 5 – DEMONSTRATING COMPLIANCE**

15. Reporting Requirements
16. Data

**PART 6 – COSTS**

17. Resource Manager

**PART 7 – FURTHER WORK**

18. Review of the Bulk Entitlements
19. Management Plans

**SCHEDULE 1 – SHARE OF RESOURCES**

**SCHEDULE 2 – PRIMARY ENTITLEMENTS**

**SCHEDULE 3 – WATER HARVESTING CAPACITY**

The Minister, under the provisions of the **Water Act 1989**, makes the following Order –

**PART 1 – INTRODUCTORY STATEMENTS**

**1. CITATION**

This Order may be cited as the Bulk Entitlement (Yarra River – Melbourne Water for South East Water Limited) Conversion Order 2006.

**2. EMPOWERING PROVISIONS**

This Order is made under s 43 and s 47 of the **Water Act 1989**.

**3. COMMENCEMENT**

This Order comes into operation on the day it is published in the Government Gazette.

**4. DEFINITIONS**

In this Order –

“**Act**” means the **Water Act 1989**;

“**Authority**” means Melbourne Water Corporation;

“**bulk transfer system**” means the system of transfer pipes and balancing storages that transports water from the headworks to the Melbourne retail authorities’ supply points;

“**Bulk Transfer System Operator**” means Melbourne Water Corporation in respect of its role to operate and maintain the bulk transfer system;

“**City West Water**” means City West Water Limited, ABN 70 066 902 467;

“**Department**” means the Department of Sustainability and Environment;

“**diversion limit**” means an upper limit on the amount of water that can be taken from the waterway as described in clause 10;

“**environmental flow**” means an amount of flow referred to in Yarra River Environmental Entitlement 2006 which the Storage Operator is obliged to pass at nominated points on the waterway;

“**Goulburn Basin**” means the area of land designated as Basin Number 5 in the Murray Darling Drainage Division of the Australian Water Resources Council’s Australian Continental Drainage Divisions;

“**harvesting storage**” means –

- (a) Maroondah Reservoir located on Watts River; or
- (b) O’Shannassy Reservoir located on O’Shannassy River; or
- (c) Sugarloaf Reservoir located on Sugarloaf Creek; or
- (d) Toorourrong Reservoir located on Plenty River East Branch; or
- (e) Upper Yarra Reservoir located on Yarra River;

“**headworks system**” means the Upper Yarra, Maroondah, O’Shannassy, Sugarloaf, Silvan, Cardinia, Toorourrong, Yan Yean, and Greenvale Reservoirs and the associated weirs, tunnels, transfer conduits and other water supply works owned by Melbourne Water;

“**licence**” means any licence granted under Part 4 of the Act;

“**Management Agreement**” means the agreement referred to in clause 11;

“**Management Plan**” means a management plan prepared for an area of the waterway under s 32A of the Act;

“**Management Rules**” means the agreement referred to in clause 12;

“**Melbourne retail authorities**” means any or all of –

- (a) Yarra Valley Water;
- (b) South East Water; and
- (c) City West Water;

“**Melbourne bulk entitlement holders**” means the holders of –

- (a) Bulk Entitlement (Yarra River – Melbourne Water for South East Water Limited) Conversion Order 2006;
- (b) Bulk Entitlement (Yarra River – Melbourne Water for City West Water Limited) Conversion Order 2006; and
- (c) Bulk Entitlement (Yarra River – Melbourne Water for Yarra Valley Water Limited) Conversion Order 2006;

acting jointly;

“**Melbourne supply system**” means the waterways, headworks and bulk transfer system works which supply water to the Melbourne retail authorities and primary entitlement holders and includes water harvested for Melbourne from the Yarra, Thomson and Goulburn Basins;

“**Melbourne Water**” means Melbourne Water Corporation;

“**Minister**”, in relation to a provision, includes any person authorised by the Minister to act on the Minister’s behalf in relation to that provision, or to whom the Minister has delegated the relevant power, discretion, function, authority or duty under s 306 of the Act;

“**other authority**” means an authority other than the Authority, or any other person holding a bulk entitlement granted under Division 1 or 3 of Part 4 of the Act in the Yarra Basin;

“**primary entitlement**” means an entitlement referred to in clause 7;

“**Resource Manager**” means a person appointed by the Minister under s 43A of the Act to do all or any of the tasks set out in sub-clause 17.1;

“**seasonal storage**” means –

- (a) Cardinia Reservoir located on Cardinia Creek; or
- (b) Silvan Reservoir located on Olinda Creek; or
- (c) Greenvale Reservoir located on Yuroke Creek; or
- (d) Yan Yean Reservoir located adjacent to Plenty River;

“**South East Water**” means South East Water Limited, ABN 89 066 902 547;

“**Storage Management Rules**” means any rules from time to time adopted for the operation of the headworks system, pursuant to the instrument appointing the Storage Operator;

“**Storage Operator**” means a person appointed by the Minister under s 43A of the Act to operate the headworks system, or to manage or measure the flow into the headworks system or the waterway, or to do a combination of those things;

“**Thomson Basin**” means the area of land designated as Basin Number 25 in the South East Coast Division of the Australian Water Resources Council’s Australian Continental Drainage Divisions;

“**waterway**” means the Yarra River and its tributaries in the Basin upstream of a point downstream of the confluence of the Yarra River and the Plenty River including pools formed by and immediately upstream of Melbourne Water’s reservoirs and weirs;

“**Yarra Basin**” means the area of land designated as Basin Number 29 in the South East Coast Division of the Australian Water Resources Council’s Australian Continental Drainage Divisions;

“**Yarra Basin Water Accounts**” means an annual report, required by the Minister, on compliance by entitlement holders and licensees, respectively, within the Yarra System, with the terms of their bulk entitlements or licences;

- “**Yarra Valley Water**” means Yarra Valley Water Limited, ABN 93 066 902 501;  
“**year**” means the 12 months commencing 1 July; and  
“**Yering Pumps Gauging Station**” means the stream gauging station, number 229270B, located on the waterway.

## **PART 2 – ENTITLEMENT**

### **5. CONVERSION TO A BULK ENTITLEMENT**

Only that part of the Authority’s entitlement to water from the waterway to supply South East Water Limited’s retail customers is converted to a bulk entitlement on the conditions set out in this Order.

### **6. BULK ENTITLEMENT**

- 6.1 The Authority may take from the waterway in any year, for the purpose of supplying entitlements, its share of the water resources available under the diversion limit.
- 6.2 The Authority’s share, together with shares allocated under –
- (a) Bulk Entitlement (Yarra River – Melbourne Water for City West Water Limited) Conversion Order 2006; and
  - (b) Bulk Entitlement (Yarra River – Melbourne Water for Yarra Valley Water Limited) Conversion Order 2006;
- as described in Schedule 1, make up 100% of the water allocated to the Melbourne supply system from the waterway.

### **7. OBLIGATIONS TO SUPPLY PRIMARY ENTITLEMENTS**

- 7.1 Water taken from the waterway under this bulk entitlement together with the bulk entitlements listed in sub-clause 6.2 must be used to supply the primary entitlements described in Schedule 2.
- 7.2 The Authority, jointly with the holders of bulk entitlements listed in sub-clause 6.2, within seven days of becoming aware that the supply by the Melbourne retail authorities to their customers is likely to be the subject of water restrictions, must notify primary entitlement holders in writing of that event.

### **8. SHARE OF STORAGE CAPACITY**

The Authority, jointly with the holders of bulk entitlements listed in sub-clause 6.2, is entitled to store water in the reservoirs set out in Table 1 of Schedule 3 –

- (a) up to the reservoir capacities and full supply levels listed in Table 1 of Schedule 3; less
- (b) any storage capacity reserved for the environment or other purposes under another bulk entitlement;

subject to the Storage Management Rules.

### **9. SHARE OF FLOW**

- 9.1 Subject to clause 10, and after the Storage Operator has released or set aside, as the case may be, water required to meet the environmental flows, the Authority, jointly with the holders of bulk entitlements listed in sub-clause 6.2, may –
- (a) store all the inflow to the reservoirs and weirs; and
  - (b) take the inflow via the transfer conduits and pumps;
- at the locations and rates listed in Tables 1, 2 and 3 of Schedule 3 and subject to the Storage Management Rules.
- 9.2 The Authority must not take, as part of this bulk entitlement, any flow of water in the waterways which is being transferred by the holder of any other bulk entitlement, environmental entitlement or licence.

**PART 3 – AVAILABLE WATER RESOURCES****10. DIVERSION LIMIT**

- 10.1 The amount of water taken in any year by the Authority, jointly with the holders of bulk entitlements listed in sub-clause 6.2 –
- (a) may vary from year to year, depending on climate; and
  - (b) must not exceed a long term average amount estimated at the date of this Order to be –
    - (i) 400,000 ML from the Yarra Basin; and
    - (ii) 555,000 ML from the Yarra, Thomson and Goulburn Basins for the Melbourne supply system.
- 10.2 The Authority must use reasonable endeavours to ensure that the method by which the water is taken complies with the recommended environmental flow regime described in clause 16 of the Yarra Environmental Entitlement.
- 10.3 For the purpose of calculating the amount taken under sub-clause 10.1, the Authority, jointly with the holders of bulk entitlements listed in sub-clause 6.2, must include the amount taken by primary entitlement holders.
- 10.4 The Authority, jointly with the holders of bulk entitlements listed in sub-clause 6.2, and in consultation with the Storage Operator, must propose to the Minister within twelve months of the commencement of this Order, the method it will use to show its compliance with sub-clauses 10.1 and 10.2.
- 10.5 The method proposed in sub-clause 10.4 must include –
- (a) the locations where water use is to be measured for the purpose of showing compliance with the diversion limit;
  - (b) an agreed base-line hydrologic model of the Melbourne water supply system;
  - (c) an annual diversion limit target which varies with climate and is determined by hydrologic modelling;
  - (d) continuous accounting of the difference between the diversion limit target and the recorded total use;
  - (e) the process to determine compliance with the diversion limit target;
  - (f) the process to determine the extent of compliance with the recommended environmental flow regime; and
  - (g) provisions to ensure that water use does not exceed the diversion limit; unless another method is approved by the Minister.
- 10.6 The Minister may –
- (a) approve the proposal under sub-clause 10.4; or
  - (b) require the Authority to amend the proposal; or
  - (c) require the Authority to –
    - (i) review the method approved by the Minister if, in the Minister's opinion, it is, at any time, no longer appropriate; and
    - (ii) propose an amended method.

**PART 4 – GENERAL CONDITIONS AND PROVISIONS****11. MANAGEMENT AGREEMENT**

The Authority, jointly with the holders of bulk entitlements listed in sub-clause 6.2, must, within three months of the commencement of this Order, establish agreed arrangements for collaborative management of this bulk entitlement between themselves and –

- (a) other authorities;
- (b) the Storage Operator; and
- (c) the Bulk Transfer System Operator.

**12. MANAGEMENT RULES**

12.1 The Authority, jointly with the holders of bulk entitlements listed in sub-clause 6.2, may establish rules for managing the Melbourne retail authorities' bulk entitlements.

12.2 The rules established in sub-clause 12.1 –

- (a) must be prepared –
  - (i) with the objective of achieving least community cost;
  - (ii) in accordance with management arrangements established under clause 11;
  - (iii) in consultation with other authorities and the Minister for Environment whose entitlements are likely to be affected by the rules; and
  - (iv) having regard to achievement of the recommended environmental flow regime described in clause 16 of the Yarra Environmental Entitlement;
- (b) may address any matters with the potential to affect this bulk entitlement or the bulk entitlements of other authorities, including –
  - (i) water quality in the headworks system;
  - (ii) the filling of Sugarloaf Reservoir from the Yarra River and Maroondah aqueduct;
  - (iii) the use of hydro-electric power generation facilities;
  - (iv) the impacts of drought on Melbourne's water supply; and
  - (v) emergency situations.

12.3 The Authority, jointly with the holders of bulk entitlements listed in sub-clause 6.2, and in accordance with the provisions of sub-clause 12.2, may vary the management rules from time to time.

**13. TRANSFER OF ENTITLEMENT AND ADJUSTMENT OF SCHEDULES**

13.1 Subject to s 46 of the Act and sub-clause 13.2 of this Order, and with the agreement of the holders of bulk entitlements listed in sub-clause 6.2, this bulk entitlement may be transferred –

- (a) temporarily or permanently;
- (b) in whole or in part;
- (c) for any purpose, including an in-stream use of water.

13.2 The Minister may, on the application of the Authority jointly with the holders of bulk entitlements listed in sub-clause 6.2, at any time, alter any provision of this Order to reflect trading of this or any other bulk entitlement by the Authority jointly with the holders of bulk entitlements listed in sub-clause 6.2.

- 13.3 An application under sub-clause 13.2 must set out –
- (a) the objectives of, and reasons for the proposed amendment;
  - (b) the results of an assessment of the likely effect of that amendment on both the security of primary entitlements and the environment.
- 13.4 The Minister may –
- (a) approve part or all of any application under sub-clause 13.2; or
  - (b) require the Authority, jointly with the holders of bulk entitlements listed in sub-clause 6.2, to –
    - (i) provide further information; and
    - (ii) re-submit the application in a different form; or
  - (c) not approve the application.

#### 14. DISPUTE RESOLUTION

- 14.1 If a difference or dispute arises between the Authority, the Minister, the other entitlement holders, the Storage Operator and the Resource Manager, or any of them (the “parties”), concerning the interpretation or application of this Order, a party may give written notice to another party requiring the matter to be determined by an independent expert.
- 14.2 The notice requiring that the matter be determined by independent expert may only be given 14 days after the matter has arisen. The independent expert may only commence to determine the matter a further 14 days after the giving of that notice.
- 14.3 The other entitlement holders, the Storage Operator and the Resource Manager will only be subject to the resolution procedure set out in this clause if they consent to the procedure.
- 14.4 The independent expert will be either –
- (a) a person agreed to by the parties to the difference or dispute; or
  - (b) if the parties cannot agree, a person nominated by the President of the Institute of Arbitrators, Australia.
- 14.5 The independent expert must reach a conclusion on the matter within 30 days of it being referred, but has power to extend the period for reaching a conclusion on the matter by a further 30 days.
- 14.6 The independent expert must send a copy of the conclusion and its supporting reasons to each party to the difference or dispute.
- 14.7 In any difference or dispute to which the Minister is a party –
- (a) the independent expert must express the conclusion as a recommendation; and
  - (b) the Minister must consider any recommendation made under paragraph (a) before deciding whether there are grounds for issuing a notice of contravention under s47 A of the Act.
- 14.8 In any difference or dispute to which the Minister is not a party, any conclusion by an independent expert is final and binding on the parties.
- 14.9 The Authority may request the Minister to determine the apportionment of the costs of and incidental to every reference, including the costs of the independent expert.

**PART 5 – DEMONSTRATING COMPLIANCE****15. REPORTING REQUIREMENTS**

- 15.1 The Minister may require the Authority, jointly with the holders of bulk entitlements listed in sub-clause 6.2, to report on all or any of the following –
- (a) the status of this bulk entitlement to water in the headworks system including the amount of water taken by the Authority, jointly with the holders of bulk entitlements listed in sub-clause 6.2, from the waterways;
  - (b) compliance with the diversion limit;
  - (c) any temporary or permanent transfer of all or part of this bulk entitlement;
  - (d) any temporary or permanent transfer of a bulk entitlement or other entitlement under the Act to the Authority, or to the Authority jointly with the holders of bulk entitlements listed in sub-clause 6.2, which does or may alter the flow of water in the waterway;
  - (e) any amendment to this bulk entitlement;
  - (f) any new bulk entitlement of water granted to the Authority, or to the Authority jointly with the holders of bulk entitlements listed in sub-clause 6.2;
  - (g) any failures either by the Authority or those that are joint with the other Melbourne retail authorities, to comply with any provision of this bulk entitlement; and
  - (h) any difficulties experienced or anticipated either by the Authority or those that are joint with the other Melbourne retail authorities, in complying with this bulk entitlement and any remedial action taken or proposed.
- 15.2 The Minister may require the Authority, jointly with the holders of bulk entitlements listed in sub-clause 6.2, to report on all or any of the matters set out in sub-clause 15.1 –
- (a) in writing, or in such electronic form as may be agreed between the Authority and the Minister; and
  - (b) within 14 days of receiving the Minister's written request or such longer period as the Minister may determine.
- 15.3 The Authority must, in its Annual Report, report on each of the matters referred to in sub-clause 15.1.
- 15.4 The Resource Manager may require the Authority, jointly with the holders of bulk entitlements listed in sub-clause 6.2, to report from time to time, on all or any of the matters set out in sub-clause 15.1.
- 15.5 Any report under sub-clause 15.4 be made –
- (a) in such form as may be agreed between the Authority, jointly with the holders of bulk entitlements listed in sub-clause 6.2, and the Resource Manager; and
  - (b) within such period of time as may be agreed between the Authority, jointly with the holders of bulk entitlements listed in sub-clause 6.2, and the Resource Manager.

**16. DATA**

- 16.1 The Minister will use the Minister's best endeavours to ensure that all hydrological and other data required by the Authority to comply with this bulk entitlement are made available to the Authority.
- 16.2 The Authority must make available to any person data collected by or on behalf of the Authority for the purpose of clause 15, subject to the person paying any fair and reasonable access fee imposed by the Authority to cover the costs of making the data available to that person.

**PART 6 – COSTS****17. RESOURCE MANAGER**

- 17.1 Subject to sub-clause 17.3, the Authority must pay the Resource Manager a fair and reasonable proportion of the costs incurred by the Resource Manager to –
- (a) prepare the Yarra Basin Water Accounts;
  - (b) report on whether entitlement holders in the Yarra Basin comply with the conditions of their bulk entitlements;
  - (c) report on disputes between entitlement holders in the Yarra Basin;
  - (d) report on significant unauthorised uses of water in the Yarra Basin; and
  - (e) co-ordinate the process for application and implementation of the qualification of any rights to water made by the Minister during periods of declared water shortage under s 13 or s 33 of the Act.
- 17.2 Subject to sub-clause 17.3, the proportion of the costs referred to in sub-clause 17.1 is to be determined by the Resource Manager.
- 17.3 Where the Resource Manager provides a regulated service for the purposes of s 4A of the **Water Industry Act 1994**, the charges to be paid by the Authority to the Resource Manager are to be determined by the Essential Services Commission in accordance with Part 1A of the **Water Industry Act 1994**.

**PART 7 – FURTHER WORK****18. REVIEW OF THE BULK ENTITLEMENTS**

- 18.1 Within 24 months of the commencement of this Order, the Authority, jointly with the holders of bulk entitlements listed in sub-clause 6.2, and in consultation with the Storage Operator, other authorities and the Department, must propose to the Minister amendments to the bulk entitlements of the Authority and the holders of bulk entitlements listed in sub-clause 6.2 that would achieve a long-term supply-demand balance for the Melbourne supply system with the least economic, environmental and social costs.
- 18.2 The Minister may –
- (a) approve the proposal under sub-clause 18.1; or
  - (b) require the Authority, jointly with the holders of bulk entitlements listed in sub-clause 6.2, to amend the proposal.

**19. MANAGEMENT PLANS**

- 19.1 The Authority will participate in good faith in developing Management Plans for the waterway, including negotiation of any changes to flow sharing arrangements.
- 19.2 The Authority must apply to the Minister to amend this Order under s 44 of the Act to implement the recommendations of a Management Plan approved by the Minister under s 32A of the Act.

Dated 25 October 2006

Responsible Minister  
JOHN THWAITES  
Minister for Water

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Note: An explanatory note that accompanies this Order is available from the Department.

**SCHEDULE 1 – SHARE OF RESOURCES**

<b>Bulk entitlement</b>	<b>Share of resources</b>
Bulk Entitlement (Yarra River – Melbourne Water for South East Water Limited) Conversion Order 2006	As determined by the bulk entitlement and other statutory and non-statutory instruments <sup>1</sup> .
Bulk Entitlement (Yarra River – Melbourne Water for City West Water Limited) Conversion Order 2006	As determined by the bulk entitlement and other statutory and non-statutory instruments <sup>1</sup> .
Bulk Entitlement (Yarra River – Melbourne Water for Yarra Valley Water Limited) Conversion Order 2006	As determined by the bulk entitlement and other statutory and non-statutory instruments <sup>1</sup> .
<b>Total</b>	<b>100% of the water available to the Yarra system</b>

Notes:

1. The instruments include –
  - (a) the Melbourne Drought Response Plans for the Melbourne retail authorities;
  - (b) Bulk entitlement (Yarra River – Western Water) Order 2006;
  - (c) Yarra River Environmental Entitlement 2006;
  - (d) the Yarra Drought Response Plan.

**SCHEDULE 2 – PRIMARY ENTITLEMENTS**

Bulk water entitlements held by other authorities as primary entitlements –

<b>Other authorities</b>	<b>Details of entitlement</b>
Western Region Water Authority	Towns supplied by Western Water under the Bulk Entitlement (Yarra River – Western Water) Order 2006.

**SCHEDULE 3 – WATER HARVESTING CAPACITY****Table 1** Reservoir and transfer capacities

<b>Reservoir</b>	<b>Reservoir capacity (ML)</b>	<b>Reservoir full supply to level Australian Height Datum (metres)</b>	<b>Transfer conduit</b>	<b>Transfer capacity (ML/day)</b>
Cardinia Reservoir	288,964	167.03	NA	
Greenvale Reservoir	27,501	167.15	NA	
Silvan Reservoir	40,581	246.50	NA	
Sugarloaf Reservoir	99,222	178.0	NA	
Yan Yean Reservoir	33,085	183.18	NA	
Maroondah Reservoir	28,199	139.44	Maroondah Aqueduct	250
O'Shannassy Reservoir	3,123	363.50	O'Shannassy Reservoir Outlet Main	550
Toorourrong Reservoir	300	227.2	Clear Water Channel	510
Upper Yarra Reservoir	204,985	366.63	Upper Yarra Aqueduct	820
			Yarra Valley Conduit	910

**Table 2** Weirs and transfer capacities

<b>Weir</b>	<b>Transfer conduit</b>	<b>Transfer capacity (ML/day)</b>
Armstrong Creek East weir	Armstrong Creek Diversion Main	300
Armstrong Creek West weir		
Coranderrk weir	Coranderrk Aqueduct	140
Cement Creek weir east	Cement Creek Diversion Main	70
Cement Creek weir west		
Donnelly's Creek weir	Diversion to Maroondah Aqueduct	5 <sup>1</sup>
Graceburn Creek weir	Graceburn Aqueduct	50
McMahons Creek weir	McMahons Creek Diversion Main	220
Mick's Creek weir		
Starvation Creek weir	Starvation Creek Diversion Main	120
Big Flume Creek weir		

**Note 1:** The transfer capacity can be increased to 8 ML/day if the supply from the Maroondah Aqueduct is interrupted by an emergency.

**Table 3** Pumps

<b>Water source</b>	<b>Pump</b>	<b>Pump capacity (ML/day)</b>
Yarra River	Yering Gorge Pump Station	1,093
Maroondah Aqueduct	Maroondah Aqueduct Pump	250

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**Water Act 1989**

**BULK ENTITLEMENT (YARRA RIVER – MELBOURNE WATER FOR  
YARRA VALLEY WATER LIMITED) CONVERSION ORDER 2006**

**PART 1 – INTRODUCTORY STATEMENTS**

1. Citation
2. Empowering Provisions
3. Commencement
4. Definitions

**PART 2 – ENTITLEMENT**

5. Conversion to a Bulk Entitlement
6. Bulk Entitlement
7. Obligations to Supply Primary Entitlements
8. Share of Storage Capacity
9. Share of Flow

**PART 3 – AVAILABLE WATER RESOURCES**

10. Diversion Limit

**PART 4 – GENERAL CONDITIONS AND PROVISIONS**

11. Management Agreement
12. Management Rules
13. Transfer of Entitlement and Adjustment of Schedules
14. Dispute Resolution

**PART 5 – DEMONSTRATING COMPLIANCE**

15. Reporting Requirements
16. Data

**PART 6 – COSTS**

17. Resource Manager

**PART 7 – FURTHER WORK**

18. Review of the Bulk Entitlements
19. Management Plans

**SCHEDULE 1 – SHARE OF RESOURCES**

**SCHEDULE 2 – PRIMARY ENTITLEMENTS**

**SCHEDULE 3 – WATER HARVESTING CAPACITY**

The Minister, under the provisions of the **Water Act 1989**, makes the following Order -

**PART 1 – INTRODUCTORY STATEMENTS**

**1. CITATION**

This Order may be cited as the Bulk Entitlement (Yarra River – Melbourne Water for Yarra Valley Water Limited) Conversion Order 2006.

**2. EMPOWERING PROVISIONS**

This Order is made under s 43 and s 47 of the **Water Act 1989**.

**3. COMMENCEMENT**

This Order comes into operation on the day it is published in the Government Gazette.

**4. DEFINITIONS**

In this Order –

“**Act**” means the **Water Act 1989**;

“**Authority**” means Melbourne Water Corporation;

“**bulk transfer system**” means the system of transfer pipes and balancing storages that transports water from the headworks to the Melbourne retail authorities’ supply points;

“**Bulk Transfer System Operator**” means Melbourne Water Corporation in respect of its role to operate and maintain the bulk transfer system;

“**City West Water**” means City West Water Limited, ABN 70 066 902 467;

“**Department**” means the Department of Sustainability and Environment;

“**diversion limit**” means an upper limit on the amount of water that can be taken from the waterway as described in clause 10;

“**environmental flow**” means an amount of flow referred to in Yarra River Environmental Entitlement 2006 which the Storage Operator is obliged to pass at nominated points on the waterway;

“**Goulburn Basin**” means the area of land designated as Basin Number 5 in the Murray Darling Drainage Division of the Australian Water Resources Council’s Australian Continental Drainage Divisions;

“**harvesting storage**” means –

- (a) Maroondah Reservoir located on Watts River; or
- (b) O’Shannassy Reservoir located on O’Shannassy River; or
- (c) Sugarloaf Reservoir located on Sugarloaf Creek; or
- (d) Toorourrong Reservoir located on Plenty River East Branch; or
- (e) Upper Yarra Reservoir located on Yarra River;

“**headworks system**” means the Upper Yarra, Maroondah, O’Shannassy, Sugarloaf, Silvan, Cardinia, Toorourrong, Yan Yean, and Greenvale Reservoirs and the associated weirs, tunnels, transfer conduits and other water supply works owned by Melbourne Water;

“**licence**” means any licence granted under Part 4 of the Act;

“**Management Agreement**” means the agreement referred to in clause 11;

“**Management Plan**” means a management plan prepared for an area of the waterway under s 32A of the Act;

“**Management Rules**” means the agreement referred to in clause 12;

“**Melbourne retail authorities**” means any or all of –

- (a) Yarra Valley Water;
- (b) South East Water; and
- (c) City West Water;

“**Melbourne bulk entitlement holders**” means the holders of –

- (a) Bulk Entitlement (Yarra River – Melbourne Water for South East Water Limited) Conversion Order 2006;
- (b) Bulk Entitlement (Yarra River – Melbourne Water for City West Water Limited) Conversion Order 2006; and
- (c) Bulk Entitlement (Yarra River – Melbourne Water for Yarra Valley Water Limited) Conversion Order 2006;

acting jointly;

“**Melbourne supply system**” means the waterways, headworks and bulk transfer system works which supply water to the Melbourne retail authorities and primary entitlement holders and includes water harvested for Melbourne from the Yarra, Thomson and Goulburn Basins;

“**Melbourne Water**” means Melbourne Water Corporation;

“**Minister**”, in relation to a provision, includes any person authorised by the Minister to act on the Minister’s behalf in relation to that provision, or to whom the Minister has delegated the relevant power, discretion, function, authority or duty under s 306 of the Act;

“**other authority**” means an authority other than the Authority, or any other person holding a bulk entitlement granted under Division 1 or 3 of Part 4 of the Act in the Yarra Basin;

“**primary entitlement**” means an entitlement referred to in clause 7;

“**Resource Manager**” means a person appointed by the Minister under s 43A of the Act to do all or any of the tasks set out in sub-clause 17.1;

“**seasonal storage**” means –

- (a) Cardinia Reservoir located on Cardinia Creek; or
- (b) Silvan Reservoir located on Olinda Creek; or
- (c) Greenvale Reservoir located on Yuroke Creek; or
- (d) Yan Yean Reservoir located adjacent to Plenty River;

“**South East Water**” means South East Water Limited, ABN 89 066 902 547;

“**Storage Management Rules**” means any rules from time to time adopted for the operation of the headworks system, pursuant to the instrument appointing the Storage Operator;

“**Storage Operator**” means a person appointed by the Minister under s 43A of the Act to operate the headworks system, or to manage or measure the flow into the headworks system or the waterway, or to do a combination of those things;

“**Thomson Basin**” means the area of land designated as Basin Number 25 in the South East Coast Division of the Australian Water Resources Council’s Australian Continental Drainage Divisions;

“**waterway**” means the Yarra River and its tributaries in the Basin upstream of a point downstream of the confluence of the Yarra River and the Plenty River including pools formed by and immediately upstream of Melbourne Water’s reservoirs and weirs;

“**Yarra Basin**” means the area of land designated as Basin Number 29 in the South East Coast Division of the Australian Water Resources Council’s Australian Continental Drainage Divisions;

“**Yarra Basin Water Accounts**” means an annual report, required by the Minister, on compliance by entitlement holders and licensees, respectively, within the Yarra System, with the terms of their bulk entitlements or licences;

“**Yarra Valley Water**” means Yarra Valley Water Limited, ABN 93 066 902 501;  
“**year**” means the 12 months commencing 1 July; and  
“**Yering Pumps Gauging Station**” means the stream gauging station, number 229270B,  
located on the waterway.

## **PART 2 – ENTITLEMENT**

### **5. CONVERSION TO A BULK ENTITLEMENT**

Only that part of the Authority’s entitlement to water from the waterway to supply Yarra Valley Water Limited’s retail customers is converted to a bulk entitlement on the conditions set out in this Order.

### **6. BULK ENTITLEMENT**

6.1 The Authority may take from the waterway in any year, for the purpose of supplying entitlements, its share of the water resources available under the diversion limit.

6.2 The Authority’s share, together with shares allocated under –

- (a) Bulk Entitlement (Yarra River – Melbourne Water for City West Water Limited) Conversion Order 2006; and
- (b) Bulk Entitlement (Yarra River – Melbourne Water for South East Water Limited) Conversion Order 2006;

as described in Schedule 1, make up 100% of the water allocated to the Melbourne supply system from the waterway.

### **7. OBLIGATIONS TO SUPPLY PRIMARY ENTITLEMENTS**

7.1 Water taken from the waterway under this bulk entitlement together with the bulk entitlements listed in sub-clause 6.2 must be used to supply the primary entitlements described in Schedule 2.

7.2 The Authority, jointly with the holders of bulk entitlements listed in sub-clause 6.2, within seven days of becoming aware that the supply by the Melbourne retail authorities to their customers is likely to be the subject of water restrictions, must notify primary entitlement holders in writing of that event.

### **8. SHARE OF STORAGE CAPACITY**

The Authority, jointly with the holders of bulk entitlements listed in sub-clause 6.2, is entitled to store water in the reservoirs set out in Table 1 of Schedule 3 -

- (a) up to the reservoir capacities and full supply levels listed in Table 1 of Schedule 3; less
- (b) any storage capacity reserved for the environment or other purposes under another bulk entitlement;

subject to the Storage Management Rules.

### **9. SHARE OF FLOW**

9.1 Subject to clause 10, and after the Storage Operator has released or set aside, as the case may be, water required to meet the environmental flows, the Authority, jointly with the holders of bulk entitlements listed in sub-clause 6.2, may–

- (a) store all the inflow to the reservoirs and weirs; and
- (b) take the inflow via the transfer conduits and pumps;

at the locations and rates listed in Tables 1, 2 and 3 of Schedule 3 and subject to the Storage Management Rules.

9.2 The Authority must not take, as part of this bulk entitlement, any flow of water in the waterways which is being transferred by the holder of any other bulk entitlement, environmental entitlement or licence.

**PART 3 – AVAILABLE WATER RESOURCES****10. DIVERSION LIMIT**

- 10.1 The amount of water taken in any year by the Authority, jointly with the holders of bulk entitlements listed in sub-clause 6.2 –
- (a) may vary from year to year, depending on climate; and
  - (b) must not exceed a long term average amount estimated at the date of this Order to be –
    - (i) 400,000 ML from the Yarra Basin; and
    - (ii) 555,000 ML from the Yarra, Thomson and Goulburn Basins for the Melbourne supply system.
- 10.2 The Authority must use reasonable endeavours to ensure that the method by which the water is taken complies with the recommended environmental flow regime described in clause 16 of the Yarra Environmental Entitlement.
- 10.3 For the purpose of calculating the amount taken under sub-clause 10.1, the Authority, jointly with the holders of bulk entitlements listed in sub-clause 6.2, must include the amount taken by primary entitlement holders.
- 10.4 The Authority, jointly with the holders of bulk entitlements listed in sub-clause 6.2, and in consultation with the Storage Operator, must propose to the Minister within twelve months of the commencement of this Order, the method it will use to show its compliance with sub-clauses 10.1 and 10.2.
- 10.5 The method proposed in sub-clause 10.4 must include –
- (a) the locations where water use is to be measured for the purpose of showing compliance with the diversion limit;
  - (b) an agreed base-line hydrologic model of the Melbourne water supply system;
  - (c) an annual diversion limit target which varies with climate and is determined by hydrologic modelling;
  - (d) continuous accounting of the difference between the diversion limit target and the recorded total use;
  - (e) the process to determine compliance with the diversion limit target;
  - (f) the process to determine the extent of compliance with the recommended environmental flow regime; and
  - (g) provisions to ensure that water use does not exceed the diversion limit; unless another method is approved by the Minister.
- 10.6 The Minister may –
- (a) approve the proposal under sub-clause 10.4; or
  - (b) require the Authority to amend the proposal; or
  - (c) require the Authority to –
    - (i) review the method approved by the Minister if, in the Minister's opinion, it is, at any time, no longer appropriate; and
    - (ii) propose an amended method.

**PART 4 – GENERAL CONDITIONS AND PROVISIONS****11. MANAGEMENT AGREEMENT**

The Authority, jointly with the holders of bulk entitlements listed in sub-clause 6.2, must, within three months of the commencement of this Order, establish agreed arrangements for collaborative management of this bulk entitlement between themselves and –

- (a) other authorities;
- (b) the Storage Operator; and
- (c) the Bulk Transfer System Operator.

**12. MANAGEMENT RULES**

12.1 The Authority, jointly with the holders of bulk entitlements listed in sub-clause 6.2, may establish rules for managing the Melbourne retail authorities' bulk entitlements.

12.2 The rules established in sub-clause 12.1 –

- (a) must be prepared –
  - (i) with the objective of achieving least community cost;
  - (ii) in accordance with management arrangements established under clause 11;
  - (iii) in consultation with other authorities and the Minister for Environment whose entitlements are likely to be affected by the rules; and
  - (iv) having regard to achievement of the recommended environmental flow regime described in clause 16 of the Yarra Environmental Entitlement;
- (b) may address any matters with the potential to affect this bulk entitlement or the bulk entitlements of other authorities, including –
  - (i) water quality in the headworks system;
  - (ii) the filling of Sugarloaf Reservoir from the Yarra River and Maroondah aqueduct;
  - (iii) the use of hydro-electric power generation facilities;
  - (iv) the impacts of drought on Melbourne's water supply; and
  - (v) emergency situations.

12.3 The Authority, jointly with the holders of bulk entitlements listed in sub-clause 6.2, and in accordance with the provisions of sub-clause 12.2, may vary the management rules from time to time.

**13. TRANSFER OF ENTITLEMENT AND ADJUSTMENT OF SCHEDULES**

13.1 Subject to s 46 of the Act and sub-clause 13.2 of this Order, and with the agreement of the holders of bulk entitlements listed in sub-clause 6.2, this bulk entitlement may be transferred –

- (a) temporarily or permanently;
- (b) in whole or in part;
- (c) for any purpose, including an in-stream use of water.

13.2 The Minister may, on the application of the Authority jointly with the holders of bulk entitlements listed in sub-clause 6.2, at any time, alter any provision of this Order to reflect trading of this or any other bulk entitlement by the Authority jointly with the holders of bulk entitlements listed in sub-clause 6.2.

- 13.3 An application under sub-clause 13.2 must set out –
- (a) the objectives of, and reasons for the proposed amendment;
  - (b) the results of an assessment of the likely effect of that amendment on both the security of primary entitlements and the environment.
- 13.4 The Minister may –
- (a) approve part or all of any application under sub-clause 13.2; or
  - (b) require the Authority, jointly with the holders of bulk entitlements listed in sub-clause 6.2, to –
    - (i) provide further information; and
    - (ii) re-submit the application in a different form; or
  - (c) not approve the application.

#### 14. DISPUTE RESOLUTION

- 14.1 If a difference or dispute arises between the Authority, the Minister, the other entitlement holders, the Storage Operator and the Resource Manager, or any of them (the “parties”), concerning the interpretation or application of this Order, a party may give written notice to another party requiring the matter to be determined by an independent expert.
- 14.2 The notice requiring that the matter be determined by independent expert may only be given 14 days after the matter has arisen. The independent expert may only commence to determine the matter a further 14 days after the giving of that notice.
- 14.3 The other entitlement holders, the Storage Operator and the Resource Manager will only be subject to the resolution procedure set out in this clause if they consent to the procedure.
- 14.4 The independent expert will be either –
- (a) a person agreed to by the parties to the difference or dispute; or
  - (b) if the parties cannot agree, a person nominated by the President of the Institute of Arbitrators, Australia.
- 14.5 The independent expert must reach a conclusion on the matter within 30 days of it being referred, but has power to extend the period for reaching a conclusion on the matter by a further 30 days.
- 14.6 The independent expert must send a copy of the conclusion and its supporting reasons to each party to the difference or dispute.
- 14.7 In any difference or dispute to which the Minister is a party –
- (a) the independent expert must express the conclusion as a recommendation; and
  - (b) the Minister must consider any recommendation made under paragraph (a) before deciding whether there are grounds for issuing a notice of contravention under s47 A of the Act.
- 14.8 In any difference or dispute to which the Minister is not a party, any conclusion by an independent expert is final and binding on the parties.
- 14.9 The Authority may request the Minister to determine the apportionment of the costs of and incidental to every reference, including the costs of the independent expert.

**PART 5 – DEMONSTRATING COMPLIANCE****15. REPORTING REQUIREMENTS**

- 15.1 The Minister may require the Authority, jointly with the holders of bulk entitlements listed in sub-clause 6.2, to report on all or any of the following -
- (a) the status of this bulk entitlement to water in the headworks system including the amount of water taken by the Authority, jointly with the holders of bulk entitlements listed in sub-clause 6.2, from the waterways;
  - (b) compliance with the diversion limit;
  - (c) any temporary or permanent transfer of all or part of this bulk entitlement;
  - (d) any temporary or permanent transfer of a bulk entitlement or other entitlement under the Act to the Authority, or to the Authority jointly with the holders of bulk entitlements listed in sub-clause 6.2, which does or may alter the flow of water in the waterway;
  - (e) any amendment to this bulk entitlement;
  - (f) any new bulk entitlement of water granted to the Authority, or to the Authority jointly with the holders of bulk entitlements listed in sub-clause 6.2;
  - (g) any failures either by the Authority or those that are joint with the other Melbourne retail authorities, to comply with any provision of this bulk entitlement; and
  - (h) any difficulties experienced or anticipated either by the Authority or those that are joint with the other Melbourne retail authorities, in complying with this bulk entitlement and any remedial action taken or proposed.
- 15.2 The Minister may require the Authority, jointly with the holders of bulk entitlements listed in sub-clause 6.2, to report on all or any of the matters set out in sub-clause 15.1 –
- (a) in writing, or in such electronic form as may be agreed between the Authority and the Minister; and
  - (b) within 14 days of receiving the Minister’s written request or such longer period as the Minister may determine.
- 15.3 The Authority must, in its Annual Report, report on each of the matters referred to in sub-clause 15.1.
- 15.4 The Resource Manager may require the Authority, jointly with the holders of bulk entitlements listed in sub-clause 6.2, to report from time to time, on all or any of the matters set out in sub-clause 15.1.
- 15.5 Any report under sub-clause 15.4 be made –
- (a) in such form as may be agreed between the Authority, jointly with the holders of bulk entitlements listed in sub-clause 6.2, and the Resource Manager; and
  - (b) within such period of time as may be agreed between the Authority, jointly with the holders of bulk entitlements listed in sub-clause 6.2, and the Resource Manager.

**16. DATA**

- 16.1 The Minister will use the Minister’s best endeavours to ensure that all hydrological and other data required by the Authority to comply with this bulk entitlement are made available to the Authority.

- 16.2 The Authority must make available to any person data collected by or on behalf of the Authority for the purpose of clause 15, subject to the person paying any fair and reasonable access fee imposed by the Authority to cover the costs of making the data available to that person.

#### **PART 6 – COSTS**

### **17. RESOURCE MANAGER**

- 17.1 Subject to sub-clause 17.3, the Authority must pay the Resource Manager a fair and reasonable proportion of the costs incurred by the Resource Manager to –
- (a) prepare the Yarra Basin Water Accounts;
  - (b) report on whether entitlement holders in the Yarra Basin comply with the conditions of their bulk entitlements;
  - (c) report on disputes between entitlement holders in the Yarra Basin;
  - (d) report on significant unauthorised uses of water in the Yarra Basin; and
  - (e) co-ordinate the process for application and implementation of the qualification of any rights to water made by the Minister during periods of declared water shortage under s 13 or s 33 of the Act.
- 17.2 Subject to sub-clause 17.3, the proportion of the costs referred to in sub-clause 17.1 is to be determined by the Resource Manager.
- 17.3 Where the Resource Manager provides a regulated service for the purposes of s 4A of the **Water Industry Act 1994**, the charges to be paid by the Authority to the Resource Manager are to be determined by the Essential Services Commission in accordance with Part 1A of the **Water Industry Act 1994**.

#### **PART 7 – FURTHER WORK**

### **18. REVIEW OF THE BULK ENTITLEMENTS**

- 18.1 Within 24 months of the commencement of this Order, the Authority, jointly with the holders of bulk entitlements listed in sub-clause 6.2, and in consultation with the Storage Operator, other authorities and the Department, must propose to the Minister amendments to the bulk entitlements of the Authority and the holders of bulk entitlements listed in sub-clause 6.2 that would achieve a long-term supply-demand balance for the Melbourne supply system with the least economic, environmental and social costs.
- 18.2 The Minister may –
- (a) approve the proposal under sub-clause 18.1; or
  - (b) require the Authority, jointly with the holders of bulk entitlements listed in sub-clause 6.2, to amend the proposal.

### **19. MANAGEMENT PLANS**

- 19.1 The Authority will participate in good faith in developing Management Plans for the waterway, including negotiation of any changes to flow sharing arrangements.
- 19.2 The Authority must apply to the Minister to amend this Order under s 44 of the Act to implement the recommendations of a Management Plan approved by the Minister under s 32A of the Act.

Dated 25 October 2006

Responsible Minister  
JOHN THWAITES  
Minister for Water

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Note: An explanatory note that accompanies this Order is available from the Department.

**SCHEDULE 1 – SHARE OF RESOURCES**

<b>Bulk entitlement</b>	<b>Share of resources</b>
Bulk Entitlement (Yarra River – Melbourne Water for South East Water Limited) Conversion Order 2006	As determined by the bulk entitlement and other statutory and non-statutory instruments <sup>1</sup> .
Bulk Entitlement (Yarra River – Melbourne Water for City West Water Limited) Conversion Order 2006	As determined by the bulk entitlement and other statutory and non-statutory instruments <sup>1</sup> .
Bulk Entitlement (Yarra River – Melbourne Water for Yarra Valley Water Limited) Conversion Order 2006	As determined by the bulk entitlement and other statutory and non-statutory instruments <sup>1</sup> .
<b>Total</b>	<b>100% of the water available to the Yarra system</b>

**Notes:**

1. The instruments include –
  - (a) the Melbourne Drought Response Plans for the Melbourne retail authorities;
  - (b) Bulk entitlement (Yarra River – Western Water) Order 2006;
  - (c) Yarra River Environmental Entitlement 2006;
  - (d) the Yarra Drought Response Plan.

**SCHEDULE 2 – PRIMARY ENTITLEMENTS**

Bulk water entitlements held by other authorities as primary entitlements –

<b>Other authorities</b>	<b>Details of entitlement</b>
Western Region Water Authority	Towns supplied by Western Water under the Bulk Entitlement (Yarra River – Western Water) Order 2006.

**SCHEDULE 3 – WATER HARVESTING CAPACITY****Table 1** Reservoir and transfer capacities

<b>Reservoir</b>	<b>Reservoir capacity (ML)</b>	<b>Reservoir full supply level to Australian Height Datum (metres)</b>	<b>Transfer conduit</b>	<b>Transfer capacity (ML/day)</b>
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			Yarra Valley Conduit	910

**Table 2** Weirs and transfer capacities

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Starvation Creek weir	Starvation Creek Diversion Main	120
Big Flume Creek weir		

**Note 1:** The transfer capacity can be increased to 8 ML/day if the supply from the Maroondah Aqueduct is interrupted by an emergency.

**Table 3** Pumps

<b>Water source</b>	<b>Pump</b>	<b>Pump capacity (ML/day)</b>
Yarra River	Yering Gorge Pump Station	1,093
Maroondah Aqueduct	Maroondah Aqueduct Pump	250

**Water Act 1989**

**BULK ENTITLEMENT (YARRA RIVER – WESTERN WATER) ORDER 2006**

**PART 1 – INTRODUCTORY STATEMENTS**

1. Citation
2. Empowering Provisions
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**PART 2 – ENTITLEMENT**

5. Granting of a Bulk Entitlement
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8. Operating Arrangements
9. Taking Water
10. Transfer of Entitlement and Adjustment of Orders
11. Review of the Bulk Entitlement
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**PART 4 – COST SHARING ARRANGEMENTS**

13. Resource Manager
14. Headworks and Bulk Transfer System Costs

**PART 5 – DEMONSTRATING COMPLIANCE**

15. Metering Program
16. Reporting Requirements
17. Data

The Minister, under the provisions of the **Water Act 1989**, makes the following Order –

**PART 1 – INTRODUCTORY STATEMENTS**

**1. CITATION**

This Order may be cited as the Bulk Entitlement (Yarra River – Western Water) Order 2006.

**2. EMPOWERING PROVISIONS**

This Order is made under s 42 and s 43 of the **Water Act 1989**.

**3. COMMENCEMENT**

This Order comes into operation on the day it is published in the Government Gazette.

**4. DEFINITIONS**

In this Order –

“**Act**” means the **Water Act 1989**;

“**Authority**” means Western Region Water Authority trading as Western Water;

“**Basin Water Accounts**” means annual reports, required by the Minister, on compliance by entitlement holders and licensees, respectively, within the Yarra, Thomson, Bunyip/Tarago and Goulburn systems, with the terms of their bulk entitlements or licences;

“**bulk transfer system**” means Melbourne Water’s system of transfer pipes and balancing storages that transports water from the headworks to the interface points for the Authority and the Melbourne retail authorities;

“**Bulk Transfer System Operator**” means Melbourne Water in respect of its role to operate and maintain the bulk transfer system;

“**Department**” means the Department of Sustainability and Environment;

“**headworks system**” means the Upper Yarra, Maroondah, O’Shannassy, Sugarloaf, Silvan, Cardinia, Toorourrong, Yan Yean, and Greenvale Reservoirs and the associated weirs, tunnels, transfer conduits and other water supply works owned by Melbourne Water;

“**interface point**” means a point where asset ownership transfers from Melbourne Water to another Authority;

“**licence**” means any licence granted under Part 4 of the Act;

“**Melbourne retail authorities**” means any or all of –

- (a) Yarra Valley Water Limited, ABN 93 066 902 501;
- (b) South East Water Limited, ABN 89 066 902 547; and
- (c) City West Water Limited, ABN 70 066 902 467;

“**Melbourne supply system**” means the waterway, headworks and bulk transfer system works which supply water to the Melbourne retail authorities and primary entitlement holders;

“**Melbourne Water**” means Melbourne Water Corporation;

“**Minister**”, in relation to a provision, includes any person authorised by the Minister to act on the Minister’s behalf in relation to that provision, or to whom the Minister has delegated the relevant power, discretion, function, authority or duty under s 306 of the Act;

“**other Authority**” means an Authority other than the Authority, or any other person holding a bulk entitlement granted under Division 1 or 3 of Part 4 of the Act;

“**Resource Manager**” means a person appointed by the Minister under s 43A of the Act to do all or any of the tasks set out in sub-clause 13.1;

“**Storage Operator**” means a person appointed by the Minister under s 43A of the Act to operate the headworks system, or to manage or measure the flow into the headworks system or the waterway, or to do any combination of those things;

“**waterway**” means the Yarra River and its tributaries upstream of a point downstream of the confluence of the Yarra River and Plenty River including pools formed by and immediately upstream of Melbourne Water’s reservoirs and weirs in the Yarra Basin;

“**Yarra Basin**” means the area of land designated as Basin Number 29 in the South East Coast Division of the Australian Water Resources Council’s Australian Continental Drainage Divisions;

“**year**” means the 12 months commencing 1 July; and

“**Yering Pumps Gauging Station**” means the stream gauging station, number 229270B, located on the waterway.

#### PART 2 – ENTITLEMENT

##### 5. GRANTING OF A BULK ENTITLEMENT

All of the Authority’s entitlement to water from the bulk transfer system is granted to the Authority on the conditions set out in this Order.

##### 6. BULK ENTITLEMENT

Subject to clause 7, the Authority may take up to a total of 11,250 ML of water in any one year.

##### 7. RESTRICTION OF SUPPLY

7.1 If the Melbourne retail authorities’ customers are subject to water restrictions, the Authority must –

- (a) implement at least the same levels of restrictions for the Authority’s customers supplied under this Order as those imposed on the Melbourne retail authorities’ customers; or
- (b) reduce the maximum daily rate of taking water to a rate agreed by authority of the Melbourne retail authorities;

within seven days of either the Authority receiving notice from the Melbourne retail authorities or restrictions being imposed on the Melbourne retail authorities’ customers, whichever is later.

7.2 The Authority must inform the Storage Operator and the Bulk Transfer System Operator within 30 days of being informed by the Melbourne retail authorities of the form of restriction to be implemented under sub-clause 7.1.

#### PART 3 – GENERAL CONDITIONS AND PROVISIONS

##### 8. OPERATING ARRANGEMENTS

8.1 The Authority and the Bulk Transfer System Operator must endeavour to agree on operational arrangements for the supply of water under this entitlement.

8.2 If the Authority and the Bulk Transfer System Operator have not reached agreement under sub-clause 8.1 within twelve months of the date of this Order, either party may give written notice to the other party requiring the matter to be determined in accordance with clause 12.

##### 9. TAKING WATER

For the purpose of clause 6, the water taken by the Authority is the total volume of water taken at the Authority’s interface points.

**10. TRANSFER OF ENTITLEMENT AND ADJUSTMENT OF ORDERS**

- 10.1 Subject to s 46 of the Act and sub-clause 10.2 of this Order, this bulk entitlement may be transferred –
- (a) temporarily or permanently;
  - (b) in whole or in part;
  - (c) for any purpose, including an in-stream use of water.
- 10.2 The Minister may, on the application of the Authority, at any time, alter any provision of this Order to reflect trading of this or any other bulk entitlement by the Authority.
- 10.3 An application under sub-clause 10.2 must set out –
- (a) the objectives of, and reasons for, the proposed amendment;
  - (b) the results of an assessment of the likely effect of that amendment on the reliability of this and any other bulk entitlements.
- 10.4 The Minister may –
- (a) approve part or all of any application under sub-clause 10.2; or
  - (b) require the Authority to –
    - (i) provide further information; and
    - (ii) re-submit the application in a different form; or
  - (c) not approve the application.

**11. REVIEW OF THE BULK ENTITLEMENT**

- 11.1 The Authority, in consultation with other Authorities, the Storage Operator, the Bulk Transfer System Operator and the Department, may, at any time, propose to the Minister amendments to this bulk entitlement that would assist in achieving a long-term supply-demand balance for the Melbourne supply system with the least economic, environmental and social costs.
- 11.2 The Minister may –
- (a) approve the proposal under sub-clause 11.1;
  - (b) not approve the proposal; or
  - (c) require the Authority to amend the proposal.

**12. DISPUTE RESOLUTION**

- 12.1 If a difference or dispute arises between the Authority, the Minister, the other entitlement holders, the Storage Operator and the Resource Manager, or any of them (the “parties”), concerning the interpretation or application of this Order, a party may give written notice to another party requiring the matter to be determined by an independent expert.
- 12.2 The notice requiring that the matter be determined by independent expert may only be given 14 days after the matter has arisen. The independent expert may only commence to determine the matter a further 14 days after the giving of that notice.
- 12.3 The other entitlement holders, the Storage Operator and the Resource Manager will only be subject to the resolution procedure set out in this clause if they consent to the procedure.
- 12.4 The independent expert will be either –
- (a) a person agreed to by the parties to the difference or dispute; or
  - (b) if the parties cannot agree, a person nominated by the President of the Institute of Arbitrators, Australia.

- 12.5 The independent expert must reach a conclusion on the matter within 30 days of it being referred, but has power to extend the period for reaching a conclusion on the matter by a further 30 days.
- 12.6 The independent expert must send a copy of the conclusion and its supporting reasons to each party to the difference or dispute.
- 12.7 In any difference or dispute to which the Minister is a party –
- (a) the independent expert must express the conclusion as a recommendation; and
  - (b) the Minister must consider any recommendation made under paragraph (a) before deciding whether there are grounds for issuing a notice of contravention under s47 A of the Act.
- 12.8 In any difference or dispute to which the Minister is not a party, any conclusion by an independent expert is final and binding on the parties.
- 12.9 The Authority may request the Minister to determine the apportionment of the costs of and incidental to every reference, including the costs of the independent expert.

#### **PART 4 – COST SHARING ARRANGEMENTS**

### **13. RESOURCE MANAGER**

- 13.1 Subject to sub-clause 13.3, the Authority must pay the Resource Manager a fair and reasonable proportion of the costs incurred by the Resource Manager to –
- (a) prepare the Yarra Basin Water Accounts;
  - (b) report on whether entitlement holders in the Yarra Basin comply with the conditions of their bulk entitlements;
  - (c) report on disputes between entitlement holders in the Yarra Basin;
  - (d) report on significant unauthorised uses of water in the Yarra Basin; and
  - (e) co-ordinate the process for application and implementation of the qualification of any rights to water made by the Minister during periods of declared water shortage under s 13 or s 33 of the Act.
- 13.2 Subject to sub-clause 13.3, the proportion of the costs referred to in sub-clause 13.1 is to be determined by the Resource Manager.
- 13.3 Where the Resource Manager provides a regulated service for the purposes of s 4A of the **Water Industry Act 1994**, the charges to be paid by the Authority to the Resource Manager are to be determined by the Essential Services Commission in accordance with Part 1A of the **Water Industry Act 1994**.

### **14. HEADWORKS AND BULK TRANSFER SYSTEM COSTS**

- 14.1 The Authority must pay a share of the costs incurred by the Storage Operator and Bulk Transfer System Operator to operate, maintain and refurbish the headworks and bulk transfer systems.
- 14.2 The amount of the share of the cost under sub-clause 14.1 is determined by –
- (a) any price determination made by the Essential Services Commission in accordance with Part 1A of the **Water Industry Act 1994**; subject to
  - (b) any existing agreement between the Authority and the Storage Operator or Bulk Transfer System Operator, including an option to extend that agreement.

**PART 5 – DEMONSTRATING COMPLIANCE****15. METERING PROGRAM**

- 15.1 The Authority, in consultation with the Storage Operator, must propose to the Minister within 12 months of the commencement of this Order, a metering program to demonstrate the Authority's compliance with its bulk entitlement under this Order.
- 15.2 The Minister may –
- (a) approve a program proposed under sub-clause 15.1; or
  - (b) require the Authority to amend the proposed program; or
  - (c) not approve the proposed program.
- 15.3 The Minister may, at any time, require the Authority to –
- (a) review the program approved by the Minister if, in the Minister's opinion, it is, at any time, no longer appropriate; and
  - (b) propose an amended program to the Minister.
- 15.4 The Authority must, at its cost and in accordance with any guidelines issued from time to time by the Minister –
- (a) implement and maintain any metering program approved by the Minister; and
  - (b) maintain metering equipment and associated measurement structures in good condition; and
  - (c) ensure that metering equipment is periodically re-calibrated; and
  - (d) if rating curves are used to calculate flows, ensure that the curves are regularly checked and, if necessary, revised; and
  - (e) keep a record of all work undertaken under paragraphs (b), (c) and (d).

**16. REPORTING REQUIREMENTS**

- 16.1 The Minister may require the Authority to report on all or any of the following:
- (a) the daily amount of water taken under this entitlement at the Authority's interface points;
  - (b) the annual amount of water taken under this entitlement at each of the Authority's interface points;
  - (c) the approval, amendment and implementation of the metering program approved under sub-clause 15.2;
  - (d) any change made to the reliability of supply for this entitlement;
  - (e) any period of restriction and the degree of restriction on supply of the entitlement;
  - (f) any temporary or permanent transfer of all or part of this bulk entitlement;
  - (g) any bulk entitlement, licence or water right, temporarily or permanently transferred to the Authority in the Yarra Basin;
  - (h) any amendment to this bulk entitlement;
  - (i) any new bulk entitlement of water granted to the Authority from the headworks system;
  - (j) any failure by the Authority to comply with any provision of this bulk entitlement;
  - (k) any difficulties experienced or anticipated by the Authority in complying with this bulk entitlement and any remedial action taken or proposed.

- 
- 16.2 The Minister may require the Authority to report on all or any of the matters set out in sub-clause 16.1 –
- (a) in writing, or in such electronic form as may be agreed between the Authority and the Minister; and
  - (b) within 14 days of receiving the Minister’s written request or such longer period as the Minister may determine.
- 16.3 The Authority must, in its Annual Report, report on each of the matters referred to in sub-clause 16.1.
- 16.4 The Resource Manager may require the Authority to report from time to time, on all or any of the matters set out in sub-clause 16.1.
- 16.5 Any report under sub-clause 16.1 must be made –
- (a) in such form as may be agreed between the Melbourne retail authorities and the Resource Manager; and
  - (b) within such period of time as may be agreed between the Melbourne retail authorities and the Storage Operator.

**17. DATA**

- 17.1 Subject to sub-clause 15.4, the Minister will use the Minister’s best endeavours to ensure that all hydrological and other data required by the Authority to comply with this bulk entitlement are made available to the Authority.
- 17.2 The Authority must make available to any person data collected by or on behalf of the Authority for the purposes of clauses 15 or 16 subject to the person paying any fair and reasonable access fee imposed by the Authority to cover the costs of making the data available to that person.

Dated 25 October 2006

Responsible Minister  
JOHN THWAITES  
Minister for Water

Note: An explanatory note that accompanies this Order is available from the Department.

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**Water Act 1989****SILVER & WALLABY CREEKS ENVIRONMENTAL ENTITLEMENT 2006**

I, John Thwaites, Minister for Water, as Minister administering the **Water Act 1989**, make the following instrument –

**COMMENCEMENT**

1. This instrument comes into operation on the day it is published in the Government Gazette.

**EMPOWERING PROVISIONS**

2. This instrument is made under section 48B of the **Water Act 1989**.

**DEFINITIONS**

3. In this instrument –

“**Act**” means the **Water Act 1989**;

“**aqueduct**” means the aqueduct running from Hellhole Weir to the Jacks Creek via Wallaby Creek Weir;

“**authorities**” means the authorities holding bulk entitlements in the waterway granted under Division 1 or 3 of Part 4 of the Act;

“**Department**” means the Department of Sustainability and Environment;

“**environment Minister**” has the same meaning as in s 48A of the Act;

“**Flowerdale Gauging Station**” means the stream gauging station, number 405231 located on the King Parrot Creek at Hazeldene;

“**Goulburn Basin**” means the area of land designated as Basin Number 5 in the South East Coast Division of the Australian Water Resources Council’s Australian Continental Drainage Divisions;

“**headworks system**” means the works owned by Melbourne Water to harvest water from the waterway, including the Hellhole, Muddy, Silver Creek, Stony and Wallaby Creek weirs and the aqueduct;

“**licence**” means any licence granted under Part 4 of the Act;

“**management plan**” means a management plan prepared for an area of the waterway under s 32A of the Act;

“**Melbourne Water**” means Melbourne Water Corporation, in its capacity as Storage Operator appointed pursuant to s 43A of the Act;

“**Minister**” means the Minister administering the Water Act 1989, and in relation to a provision, includes any person authorised by the Minister to act on the Minister’s behalf in relation to that provision, or to whom the Minister has delegated the relevant power, discretion, function, authority or duty under s 306 of the Act;

“**Storage Management Rules**” means any rules from time to time adopted by Melbourne Water for the operation of the headworks system;

“**waterway**” means the Silver Creek and Wallaby Creek and their tributaries in the Goulburn Basin including pools formed by and immediately upstream of Melbourne Water’s weirs; and

“**year**” means the 12 months commencing 1 July.

**QUANTIFYING THE ENTITLEMENT**

4. The environment Minister is entitled to the water in the waterway that is specified in –
  - (a) Schedule 1 to this Instrument;or, on approval of the Management Plan by the Minister under s 32A of the Act –
  - (b) Schedule 2 to this Instrument.

**WATER ACCOUNTING PROCEDURES****Data**

5. The Minister will use the Minister's best endeavours to ensure that all hydrological and other data required by the environment Minister to comply with this entitlement are made available to the environment Minister.
6. The environment Minister must make available to any person data collected by or on behalf of the environment Minister for the purpose of clause 5 subject to the person paying any fair and reasonable access fee imposed by the environment Minister to cover the costs of making the data available to that person.

**OPERATION AND MANAGEMENT CONDITIONS****Operating Arrangements**

7. Within twelve months of the commencement of this instrument, the environment Minister must consult with Melbourne Water and the authorities to develop and propose to the Minister, agreed –
  - (a) operational arrangements for water released from the headworks system under this entitlement; and
  - (b) arrangements for reporting under clause 23.
8. The Minister may –
  - (a) approve a proposal made under sub-clause 7; or
  - (b) require the environment Minister to amend the proposal; or
  - (c) not approve the proposal.
9. The Minister may, at any time, require the environment Minister to –
  - (a) review all or part of any proposal approved by the Minister if, in the Minister's opinion, it is, at any time, no longer fair, reasonable or representative; and
  - (b) make an amended proposal to the Minister.
10. The environment Minister must obtain the agreement of Melbourne Water and the authorities for any amendments proposed under sub-clause 9.
11. Where the introduction of environmental flows in clause 4 requires a change in operational practices by Melbourne Water or to Melbourne Water's assets, Melbourne Water must implement these changes within three months of the date the environmental flows would otherwise first apply, or other period as agreed by the Minister.

**Releases**

12. Melbourne Water must release water from the headworks system as required to maintain the flows specified in Schedules 1 and 2 at –
  - (a) the offtake points, rates and times specified in Schedules 1 and 2 and within the tolerances set out in the Operating Agreement; or
  - (b) subject to the Storage Management Rules, such other offtake points, rates, times and tolerances as are, at the request of the environment Minister, agreed to in writing by Melbourne Water after taking the interests of the authorities into account.

**Payments in relation to services provided in relation to this entitlement**

13. The environment Minister is not required to make any payment to any person in relation to services provided by that person in relation to this entitlement.

**Dispute Resolution**

14. If a difference or dispute arises between the environment Minister, the Minister, the authorities and Melbourne Water, or any of them (the "parties"), concerning the interpretation or application of this instrument, a party may give written notice to another party requiring the matter to be determined by an independent expert.

15. The notice requiring that the matter be determined by independent expert may only be given 14 days after the matter has arisen. The independent expert may only commence to determine the matter a further 14 days after the giving of that notice.
16. The authorities and Melbourne Water will only be subject to the resolution procedure set out in this clause if they consent to the procedure.
17. The independent expert will be either –
  - (a) a person agreed to by the parties to the difference or dispute; or
  - (b) if the parties cannot agree, a person nominated by the President of the Institute of Arbitrators, Australia.
18. The independent expert must reach a conclusion on the matter within 30 days of it being referred, but has power to extend the period for reaching a conclusion on the matter by a further 30 days.
19. The independent expert must send a copy of the conclusion and its supporting reasons to each party to the difference or dispute.
20. In any difference or dispute to which the Minister is a party –
  - (a) the independent expert must express the conclusion as a recommendation; and
  - (b) the Minister must consider any recommendation made under paragraph (a) before deciding whether there are grounds for giving a direction pursuant to s 48J(2) of the Act.
21. In any difference or dispute to which the Minister is not a party, any conclusion by an independent expert is final and binding on the parties.
22. The environment Minister may request the Minister to determine the apportionment of the costs of and incidental to every reference, including the costs of the independent expert.

**Reporting Requirements**

23. The Minister may require the environment Minister to report on all or any of the following:
  - (a) the daily environmental flows under this entitlement at each of the offtake points;
  - (b) the annual volume of environmental flows under this entitlement at each of the offtake points;
  - (c) any bulk entitlement, licence or water right, temporarily or permanently transferred to the environment Minister;
  - (d) any amendment to this instrument;
  - (e) any new environmental entitlement allocated to the environment Minister in respect of the headworks system;
  - (f) any failure by the environment Minister to comply with any provision of this instrument; and
  - (g) any existing or anticipated difficulties experienced by the environment Minister in complying with this instrument and any remedial action taken or proposed.
24. The Minister may require the environment Minister to report on all or any of the matters set out in sub-clause 23 –
  - (a) in writing, or in such electronic form as may be agreed between the environment Minister and the Minister; and
  - (b) within 14 days of receiving the Minister's written request or such longer period as the Minister may determine.

Dated 25 October 2006

Responsible Minister –  
JOHN THWAITES  
Minister for Water

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Note: An explanatory note that accompanies this instrument is available from the Department.

**SCHEDULE 1 - CURRENT ENVIRONMENTAL FLOWS**

The water for environmental flows specified in this schedule applies in the absence of an approved Management Plan for King Parrot Creek.

The water for environmental flows is determined as follows –

1. The locations on the waterway at which environmental flows must be passed are described in Table 1.

**Table 1** Locations

<b>Location</b>	<b>Description</b>
Silver Creek	Silver Creek, at the most upstream point at which flows in the Hellhole, Muddy, Silver and Stony Creeks combine
Wallaby Creek	Below Wallaby Creek weir

2. The water to be released as environmental flows at the locations in Table 1 is described in Tables 2 and 3.

**Table 2** Environmental flows for Silver Creek

<b>Combined inflow to the Hellhole, Muddy, Silver and Stony Creek weirs (ML/day)</b>	<b>Environmental flow (ML/day)</b>
0 to 0.5	nil
0.5 to 1.0	Inflow – 0.5
1.0 to 4.0	50% of inflow
greater than 4.0	1.0

**Table 3** Environmental flows for Wallaby Creek

<b>Inflow to Wallaby Creek weir (ML/day)</b>	<b>Environmental flow (ML/day)</b>
0 to 0.5	nil
0.5 to 1.0	Inflow – 0.5
1.0 to 2.0	50% of inflow
greater than 2.0	1.0

**SCHEDULE 2 – PROPOSED ENVIRONMENTAL FLOWS**

The environmental flows in this Schedule are based on the results of negotiations between Goulburn Murray Water, Melbourne Water and the Department in relation to the preparation of a Management Plan for King Parrot Creek.

The water for environmental flows is determined as follows –

1. The locations on the waterway at which environmental flows must be passed are described in Table 1.

**Table 1** Locations

<b>Location</b>	<b>Description</b>
Silver Creek	Silver Creek, at the most upstream point at which flows in the Hellhole, Muddy, Silver and Stony Creeks combine
Wallaby Creek	Below Wallaby Creek weir

2. The water to be released as environmental flows at the locations in Table 1 is conditional on the time of year and the flow passing the Flowerdale Gauging Station as described in Table 2.

**Table 2** Flowerdale Gauging Station

<b>Season</b>	<b>Flow at Flowerdale Gauging Station (ML/day)</b>	<b>Environmental flow</b>
1 December to 31 May	greater than or equal to 12	refer to Tables 3 & 4
	less than 12	refer to Table 5
1 June to 30 November	greater than or equal to 20	refer to Tables 3 & 4
	less than 20	refer to Table 5

3. Subject to the time of year and the flow passing the Flowerdale Gauging Station as described in Table 2, the water to be released as environmental flows at the locations in Table 1 is described in Tables 3, 4 and 5.

**Table 3** Environmental flows for Silver Creek

<b>Combined inflow to the Hellhole, Muddy, Silver and Stony Creek weirs (ML/day)</b>	<b>Environmental flow (ML/day)</b>
0 to 0.5	nil
0.5 to 1.0	Inflow – 0.5
1.0 to 4.0	50% of inflow
greater than 4.0	1.0

**Table 4** Environmental flows for Wallaby Creek

<b>Inflow to Wallaby Creek weir (ML/day)</b>	<b>Environmental flow (ML/day)</b>
0 to 0.5	nil
0.5 to 1.0	Inflow – 0.5
1.0 to 2.0	50% of inflow
greater than 2.0	1.0

**Table 5** Combined environmental flow for Silver and Wallaby Creeks

<b>Combined inflow to the Hellhole, Muddy, Silver, Stony, and Wallaby Creeks weirs (ML/day)</b>	<b>Environmental flow (ML/day)</b>
All flows	All flow entering the headworks less 1 ML/day <sup>1</sup> . The environmental flow is expected to be released at the Wallaby Weir subject to the minimum environmental flows being met at the locations described in Tables 3 and 4.

Note –

1. This flow is required by Melbourne Water in the aqueduct in order to prevent damage to the aqueduct lining by drying.

**Water Act 1989**

**BULK ENTITLEMENT (SILVER & WALLABY CREEKS – MELBOURNE WATER  
FOR CITY WEST WATER LIMITED) CONVERSION ORDER 2006**

**PART 1 – INTRODUCTORY STATEMENTS**

1. Citation
2. Empowering Provisions
3. Commencement
4. Definitions

**PART 2 – ENTITLEMENT**

5. Conversion to a Bulk Entitlement
6. Bulk Entitlement
7. Share of Flow

**PART 3 – AVAILABLE WATER RESOURCES**

8. Diversion Limit

**PART 4 – GENERAL CONDITIONS AND PROVISIONS**

9. Management Agreement
10. Management Rules
11. Transfer of Entitlement and Adjustment of Schedules
12. Dispute Resolution

**PART 5 – DEMONSTRATING COMPLIANCE**

13. Reporting Requirements
14. Data

**PART 6 – COSTS**

15. Resource Manager

**PART 7 – FURTHER WORK**

16. Review of the Bulk Entitlements
17. Management Plan

**SCHEDULE 1 – SHARE OF RESOURCES**

**SCHEDULE 2 – WATER HARVESTING CAPACITY**

The Minister, under the provisions of the **Water Act 1989**, makes the following Order –

**PART 1 – INTRODUCTORY STATEMENTS**

**1. CITATION**

This Order may be cited as the Bulk Entitlement (Silver & Wallaby Creeks – Melbourne Water for City West Water Limited) Conversion Order 2006.

**2. EMPOWERING PROVISIONS**

This Order is made under s 43 and s 47 of the **Water Act 1989**.

**3. COMMENCEMENT**

This Order comes into operation on the day it is published in the Government Gazette.

**4. DEFINITIONS**

In this Order –

“**Act**” means the **Water Act 1989**;

“**Agreement**” means the Murray–Darling Basin Agreement as contained in Schedule 1 of the **Murray–Darling Basin Act 1993**;

“**Authority**” means Melbourne Water Corporation;

“**aqueduct**” means the aqueduct running from Hellhole Weir to the Jacks Creek via Wallaby Creek Weir;

“**bulk transfer system**” means the system of transfer pipes and balancing storages that transports water from the headworks to the Melbourne retail authorities’ supply points;

“**Bulk Transfer System Operator**” means the person who operates and maintains the bulk transfer system;

“**City West Water**” means City West Water Limited, ABN 70 066 902 467;

“**Department**” means the Department of Sustainability and Environment;

“**diversion limit**” means an upper limit on the amount of water that can be taken from the waterway as described in clause 8;

“**environmental flow**” means an amount of flow referred to in the Silver & Wallaby Creeks Environmental Entitlement 2006 which the Storage Operator is obliged to pass at nominated points in the waterway;

“**Goulburn Basin**” means the area of land designated as Basin Number 5 in the South East Coast Division of the Australian Water Resources Council’s Australian Continental Drainage Divisions;

“**Goulburn Basin Water Accounts**” means an annual report, required by the Minister, on compliance by entitlement holders and licensees, respectively, within the Goulburn Basin, with the terms of their bulk entitlements or licences;

“**MDB cap**” means the annual volume of water determined each year in accordance with Victoria’s compliance with the Murray Darling Basin cap under the Agreement;

“**headworks system**” means the works owned by Melbourne Water to harvest water from Silver and Wallaby Creeks, including the Hellhole, Muddy, Silver Creek, Stony and Wallaby Creek weirs and the aqueduct;

“**licence**” means any licence granted under Part 4 of the Act;

“**Management Agreement**” means the agreement referred to in clause 9.

“**Management Plan**” means a management plan prepared for an area of the waterway under s 32A of the Act;

“**Management Rules**” means the agreement referred to in clause 10.

“**Melbourne retail authorities**” means any or all of ”

- (a) Yarra Valley Water;
- (b) South East Water; and
- (c) City West Water;

“**Melbourne supply system**” means the waterways, headworks and bulk transfer system works which supply water to the Melbourne retail authorities and Western Water and includes water harvested for Melbourne from the Yarra, Thomson and Goulburn Basins;

“**Melbourne Water**” means Melbourne Water Corporation;

“**Minister**”, in relation to a provision, includes any person authorised by the Minister to act on the Minister’s behalf in relation to that provision, or to whom the Minister has delegated the relevant power, discretion, function, authority or duty under s 306 of the Act;

“**other authority**” means an authority other than the Authority, or any other person holding a bulk entitlement granted under Division 1 or 3 of Part 4 of the Act in the Yarra Basin;

“**Resource Manager**” means a person appointed by the Minister under s 43A of the Act to do all or any of the tasks set out in sub-clause 15.1;

“**South East Water**” means South East Water Limited, ABN 89 066 902 547;

“**Storage Management Rules**” means any rules from time to time adopted for the operation of the headworks system, pursuant to the instrument appointing the Storage Operator;

“**Storage Operator**” means a person appointed by the Minister under s 43A of the Act to operate the headworks system, or to manage or measure the flow into the headworks system or the waterway, or to do any combination of those things;

“**Thomson Basin**” means the area of land designated as Basin Number 25 in the South East Coast Division of the Australian Water Resources Council’s Australian Continental Drainage Divisions;

“**waterway**” means the Silver Creek and Wallaby Creek and their tributaries in the Goulburn Basin including pools formed by and immediately upstream of Melbourne Water’s weirs;

“**Western Water**” means the Western Water Regional Urban Water Authority;

“**Yarra Basin**” means the area of land designated as Basin Number 29 in the South East Coast Division of the Australian Water Resources Council’s Australian Continental Drainage Divisions;

“**Yarra Valley Water**” means Yarra Valley Water Limited, ABN 93 066 902 501; and

“**year**” means the 12 months commencing 1 July.

## PART 2 – ENTITLEMENT

### 5. CONVERSION TO A BULK ENTITLEMENT

Only that part of the Authority’s entitlement to water from the waterway to supply City West Water’s retail customers is converted to a bulk entitlement on the conditions set out in this Order.

### 6. BULK ENTITLEMENT

- 6.1 The Authority may take from the waterway, for the purpose of supplying entitlements, its share of the water resources available under the diversion limit.
- 6.2 The Authority’s share, together with shares allocated under –
  - (a) Bulk Entitlement (Silver & Wallaby Creeks – Melbourne Water for Yarra Valley Water Limited) Conversion Order 2006; and

- (b) Bulk Entitlement (Silver & Wallaby Creeks - Melbourne Water for South East Water Limited) Conversion Order 2006;  
as described in Schedule 1, make up 100% of the water allocated to the Melbourne supply system from the waterway.

**7. SHARE OF FLOW**

- 7.1 Subject to clause 8, and after the Storage Operator has released water required to meet the environmental flows, the Authority, jointly with the holders of bulk entitlements listed in sub-clause 6.2, may –
  - (a) store all the inflow to the weirs in the headworks system; and
  - (b) take the inflow via the aqueduct;
 at the locations and rates listed in Schedule 2 and at other existing inflow points to the transfer aqueduct, subject to the Storage Management Rules.
- 7.2 The Authority must not take, as part of this bulk entitlement, any flow of water in the waterways which is being transferred by the holder of any other bulk entitlement or licence.

**PART 3 – AVAILABLE WATER RESOURCES**

**8. DIVERSION LIMIT**

- 8.1 The amount of water taken in any year by the Authority, jointly with the holders of bulk entitlements listed in sub-clause 6.2, must not exceed 66,000 ML in any 3 year period from the waterway, subject to the total amount taken from the Melbourne supply system not exceeding a long term average amount estimated at the date of this Order to be 555,000 ML.
- 8.2 The Authority, jointly with the holders of bulk entitlements listed in sub-clause 6.2, and in consultation with the Storage Operator and Goulburn-Murray Water, must propose to the Minister within twelve months of the commencement of this Order, the method it will use to show its compliance with;
  - (a) sub-clause 8.1; and
  - (b) the MDB cap.
- 8.3 The method proposed in sub-clause 8.2(a) must include -
  - (a) the locations where water use is to be measured for the purpose of showing compliance with the diversion limit;
  - (b) an agreed base-line hydrologic model of the Melbourne water supply system;
  - (c) an annual diversion limit target which varies with climate and is determined by hydrologic modelling;
  - (d) continuous accounting of the difference between the diversion limit target and the recorded total use;
  - (e) the process to determine compliance with the diversion limit target; and
  - (f) provisions to ensure that water use does not exceed the diversion limit; unless another method is approved by the Minister.
- 8.4 The Minister may –
  - (a) approve the proposal under sub-clause 8.2; or
  - (b) require the Authority to amend the proposal; or
  - (c) require the Authority to –
    - (i) review the method approved by the Minister if, in the Minister's opinion, it is, at any time, no longer appropriate; and
    - (ii) propose an amended method.

**PART 4 – GENERAL CONDITIONS AND PROVISIONS****9. MANAGEMENT AGREEMENT**

The Authority, jointly with the holders of bulk entitlements listed in sub-clause 6.2, within three months of the commencement of this Order, establish agreed arrangements for collaborative management of this bulk entitlement between themselves and –

- (a) other authorities;
- (b) the Storage Operator; and
- (c) the Bulk Transfer System Operator.

**10. MANAGEMENT RULES**

10.1 The Authority, jointly with the other holders of bulk entitlements listed in sub-clause 6.2, may establish rules for managing the Melbourne retail authorities' bulk entitlements.

10.2 The rules established in sub-clause 10.1 –

- (a) must be prepared –
  - (i) with the objective of achieving least community cost;
  - (ii) in accordance with management arrangements established under clause 10; and
  - (iii) in consultation with other authorities whose bulk entitlements are likely to be affected by the rules; and
- (b) may address any matters with the potential to affect this bulk entitlement or the bulk entitlements of other authorities, including –
  - (i) water quality in the headworks system;
  - (ii) the impacts of drought on Melbourne's water supply; and
  - (iii) emergency situations.

10.3 The Authority, jointly with the holders of bulk entitlements listed in sub-clause 6.2, and after consulting with the persons described in paragraphs (ii) and (iii) of sub-clause 10.2(a), may vary the management rules from time to time.

**11. TRANSFER OF ENTITLEMENT AND ADJUSTMENT OF SCHEDULES**

11.1 Subject to s 46 of the Act and sub-clause 11.2 of this Order, and with the agreement of the holders of bulk entitlements listed in sub-clause 6.2, this bulk entitlement may be transferred –

- (a) temporarily or permanently;
- (b) in whole or in part;
- (c) for any purpose, including an in-stream use of water.

11.2 The Minister may, on the application of the Authority jointly with the holders of bulk entitlements listed in sub-clause 6.2, at any time, alter any provision of this Order to reflect trading of this or any other bulk entitlement by the Authority jointly with the holders of bulk entitlements listed in sub-clause 6.2.

11.3 An application under sub-clause 11.2 must set out –

- (a) the objectives of, and reasons for the proposed amendment;
- (b) the results of an assessment of the likely effect of that amendment on both the security of primary entitlements and the environment.

11.4 The Minister may –

- (a) approve part or all of any application under sub-clause 11.2; or
- (b) require the Authority to –
  - (i) provide further information; and
  - (ii) re-submit the application in a different form; or
- (c) not approve the application.

**12. DISPUTE RESOLUTION**

- 12.1 If a difference or dispute arises between the Authority, the Minister, the other entitlement holders, the Storage Operator and the Resource Manager, or any of them (the “parties”), concerning the interpretation or application of this Order, a party may give written notice to another party requiring the matter to be determined by an independent expert.
- 12.2 The notice requiring that the matter be determined by independent expert may only be given 14 days after the matter has arisen. The independent expert may only commence to determine the matter a further 14 days after the giving of that notice.
- 12.3 The other entitlement holders, the Storage Operator and the Resource Manager will only be subject to the resolution procedure set out in this clause if they consent to the procedure.
- 12.4 The independent expert will be either –
- (a) a person agreed to by the parties to the difference or dispute; or
  - (b) if the parties cannot agree, a person nominated by the President of the Institute of Arbitrators, Australia.
- 12.5 The independent expert must reach a conclusion on the matter within 30 days of it being referred, but has power to extend the period for reaching a conclusion on the matter by a further 30 days.
- 12.6 The independent expert must send a copy of the conclusion and its supporting reasons to each party to the difference or dispute.
- 12.7 In any difference or dispute to which the Minister is a party –
- (a) the independent expert must express the conclusion as a recommendation; and
  - (b) the Minister must consider any recommendation made under paragraph (a) before deciding whether there are grounds for issuing a notice of contravention under s47 A of the Act.
- 12.8 In any difference or dispute to which the Minister is not a party, any conclusion by an independent expert is final and binding on the parties.
- 12.9 The Authority may request the Minister to determine the apportionment of the costs of and incidental to every reference, including the costs of the independent expert.

**PART 5 – DEMONSTRATING COMPLIANCE****13. REPORTING REQUIREMENTS**

- 13.1 The Minister may require the Authority, jointly with the other Melbourne retail authorities, to report on all or any of the following –
- (a) the status of this bulk entitlement to water in the headworks system including the amount of water taken by the Authority, jointly with the other Melbourne retail authorities, from the waterways;
  - (b) compliance with the diversion limit;
  - (c) any temporary or permanent transfer of all or part of this bulk entitlement;
  - (d) any temporary or permanent transfer of a bulk entitlement or other entitlement under the Act to the Authority, or to the Authority jointly with the other Melbourne retail authorities, which does or may alter the flow of water in the waterway;
  - (e) any amendment to this bulk entitlement;

- (f) any new bulk entitlement granted to the Authority, or to the Authority jointly with the other Melbourne retail authorities;
  - (g) any failures either by the Authority or those that are joint with the other Melbourne retail authorities, to comply with any provision of this bulk entitlement; and
  - (h) any difficulties experienced or anticipated either by the Authority or those that are joint with the other Melbourne retail authorities, in complying with this bulk entitlement and any remedial action taken or proposed.
- 13.2 The Minister may require the Authority, jointly with the other Melbourne retail authorities, to report on all or any of the matters set out in sub-clause 13.1 –
- (a) in writing, or in such electronic form as may be agreed between the Authority and the Minister; and
  - (b) within 14 days of receiving the Minister’s written request or such longer period as the Minister may determine.
- 13.3 The Authority must, in its Annual Report, report on each of the matters referred to in sub-clause 13.1.
- 13.4 The Resource Manager may require the Authority, jointly with the other Melbourne retail authorities, to report from time to time, on all or any of the matters set out in sub-clause 13.1.
- 13.5 Any report under sub-clause 13.4 must be made –
- (a) in such form as may be agreed between the Melbourne retail authorities and the Resource Manager; and
  - (b) within such period of time as may be agreed between the Melbourne retail authorities and the Storage Operator.

#### 14. DATA

- 14.1 The Minister will use the Minister’s best endeavours to ensure that all hydrological and other data required by the Authority, to comply with this bulk entitlement are made available to the Authority.
- 14.2 The Authority must make available to any person data collected by or on behalf of the Authority for the purpose of clause 13, subject to the person paying any fair and reasonable access fee imposed by the Authority to cover the costs of making the data available to that person.

#### PART 6 – COSTS

#### 15. RESOURCE MANAGER

- 15.1 Subject to sub-clause 15.3, the Authority must pay the Resource Manager a fair and reasonable proportion of the costs incurred by the Resource Manager to –
- (a) prepare the Goulburn Basin Water Accounts;
  - (b) report on whether entitlement holders in the Goulburn Basin comply with the conditions of their bulk entitlements;
  - (c) report on disputes between entitlement holders in the Goulburn Basin;
  - (d) report on significant unauthorised uses of water in the Goulburn Basin; and
  - (e) co-ordinate the process for application and implementation of the qualification of any rights to water made by the Minister during periods of declared water shortage under s 13 or s 33 of the Act.

- 15.2 Subject to sub-clause 15.3, the proportion of the costs referred to in sub-clause 15.1 is to be determined by the Resource Manager.
- 15.3 Where the Resource Manager provides a regulated service for the purposes of s 4A of the **Water Industry Act 1994**, the charges to be paid by the Authority to the Resource Manager are to be determined by the Essential Services Commission in accordance with Part 1A of the **Water Industry Act 1994**.

**PART 7 – FURTHER WORK**

**16. REVIEW OF THE BULK ENTITLEMENTS**

- 16.1 Within 24 months of the commencement of this Order, the Authority, jointly with the other holders of bulk entitlements listed in sub-clause 6.2, and in consultation with the Storage Operator and the Department, must propose to the Minister amendments to the Melbourne bulk entitlements that –
- (a) would achieve a long-term supply-demand balance for the Melbourne supply system with the least economic, environmental and social costs; and
  - (b) adjust the capacity of the Wallaby Creek weir channel shown in Schedule 2 following a review of its practical operating capacity.
- 16.2 The Minister may –
- (a) approve the proposal under sub-clause 16.1; or
  - (b) require the Melbourne retail authorities to amend the proposal.

**17. MANAGEMENT PLAN**

- 17.1 The Authority will participate in good faith in developing a Management Plan for King Parrot Creek including negotiation of any changes to flow sharing arrangements.
- 17.2 The Authority must apply to the Minister to amend this Order under s 44 of the Act to implement the recommendations of a Management Plan approved by the Minister under s 32A of the Act.

Dated 25 October 2006

Responsible Minister  
JOHN THWAITES  
Minister for Water

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Note: An explanatory note that accompanies this Order is available from the Department.

**SCHEDULE 1 – SHARE OF RESOURCES**

<b>Bulk entitlement</b>	<b>Share of resources</b>
Bulk Entitlement (Silver & Wallaby Creeks – Melbourne Water for South East Water Limited) Conversion Order 2006	As determined by this entitlement and other statutory and non-statutory instruments <sup>1</sup> .
Bulk Entitlement (Silver & Wallaby Creeks – Melbourne Water for Yarra Valley Water Limited) Conversion Order 2006	As determined by this entitlement and other statutory and non-statutory instruments <sup>1</sup> .
Bulk Entitlement (Silver & Wallaby Creeks – Melbourne Water for City West Water Limited) Conversion Order 2006	As determined by this entitlement and other statutory and non-statutory instruments <sup>1</sup> .
<b>Total</b>	<b>100% of the water available to the Silver &amp; Wallaby Creeks headworks system</b>

Notes:

1. The instruments include –
  - (a) the Melbourne Drought Response Plans for the Melbourne retail authorities;
  - (b) Silver & Wallaby Creeks Environmental Entitlement 2006; and
  - (c) the Authority's Statement of Obligations.

**SCHEDULE 2 – WATER HARVESTING CAPACITY****Table 1** Weirs and transfer capacities

<b>Weir</b>	<b>Transfer conduit</b>	<b>Transfer capacity (ML/day)</b>	<b>Transfer capacity (ML/month)</b>
Hellhole weir	Aqueduct	60	NA
Muddy weir	Aqueduct	60	NA
Silver Creek weir	Aqueduct	60	NA
Stony weir	Aqueduct	60	NA
Wallaby Creek weir	Aqueduct	180	2,400

Note: NA means 'not applicable'

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**Water Act 1989**

**BULK ENTITLEMENT (SILVER & WALLABY CREEKS - MELBOURNE WATER FOR  
SOUTH EAST WATER LIMITED) CONVERSION ORDER 2006**

**PART 1 – INTRODUCTORY STATEMENTS**

1. Citation
2. Empowering Provisions
3. Commencement
4. Definitions

**PART 2 – ENTITLEMENT**

5. Conversion to a Bulk Entitlement
6. Bulk Entitlement
7. Share of Flow

**PART 3 – AVAILABLE WATER RESOURCES**

8. Diversion Limit

**PART 4 – GENERAL CONDITIONS AND PROVISIONS**

9. Management Agreement
10. Management Rules
11. Transfer of Entitlement and Adjustment of Schedules
12. Dispute Resolution

**PART 5 – DEMONSTRATING COMPLIANCE**

13. Reporting Requirements
14. Data

**PART 6 – COSTS**

15. Resource Manager

**PART 7 – FURTHER WORK**

16. Review of the Bulk Entitlements
17. Management Plan

**SCHEDULE 1 – SHARE OF RESOURCES**

**SCHEDULE 2 – WATER HARVESTING CAPACITY**

The Minister, under the provisions of the **Water Act 1989**, makes the following Order –

**PART 1 – INTRODUCTORY STATEMENTS**

**1. CITATION**

This Order may be cited as the Bulk Entitlement (Silver & Wallaby Creeks – Melbourne Water for South East Water Limited) Conversion Order 2006.

**2. EMPOWERING PROVISIONS**

This Order is made under s 43 and s 47 of the **Water Act 1989**.

**3. COMMENCEMENT**

This Order comes into operation on the day it is published in the Government Gazette.

**4. DEFINITIONS**

In this Order –

“**Act**” means the **Water Act 1989**;

“**Agreement**” means the Murray–Darling Basin Agreement as contained in Schedule 1 of the **Murray–Darling Basin Act 1993**;

“**Authority**” means Melbourne Water Corporation;

“**aqueduct**” means the aqueduct running from Hellhole Weir to the Jacks Creek via Wallaby Creek Weir;

“**bulk transfer system**” means the system of transfer pipes and balancing storages that transports water from the headworks to the Melbourne retail authorities’ supply points;

“**Bulk Transfer System Operator**” means the person who operates and maintains the bulk transfer system;

“**City West Water**” means City West Water Limited, ABN 70 066 902 467;

“**Department**” means the Department of Sustainability and Environment;

“**diversion limit**” means an upper limit on the amount of water that can be taken from the waterway as described in clause 8;

“**environmental flow**” means an amount of flow referred to in the Silver & Wallaby Creeks Environmental Entitlement 2006 which the Storage Operator is obliged to pass at nominated points in the waterway;

“**Goulburn Basin**” means the area of land designated as Basin Number 5 in the South East Coast Division of the Australian Water Resources Council’s Australian Continental Drainage Divisions;

“**Goulburn Basin Water Accounts**” means an annual report, required by the Minister, on compliance by entitlement holders and licensees, respectively, within the Goulburn Basin, with the terms of their bulk entitlements or licences;

“**MDB cap**” means the annual volume of water determined each year in accordance with Victoria’s compliance with the Murray Darling Basin cap under the Agreement;

“**headworks system**” means the works owned by Melbourne Water to harvest water from Silver and Wallaby Creeks, including the Hellhole, Muddy, Silver Creek, Stony and Wallaby Creek weirs and the aqueduct;

“**licence**” means any licence granted under Part 4 of the Act;

“**Management Agreement**” means the agreement referred to in clause 9;

“**Management Plan**” means a management plan prepared for an area of the waterway under s 32A of the Act;

“**Management Rules**” means the agreement referred to in clause 10;

“**Melbourne retail authorities**” means any or all of –

- (a) Yarra Valley Water;
- (b) South East Water; and
- (c) City West Water;

“**Melbourne supply system**” means the waterways, headworks and bulk transfer system works which supply water to the Melbourne retail authorities and Western Water and includes water harvested for Melbourne from the Yarra, Thomson and Goulburn Basins;

“**Melbourne Water**” means Melbourne Water Corporation;

“**Minister**”, in relation to a provision, includes any person authorised by the Minister to act on the Minister’s behalf in relation to that provision, or to whom the Minister has delegated the relevant power, discretion, function, authority or duty under s 306 of the Act;

“**other authority**” means an authority other than the Authority, or any other person holding a bulk entitlement granted under Division 1 or 3 of Part 4 of the Act in the Yarra Basin;

“**Resource Manager**” means a person appointed by the Minister under s 43A of the Act to do all or any of the tasks set out in sub-clause 15.1;

“**South East Water**” means South East Water Limited, ABN 89 066 902 547;

“**Storage Management Rules**” means any rules from time to time adopted for the operation of the headworks system, pursuant to the instrument appointing the Storage Operator;

“**Storage Operator**” means a person appointed by the Minister under s 43A of the Act to operate the headworks system, or to manage or measure the flow into the headworks system or the waterway, or to do any combination of those things;

“**Thomson Basin**” means the area of land designated as Basin Number 25 in the South East Coast Division of the Australian Water Resources Council’s Australian Continental Drainage Divisions;

“**waterway**” means the Silver Creek and Wallaby Creek and their tributaries in the Goulburn Basin including pools formed by and immediately upstream of Melbourne Water’s weirs;

“**Western Water**” means the Western Water Regional Urban Water Authority;

“**Yarra Basin**” means the area of land designated as Basin Number 29 in the South East Coast Division of the Australian Water Resources Council’s Australian Continental Drainage Divisions;

“**Yarra Valley Water**” means Yarra Valley Water Limited, ABN 93 066 902 501; and

“**year**” means the 12 months commencing 1 July.

## PART 2 – ENTITLEMENT

### 5. CONVERSION TO A BULK ENTITLEMENT

Only that part of the Authority’s entitlement to water from the waterway to supply South East Water’s retail customers is converted to a bulk entitlement on the conditions set out in this Order.

### 6. BULK ENTITLEMENT

6.1 The Authority may take from the waterway, for the purpose of supplying entitlements, its share of the water resources available under the diversion limit.

- 6.2 The Authority's share, together with shares allocated under –
- (a) Bulk Entitlement (Silver & Wallaby Creeks – Melbourne Water for Yarra Valley Water Limited) Conversion Order 2006; and
  - (b) Bulk Entitlement (Silver & Wallaby Creeks – Melbourne Water for City West Water Limited) Conversion Order 2006;
- as described in Schedule 1, make up 100% of the water allocated to the Melbourne supply system from the waterway.

**7. SHARE OF FLOW**

- 7.1 Subject to clause 8, and after the Storage Operator has released water required to meet the environmental flows, the Authority, jointly with the holders of bulk entitlements listed in sub-clause 6.2, may –
- (a) store all the inflow to the weirs in the headworks system; and
  - (b) take the inflow via the aqueduct;
- at the locations and rates listed in Schedule 2 and at other existing inflow points to the transfer aqueduct, subject to the Storage Management Rules.
- 7.2 The Authority must not take, as part of this bulk entitlement, any flow of water in the waterways which is being transferred by the holder of any other bulk entitlement or licence.

**PART 3 – AVAILABLE WATER RESOURCES**

**8. DIVERSION LIMIT**

- 8.1 The amount of water taken in any year by the Authority, jointly with the holders of bulk entitlements listed in sub-clause 6.2, must not exceed 66,000 ML in any 3 year period from the waterway, subject to the total amount taken from the Melbourne supply system not exceeding a long term average amount estimated at the date of this Order to be 555,000 ML.
- 8.2 The Authority, jointly with the holders of bulk entitlements listed in sub-clause 6.2, and in consultation with the Storage Operator and Goulburn–Murray Water, must propose to the Minister within twelve months of the commencement of this Order, the method it will use to show its compliance with;
- (a) sub-clause 8.1; and
  - (b) the MDB cap.
- 8.3 The method proposed in sub-clause 8.2(a) must include –
- (a) the locations where water use is to be measured for the purpose of showing compliance with the diversion limit;
  - (b) an agreed base-line hydrologic model of the Melbourne water supply system;
  - (c) an annual diversion limit target which varies with climate and is determined by hydrologic modelling;
  - (d) continuous accounting of the difference between the diversion limit target and the recorded total use;
  - (e) the process to determine compliance with the diversion limit target; and
  - (f) provisions to ensure that water use does not exceed the diversion limit;
- unless another method is approved by the Minister.
- 8.4 The Minister may –
- (a) approve the proposal under sub-clause 8.2; or

- (b) require the Authority to amend the proposal; or
- (c) require the Authority to –
  - (i) review the method approved by the Minister if, in the Minister’s opinion, it is, at any time, no longer appropriate; and
  - (ii) propose an amended method.

#### **PART 4 – GENERAL CONDITIONS AND PROVISIONS**

#### **9. MANAGEMENT AGREEMENT**

The Authority, jointly with the holders of bulk entitlements listed in sub-clause 6.2, within three months of the commencement of this Order, establish agreed arrangements for collaborative management of this bulk entitlement between themselves and –

- (a) other authorities;
- (b) the Storage Operator; and
- (c) the Bulk Transfer System Operator.

#### **10. MANAGEMENT RULES**

10.1 The Authority, jointly with the other holders of bulk entitlements listed in sub-clause 6.2, may establish rules for managing the Melbourne retail authorities’ bulk entitlements.

10.2 The rules established in sub-clause 10.1 –

- (a) must be prepared –
  - (i) with the objective of achieving least community cost;
  - (ii) in accordance with management arrangements established under clause 10; and
  - (iii) in consultation with other authorities whose bulk entitlements are likely to be affected by the rules; and
- (b) may address any matters with the potential to affect this bulk entitlement or the bulk entitlements of other authorities, including –
  - (i) water quality in the headworks system;
  - (ii) the impacts of drought on Melbourne’s water supply; and
  - (iii) emergency situations.

10.3 The Authority, jointly with the holders of bulk entitlements listed in sub-clause 6.2, and after consulting with the persons described in paragraphs (ii) and (iii) of sub-clause 10.2(a), may vary the management rules from time to time.

#### **11. TRANSFER OF ENTITLEMENT AND ADJUSTMENT OF SCHEDULES**

11.1 Subject to s 46 of the Act and sub-clause 11.2 of this Order, and with the agreement of the holders of bulk entitlements listed in sub-clause 6.2, this bulk entitlement may be transferred –

- (a) temporarily or permanently;
- (b) in whole or in part;
- (c) for any purpose, including an in-stream use of water.

11.2 The Minister may, on the application of the Authority jointly with the holders of bulk entitlements listed in sub-clause 6.2, at any time, alter any provision of this Order to reflect trading of this or any other bulk entitlement by the Authority jointly with the holders of bulk entitlements listed in sub-clause 6.2.

- 11.3 An application under sub-clause 11.2 must set out –
- (a) the objectives of, and reasons for the proposed amendment;
  - (b) the results of an assessment of the likely effect of that amendment on both the security of primary entitlements and the environment.
- 11.4 The Minister may –
- (a) approve part or all of any application under sub-clause 11.2; or
  - (b) require the Authority to –
    - (i) provide further information; and
    - (ii) re-submit the application in a different form; or
  - (c) not approve the application.

## **12. DISPUTE RESOLUTION**

- 12.1 If a difference or dispute arises between the Authority, the Minister, the other entitlement holders, the Storage Operator and the Resource Manager, or any of them (the "parties"), concerning the interpretation or application of this Order, a party may give written notice to another party requiring the matter to be determined by an independent expert.
- 12.2 The notice requiring that the matter be determined by independent expert may only be given 14 days after the matter has arisen. The independent expert may only commence to determine the matter a further 14 days after the giving of that notice.
- 12.3 The other entitlement holders, the Storage Operator and the Resource Manager will only be subject to the resolution procedure set out in this clause if they consent to the procedure.
- 12.4 The independent expert will be either –
- (a) a person agreed to by the parties to the difference or dispute; or
  - (b) if the parties cannot agree, a person nominated by the President of the Institute of Arbitrators, Australia.
- 12.5 The independent expert must reach a conclusion on the matter within 30 days of it being referred, but has power to extend the period for reaching a conclusion on the matter by a further 30 days.
- 12.6 The independent expert must send a copy of the conclusion and its supporting reasons to each party to the difference or dispute.
- 12.7 In any difference or dispute to which the Minister is a party –
- (a) the independent expert must express the conclusion as a recommendation; and
  - (b) the Minister must consider any recommendation made under paragraph (a) before deciding whether there are grounds for issuing a notice of contravention under s47 A of the Act.
- 12.8 In any difference or dispute to which the Minister is not a party, any conclusion by an independent expert is final and binding on the parties.
- 12.9 The Authority may request the Minister to determine the apportionment of the costs of and incidental to every reference, including the costs of the independent expert.

**PART 5 – DEMONSTRATING COMPLIANCE****13. REPORTING REQUIREMENTS**

- 13.1 The Minister may require the Authority, jointly with the other Melbourne retail authorities, to report on all or any of the following –
- (a) the status of this bulk entitlement to water in the headworks system including the amount of water taken by the Authority, jointly with the other Melbourne retail authorities, from the waterways;
  - (b) compliance with the diversion limit;
  - (c) any temporary or permanent transfer of all or part of this bulk entitlement;
  - (d) any temporary or permanent transfer of a bulk entitlement or other entitlement under the Act to the Authority, or to the Authority jointly with the other Melbourne retail authorities, which does or may alter the flow of water in the waterway;
  - (e) any amendment to this bulk entitlement;
  - (f) any new bulk entitlement granted to the Authority, or to the Authority jointly with the other Melbourne retail authorities;
  - (g) any failures either by the Authority or those that are joint with the other Melbourne retail authorities, to comply with any provision of this bulk entitlement; and
  - (h) any difficulties experienced or anticipated either by the Authority or those that are joint with the other Melbourne retail authorities, in complying with this bulk entitlement and any remedial action taken or proposed.
- 13.2 The Minister may require the Authority, jointly with the other Melbourne retail authorities, to report on all or any of the matters set out in sub-clause 13.1 –
- (a) in writing, or in such electronic form as may be agreed between the Authority and the Minister; and
  - (b) within 14 days of receiving the Minister’s written request or such longer period as the Minister may determine.
- 13.3 The Authority must, in its Annual Report, report on each of the matters referred to in sub-clause 13.1.
- 13.4 The Resource Manager may require the Authority, jointly with the other Melbourne retail authorities, to report from time to time, on all or any of the matters set out in sub-clause 13.1.
- 13.5 Any report under sub-clause 13.4 must be made –
- (a) in such form as may be agreed between the Melbourne retail authorities and the Resource Manager; and
  - (b) within such period of time as may be agreed between the Melbourne retail authorities and the Storage Operator.

**14. DATA**

- 14.1 The Minister will use the Minister’s best endeavours to ensure that all hydrological and other data required by the Authority, to comply with this bulk entitlement are made available to the Authority.
- 14.2 The Authority must make available to any person data collected by or on behalf of the Authority for the purpose of clause 13, subject to the person paying any fair and reasonable access fee imposed by the Authority to cover the costs of making the data available to that person.

**PART 6 – COSTS****15. RESOURCE MANAGER**

- 15.1 Subject to sub-clause 15.3, the Authority must pay the Resource Manager a fair and reasonable proportion of the costs incurred by the Resource Manager to –
- (a) prepare the Goulburn Basin Water Accounts;
  - (b) report on whether entitlement holders in the Goulburn Basin comply with the conditions of their bulk entitlements;
  - (c) report on disputes between entitlement holders in the Goulburn Basin;
  - (d) report on significant unauthorised uses of water in the Goulburn Basin; and
  - (e) co-ordinate the process for application and implementation of the qualification of any rights to water made by the Minister during periods of declared water shortage under s 13 or s 33 of the Act.
- 15.2 Subject to sub-clause 15.3, the proportion of the costs referred to in sub-clause 15.1 is to be determined by the Resource Manager.
- 15.3 Where the Resource Manager provides a regulated service for the purposes of s 4A of the **Water Industry Act 1994**, the charges to be paid by the Authority to the Resource Manager are to be determined by the Essential Services Commission in accordance with Part 1A of the **Water Industry Act 1994**.

**PART 7 – FURTHER WORK****16. REVIEW OF THE BULK ENTITLEMENTS**

- 16.1 Within 24 months of the commencement of this Order, the Authority, jointly with the other holders of bulk entitlements listed in sub-clause 6.2, and in consultation with the Storage Operator and the Department, must propose to the Minister amendments to the Melbourne bulk entitlements that –
- (a) would achieve a long-term supply-demand balance for the Melbourne supply system with the least economic, environmental and social costs; and
  - (b) adjust the capacity of the Wallaby Creek weir channel shown in Schedule 2 following a review of its practical operating capacity.
- 16.2 The Minister may –
- (a) approve the proposal under sub-clause 16.1; or
  - (b) require the Melbourne retail authorities to amend the proposal.

**17. MANAGEMENT PLAN**

- 17.1 The Authority will participate in good faith in developing a Management Plan for King Parrot Creek including negotiation of any changes to flow sharing arrangements.
- 17.2 The Authority must apply to the Minister to amend this Order under s 44 of the Act to implement the recommendations of a Management Plan approved by the Minister under s 32A of the Act.

Dated 25 October 2006

Responsible Minister  
JOHN THWAITES  
Minister for Water

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Note: An explanatory note that accompanies this Order is available from the Department.

**SCHEDULE 1 – SHARE OF RESOURCES**

<b>Bulk entitlement</b>	<b>Share of resources</b>
Bulk Entitlement (Silver & Wallaby Creeks – Melbourne Water for South East Water Limited) Conversion Order 2006	As determined by this entitlement and other statutory and non-statutory instruments <sup>1</sup> .
Bulk Entitlement (Silver & Wallaby Creeks – Melbourne Water for Yarra Valley Water Limited) Conversion Order 2006	As determined by this entitlement and other statutory and non-statutory instruments <sup>1</sup> .
Bulk Entitlement (Silver & Wallaby Creeks – Melbourne Water for City West Water Limited) Conversion Order 2006	As determined by this entitlement and other statutory and non-statutory instruments <sup>1</sup> .
<b>Total</b>	<b>100% of the water available to the Silver &amp; Wallaby Creeks headworks system</b>

**Notes:**

1. The instruments include –
- (a) the Melbourne Drought Response Plans for the Melbourne retail authorities;
  - (b) Silver & Wallaby Creeks Environmental Entitlement 2006; and
  - (c) the Authority's Statement of Obligations.

**SCHEDULE 2 – WATER HARVESTING CAPACITY****Table 1** Weirs and transfer capacities

<b>Weir</b>	<b>Transfer conduit</b>	<b>Transfer capacity (ML/day)</b>	<b>Transfer capacity (ML/month)</b>
Hellhole weir	Aqueduct	60	NA
Muddy weir	Aqueduct	60	NA
Silver Creek weir	Aqueduct	60	NA
Stony weir	Aqueduct	60	NA
Wallaby Creek weir	Aqueduct	180	2,400

Note: NA means 'not applicable'

**Water Act 1989**

**BULK ENTITLEMENT (SILVER & WALLABY CREEKS – MELBOURNE WATER  
FOR YARRA VALLEY WATER LIMITED) CONVERSION ORDER 2006**

**PART 1 – INTRODUCTORY STATEMENTS**

1. Citation
2. Empowering Provisions
3. Commencement
4. Definitions

**PART 2 – ENTITLEMENT**

5. Conversion to a Bulk Entitlement
6. Bulk Entitlement
7. Share of Flow

**PART 3 – AVAILABLE WATER RESOURCES**

8. Diversion Limit

**PART 4 – GENERAL CONDITIONS AND PROVISIONS**

9. Management Agreement
10. Management Rules
11. Transfer of Entitlement and Adjustment of Schedules
12. Dispute Resolution

**PART 5 – DEMONSTRATING COMPLIANCE**

13. Reporting Requirements
14. Data

**PART 6 – COSTS**

15. Resource Manager

**PART 7 – FURTHER WORK**

16. Review of the Bulk Entitlements
17. Management Plan

**SCHEDULE 1 – SHARE OF RESOURCES**

**SCHEDULE 2 – WATER HARVESTING CAPACITY**

The Minister, under the provisions of the **Water Act 1989**, makes the following Order –

**PART 1 – INTRODUCTORY STATEMENTS**

**1. CITATION**

This Order may be cited as the Bulk Entitlement (Silver & Wallaby Creeks – Melbourne Water for Yarra Valley Water Limited) Conversion Order 2006.

**2. EMPOWERING PROVISIONS**

This Order is made under s 43 and s 47 of the **Water Act 1989**.

**3. COMMENCEMENT**

This Order comes into operation on the day it is published in the Government Gazette.

**4. DEFINITIONS**

In this Order –

“**Act**” means the **Water Act 1989**;

“**Agreement**” means the Murray–Darling Basin Agreement as contained in Schedule 1 of the **Murray–Darling Basin Act 1993**;

“**Authority**” means Melbourne Water Corporation;

“**aqueduct**” means the aqueduct running from Hellhole Weir to the Jacks Creek via Wallaby Creek Weir;

“**bulk transfer system**” means the system of transfer pipes and balancing storages that transports water from the headworks to the Melbourne retail authorities' supply points;

“**Bulk Transfer System Operator**” means the person who operates and maintains the bulk transfer system;

“**City West Water**” means City West Water Limited, ABN 70 066 902 467;

“**Department**” means the Department of Sustainability and Environment;

“**diversion limit**” means an upper limit on the amount of water that can be taken from the waterway as described in clause 8;

“**environmental flow**” means an amount of flow referred to in the Silver & Wallaby Creeks Environmental Entitlement 2006 which the Storage Operator is obliged to pass at nominated points in the waterway;

“**Goulburn Basin**” means the area of land designated as Basin Number 5 in the South East Coast Division of the Australian Water Resources Council's Australian Continental Drainage Divisions;

“**Goulburn Basin Water Accounts**” means an annual report, required by the Minister, on compliance by entitlement holders and licensees, respectively, within the Goulburn Basin, with the terms of their bulk entitlements or licences;

“**MDB cap**” means the annual volume of water determined each year in accordance with Victoria's compliance with the Murray Darling Basin cap under the Agreement;

“**headworks system**” means the works owned by Melbourne Water to harvest water from Silver and Wallaby Creeks, including the Hellhole, Muddy, Silver Creek, Stony and Wallaby Creek weirs and the aqueduct;

“**licence**” means any licence granted under Part 4 of the Act;

“**Management Agreement**” means the agreement referred to in clause 9;

“**Management Plan**” means a management plan prepared for an area of the waterway under s 32A of the Act;

“**Management Rules**” means the agreement referred to in clause 10;

“**Melbourne retail authorities**” means any or all of—

- (a) Yarra Valley Water;
- (b) South East Water; and
- (c) City West Water;

“**Melbourne supply system**” means the waterways, headworks and bulk transfer system works which supply water to the Melbourne retail authorities and Western Water and includes water harvested for Melbourne from the Yarra, Thomson and Goulburn Basins;

“**Melbourne Water**” means Melbourne Water Corporation;

“**Minister**”, in relation to a provision, includes any person authorised by the Minister to act on the Minister’s behalf in relation to that provision, or to whom the Minister has delegated the relevant power, discretion, function, authority or duty under s 306 of the Act;

“**other authority**” means an authority other than the Authority, or any other person holding a bulk entitlement granted under Division 1 or 3 of Part 4 of the Act in the Yarra Basin;

“**Resource Manager**” means a person appointed by the Minister under s 43A of the Act to do all or any of the tasks set out in sub-clause 15.1;

“**South East Water**” means South East Water Limited, ABN 89 066 902 547;

“**Storage Management Rules**” means any rules from time to time adopted for the operation of the headworks system, pursuant to the instrument appointing the Storage Operator;

“**Storage Operator**” means a person appointed by the Minister under s 43A of the Act to operate the headworks system, or to manage or measure the flow into the headworks system or the waterway, or to do any combination of those things;

“**Thomson Basin**” means the area of land designated as Basin Number 25 in the South East Coast Division of the Australian Water Resources Council’s Australian Continental Drainage Divisions;

“**waterway**” means the Silver Creek and Wallaby Creek and their tributaries in the Goulburn Basin including pools formed by and immediately upstream of Melbourne Water’s weirs;

“**Western Water**” means the Western Water Regional Urban Water Authority;

“**Yarra Basin**” means the area of land designated as Basin Number 29 in the South East Coast Division of the Australian Water Resources Council’s Australian Continental Drainage Divisions;

“**Yarra Valley Water**” means Yarra Valley Water Limited, ABN 93 066 902 501; and

“**year**” means the 12 months commencing 1 July.

## PART 2 – ENTITLEMENT

### 5. CONVERSION TO A BULK ENTITLEMENT

Only that part of the Authority’s entitlement to water from the waterway to supply Yarra Valley Water’s retail customers is converted to a bulk entitlement on the conditions set out in this Order.

### 6. BULK ENTITLEMENT

6.1 The Authority may take from the waterway, for the purpose of supplying entitlements, its share of the water resources available under the diversion limit.

- 6.2 The Authority's share, together with shares allocated under –
- (a) Bulk Entitlement (Silver & Wallaby Creeks – Melbourne Water for City West Water Limited) Conversion Order 2006; and
  - (b) Bulk Entitlement (Silver & Wallaby Creeks – Melbourne Water for South East Water Limited) Conversion Order 2006;
- as described in Schedule 1, make up 100% of the water allocated to the Melbourne supply system from the waterway.

**7. SHARE OF FLOW**

- 7.1 Subject to clause 8, and after the Storage Operator has released water required to meet the environmental flows, the Authority, jointly with the holders of bulk entitlements listed in sub-clause 6.2, may –
- (a) store all the inflow to the weirs in the headworks system; and
  - (b) take the inflow via the aqueduct;
- at the locations and rates listed in Schedule 2 and at other existing inflow points to the transfer aqueduct, subject to the Storage Management Rules.
- 7.2 The Authority must not take, as part of this bulk entitlement, any flow of water in the waterways which is being transferred by the holder of any other bulk entitlement or licence.

**PART 3 – AVAILABLE WATER RESOURCES**

**8. DIVERSION LIMIT**

- 8.1 The amount of water taken in any year by the Authority, jointly with the holders of bulk entitlements listed in sub-clause 6.2, must not exceed 66,000 ML in any 3 year period from the waterway, subject to the total amount taken from the Melbourne supply system not exceeding a long term average amount estimated at the date of this Order to be 555,000 ML.
- 8.2 The Authority, jointly with the holders of bulk entitlements listed in sub-clause 6.2, and in consultation with the Storage Operator and Goulburn–Murray Water, must propose to the Minister within twelve months of the commencement of this Order, the method it will use to show its compliance with;
- (a) sub-clause 8.1; and
  - (b) the MDB cap.
- 8.3 The method proposed in sub-clause 8.2(a) must include –
- (a) the locations where water use is to be measured for the purpose of showing compliance with the diversion limit;
  - (b) an agreed base-line hydrologic model of the Melbourne water supply system;
  - (c) an annual diversion limit target which varies with climate and is determined by hydrologic modelling;
  - (d) continuous accounting of the difference between the diversion limit target and the recorded total use;
  - (e) the process to determine compliance with the diversion limit target; and
  - (f) provisions to ensure that water use does not exceed the diversion limit;
- unless another method is approved by the Minister.
- 8.4 The Minister may –
- (a) approve the proposal under sub-clause 8.2; or
  - (b) require the Authority to amend the proposal; or

- (c) require the Authority to –
  - (i) review the method approved by the Minister if, in the Minister's opinion, it is, at any time, no longer appropriate; and
  - (ii) propose an amended method.

#### **PART 4 – GENERAL CONDITIONS AND PROVISIONS**

#### **9. MANAGEMENT AGREEMENT**

The Authority, jointly with the holders of bulk entitlements listed in sub-clause 6.2, within three months of the commencement of this Order, establish agreed arrangements for collaborative management of this bulk entitlement between themselves and –

- (a) other authorities;
- (b) the Storage Operator; and
- (c) the Bulk Transfer System Operator.

#### **10. MANAGEMENT RULES**

10.1 The Authority, jointly with the other holders of bulk entitlements listed in sub-clause 6.2, may establish rules for managing the Melbourne retail authorities' bulk entitlements.

10.2 The rules established in sub-clause 10.1 –

- (a) must be prepared –
  - (i) with the objective of achieving least community cost;
  - (ii) in accordance with management arrangements established under clause 10; and
  - (iii) in consultation with other authorities whose bulk entitlements are likely to be affected by the rules; and
- (b) may address any matters with the potential to affect this bulk entitlement or the bulk entitlements of other authorities, including –
  - (i) water quality in the headworks system;
  - (ii) the impacts of drought on Melbourne's water supply; and
  - (iii) emergency situations.

10.3 The Authority, jointly with the holders of bulk entitlements listed in sub-clause 6.2, and after consulting with the persons described in paragraphs (ii) and (iii) of sub-clause 10.2(a), may vary the management rules from time to time.

#### **11. TRANSFER OF ENTITLEMENT AND ADJUSTMENT OF SCHEDULES**

11.1 Subject to s 46 of the Act and sub-clause 11.2 of this Order, and with the agreement of the holders of bulk entitlements listed in sub-clause 6.2, this bulk entitlement may be transferred –

- (a) temporarily or permanently;
- (b) in whole or in part;
- (c) for any purpose, including an in-stream use of water.

11.2 The Minister may, on the application of the Authority jointly with the holders of bulk entitlements listed in sub-clause 6.2, at any time, alter any provision of this Order to reflect trading of this or any other bulk entitlement by the Authority jointly with the holders of bulk entitlements listed in sub-clause 6.2.

11.3 An application under sub-clause 11.2 must set out –

- (a) the objectives of, and reasons for the proposed amendment;
- (b) the results of an assessment of the likely effect of that amendment on both the security of primary entitlements and the environment.

- 11.4 The Minister may –
- (a) approve part or all of any application under sub-clause 11.2; or
  - (b) require the Authority to –
    - (i) provide further information; and
    - (ii) re-submit the application in a different form; or
  - (c) not approve the application.

## 12. DISPUTE RESOLUTION

- 12.1 If a difference or dispute arises between the Authority, the Minister, the other entitlement holders, the Storage Operator and the Resource Manager, or any of them (the "parties"), concerning the interpretation or application of this Order, a party may give written notice to another party requiring the matter to be determined by an independent expert.
- 12.2 The notice requiring that the matter be determined by independent expert may only be given 14 days after the matter has arisen. The independent expert may only commence to determine the matter a further 14 days after the giving of that notice.
- 12.3 The other entitlement holders, the Storage Operator and the Resource Manager will only be subject to the resolution procedure set out in this clause if they consent to the procedure.
- 12.4 The independent expert will be either –
- (a) a person agreed to by the parties to the difference or dispute; or
  - (b) if the parties cannot agree, a person nominated by the President of the Institute of Arbitrators, Australia.
- 12.5 The independent expert must reach a conclusion on the matter within 30 days of it being referred, but has power to extend the period for reaching a conclusion on the matter by a further 30 days.
- 12.6 The independent expert must send a copy of the conclusion and its supporting reasons to each party to the difference or dispute.
- 12.7 In any difference or dispute to which the Minister is a party –
- (a) the independent expert must express the conclusion as a recommendation; and
  - (b) the Minister must consider any recommendation made under paragraph (a) before deciding whether there are grounds for issuing a notice of contravention under s47 A of the Act.
- 12.8 In any difference or dispute to which the Minister is not a party, any conclusion by an independent expert is final and binding on the parties.
- 12.9 The Authority may request the Minister to determine the apportionment of the costs of and incidental to every reference, including the costs of the independent expert.

## PART 5 – DEMONSTRATING COMPLIANCE

### 13. REPORTING REQUIREMENTS

- 13.1 The Minister may require the Authority, jointly with the other Melbourne retail authorities, to report on all or any of the following –
- (a) the status of this bulk entitlement to water in the headworks system including the amount of water taken by the Authority, jointly with the other Melbourne retail authorities, from the waterways;

- (b) compliance with the diversion limit;
  - (c) any temporary or permanent transfer of all or part of this bulk entitlement;
  - (d) any temporary or permanent transfer of a bulk entitlement or other entitlement under the Act to the Authority, or to the Authority jointly with the other Melbourne retail authorities, which does or may alter the flow of water in the waterway;
  - (e) any amendment to this bulk entitlement;
  - (f) any new bulk entitlement granted to the Authority, or to the Authority jointly with the other Melbourne retail authorities;
  - (g) any failures either by the Authority or those that are joint with the other Melbourne retail authorities, to comply with any provision of this bulk entitlement; and
  - (h) any difficulties experienced or anticipated either by the Authority or those that are joint with the other Melbourne retail authorities, in complying with this bulk entitlement and any remedial action taken or proposed.
- 13.2 The Minister may require the Authority, jointly with the other Melbourne retail authorities, to report on all or any of the matters set out in sub-clause 13.1 –
- (a) in writing, or in such electronic form as may be agreed between the Authority and the Minister; and
  - (b) within 14 days of receiving the Minister's written request or such longer period as the Minister may determine.
- 13.3 The Authority must, in its Annual Report, report on each of the matters referred to in sub-clause 13.1.
- 13.4 The Resource Manager may require the Authority, jointly with the other Melbourne retail authorities, to report from time to time, on all or any of the matters set out in sub-clause 13.1.
- 13.5 Any report under sub-clause 13.4 must be made –
- (a) in such form as may be agreed between the Melbourne retail authorities and the Resource Manager; and
  - (b) within such period of time as may be agreed between the Melbourne retail authorities and the Storage Operator.

#### **14. DATA**

- 14.1 The Minister will use the Minister's best endeavours to ensure that all hydrological and other data required by the Authority, to comply with this bulk entitlement are made available to the Authority.
- 14.2 The Authority must make available to any person data collected by or on behalf of the Authority for the purpose of clause 13, subject to the person paying any fair and reasonable access fee imposed by the Authority to cover the costs of making the data available to that person.

### **PART 6 – COSTS**

#### **15. RESOURCE MANAGER**

- 15.1 Subject to sub-clause 15.3, the Authority must pay the Resource Manager a fair and reasonable proportion of the costs incurred by the Resource Manager to –
- (a) prepare the Goulburn Basin Water Accounts;
  - (b) report on whether entitlement holders in the Goulburn Basin comply with the conditions of their bulk entitlements;

- (c) report on disputes between entitlement holders in the Goulburn Basin;
  - (d) report on significant unauthorised uses of water in the Goulburn Basin; and
  - (e) co-ordinate the process for application and implementation of the qualification of any rights to water made by the Minister during periods of declared water shortage under s 13 or s 33 of the Act.
- 15.2 Subject to sub-clause 15.3, the proportion of the costs referred to in sub-clause 15.1 is to be determined by the Resource Manager.
- 15.3 Where the Resource Manager provides a regulated service for the purposes of s 4A of the **Water Industry Act 1994**, the charges to be paid by the Authority to the Resource Manager are to be determined by the Essential Services Commission in accordance with Part 1A of the **Water Industry Act 1994**.

#### **PART 7 – FURTHER WORK**

#### **16. REVIEW OF THE BULK ENTITLEMENTS**

- 16.1 Within 24 months of the commencement of this Order, the Authority, jointly with the other holders of bulk entitlements listed in sub-clause 6.2, and in consultation with the Storage Operator and the Department, must propose to the Minister amendments to the Melbourne bulk entitlements that –
- (a) would achieve a long-term supply-demand balance for the Melbourne supply system with the least economic, environmental and social costs; and
  - (b) adjust the capacity of the Wallaby Creek weir channel shown in Schedule 2 following a review of its practical operating capacity.
- 16.2 The Minister may –
- (a) approve the proposal under sub-clause 16.1; or
  - (b) require the Melbourne retail authorities to amend the proposal.

#### **17. MANAGEMENT PLAN**

- 17.1 The Authority will participate in good faith in developing a Management Plan for King Parrot Creek including negotiation of any changes to flow sharing arrangements.
- 17.2 The Authority must apply to the Minister to amend this Order under s 44 of the Act to implement the recommendations of a Management Plan approved by the Minister under s 32A of the Act.

Dated 25 October 2006

Responsible Minister –  
JOHN THWAITES  
Minister for Water

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Note: An explanatory note that accompanies this Order is available from the Department.

**SCHEDULE 1 – SHARE OF RESOURCES**

<b>Bulk entitlement</b>	<b>Share of resources</b>
Bulk Entitlement (Silver & Wallaby Creeks – Melbourne Water for South East Water Limited) Conversion Order 2006	As determined by this entitlement and other statutory and non-statutory instruments <sup>1</sup> .
Bulk Entitlement (Silver & Wallaby Creeks – Melbourne Water for Yarra Valley Water Limited) Conversion Order 2006	As determined by this entitlement and other statutory and non-statutory instruments <sup>1</sup> .
Bulk Entitlement (Silver & Wallaby Creeks – Melbourne Water for City West Water Limited) Conversion Order 2006	As determined by this entitlement and other statutory and non-statutory instruments <sup>1</sup> .
<b>Total</b>	<b>100% of the water available to the Silver &amp; Wallaby Creeks headworks system</b>

**Notes:**

1. The instruments include –
  - (a) the Melbourne Drought Response Plans for the Melbourne retail authorities;
  - (b) Silver & Wallaby Creeks Environmental Entitlement 2006; and
  - (c) the Authority's Statement of Obligations.

**SCHEDULE 2 – WATER HARVESTING CAPACITY****Table 1** Weirs and transfer capacities

<b>Weir</b>	<b>Transfer conduit</b>	<b>Transfer capacity (ML/day)</b>	<b>Transfer capacity (ML/month)</b>
Hellhole weir	Aqueduct	60	NA
Muddy weir	Aqueduct	60	NA
Silver Creek weir	Aqueduct	60	NA
Stony weir	Aqueduct	60	NA
Wallaby Creek weir	Aqueduct	180	2,400

Note: NA means 'not applicable'

MELBOURNE BULK WATER ENTITLEMENT PROJECT

Explanatory note to the Melbourne bulk entitlement orders

**OVERVIEW**

1. Introduction
2. Objectives
3. Background
4. Water allocation framework
5. Allocation for the environment
6. Allocation of consumptive entitlements
7. Institutional arrangements to clarify accountabilities

**YARRA BULK ENTITLEMENTS**

8. Melbourne retail authorities' bulk entitlements
9. Western Water's bulk entitlement
10. The environmental entitlement

**SILVER & WALLABY CREEKS BULK ENTITLEMENTS**

11. Melbourne retail authorities' bulk entitlements
12. The environmental entitlement

**INSTRUMENTS OF APPOINTMENT**

13. Storage Operator

## OVERVIEW

### 1. INTRODUCTION

This note has been prepared to explain the basis and intent of the Melbourne system bulk entitlements and associated instruments.

### 2. OBJECTIVES

The purpose of these bulk entitlements is to convert existing rights to water in the Melbourne system to clearly defined entitlements, in order to:

- establish the initial environmental water reserve for the Yarra River by allocating an environmental entitlement to the environment Minister, and implementing the Government's White Paper commitment to introduce an annual average diversion limit on the water Melbourne uses from the waterways;
- clearly define the volume of water allocated to the Melbourne retail authorities from traditional sources to meet customer demand;
- clarify the respective accountabilities of the Melbourne retail and bulk water authorities;
- ensure collaborative long-term water supply and demand planning for Melbourne;
- enable improved transparency and customer engagement in critical bulk water management decisions; and
- provide the basis for trading between the Melbourne pool and other water entitlement holders.

### 3. BACKGROUND

For the past decade, the Government has been progressively converting authorities' previously poorly-defined rights to water into formal bulk entitlements and providing explicit allocations for the environment. Under its White Paper 'Our Water Our Future', the Government will enhance and complement the existing water allocation framework through various initiatives including the establishment of Environmental Water Reserves setting aside a share of water in rivers for the environment. The enhanced framework for water allocation entails high-level decisions by Government on allocation of water between environmental and consumptive purposes but within adaptive management regimes via various planning processes including Regional Sustainable Water Strategies.

The White Paper included a commitment to finalise bulk water entitlements for the Yarra and Tarago systems. Two key decisions affecting the bulk entitlements were:

- the diversion limit for Melbourne's use of water from the Yarra will not be greater than an average of 420,000 ML per year (Action 2.5); and
- Melbourne's retail water authorities will be assigned source bulk entitlements in the form of capacity shares, which will be pooled for operation by Melbourne Water, with water trading permitted between the Melbourne pool and other water entitlement holders (Action 7.10).

The assignment of bulk entitlements for Melbourne therefore needs to be seen as one instrument within broader water allocation and industry institutional and regulatory frameworks.

Subsequently, in 2006, the Government committed in its Central Region Sustainable Water Strategy (2006) to –

- provide the full environmental flows recommended in the 2005 scientific study for the Yarra River through the granting of a new environmental entitlement. This includes 17,000 ML that can be stored and released as needed to provide operational flexibility to maximise environmental benefits;
- grant bulk entitlements for an average annual cap of 400,000 ML per year from the Yarra for Melbourne's urban use; and
- establish an average annual cap of 555,000 ML covering all of Melbourne's water supply from its Yarra, Goulburn and Thomson sources.

#### 4. WATER ALLOCATION FRAMEWORK

Under previous arrangements, Melbourne Water has various rights to harvest water in the Yarra, Goulburn, Tarago and Thomson River Basins. Except for the Thomson where a Melbourne Water holds a bulk entitlement, these rights are in the form of broad powers bestowed by legislation, subject to constraints imposed by relevant Orders in Council and administrative orders issued by Government and the Environment Protection Authority (EPA). Melbourne Water then supplies water to the three Melbourne retail businesses and also to Western Water and Gippsland Water under Bulk Service agreements. It also has some environmental flow obligations in the waterways (eg under SEPP for the Yarra). A number of private diverters in the Yarra River and Tarago River basins also hold rights to take water under s 8(1) of the Water Act.

This Note addresses entitlements for the Yarra and Goulburn basins only.

The bulk entitlement Orders included in this Note broadly convert the pre-existing rights in the Yarra and Goulburn basins into more clearly-defined bulk entitlements, consistent with the principle of conversion of existing rights that underpin the bulk entitlements process throughout the State (see Table 1). In doing so, they give effect to key Government decisions relating to:

- the high-level allocation of water between the environmental water reserve and consumptive uses; and
- the allocation and management of the consumptive entitlements.

**Table 1** Melbourne's entitlements to water in the Yarra and Goulburn basins

User group	Existing entitlements	Proposed entitlements	Process
<b>Yarra basin</b>			
Melbourne	Melbourne Water (MWC) – under MMBW Act & Government approvals for works	Source bulk entitlements held by City West Water, South East Water & Yarra Valley Water  Obligation to supply delivery entitlement to Western Water	Two-step process:  1. Conversion of MWC's existing entitlement under s 47 of the Water Act  2. Transfer of MWC's bulk entitlement to the Melbourne retail authorities under s 46 of the Water Act
Yarra basin diverters	Licences to individuals administered by MWC	No change	n.a.
Environmental flows	SEPP at Warrandyte & Yarra drought response plan	Environmental entitlement held by the environment Minister	Allocation of environmental entitlement under s 48B of the Water Act
Western Water	Commercial agreement with MWC	Delivery bulk entitlement held by Western Water	Grant of entitlement under s 42 of the Water Act

User group	Existing entitlements	Proposed entitlements	Process
<b>Goulburn basin</b>			
Melbourne	Melbourne Water (MWC) – under MMBW Act & Government approvals for works	Source bulk entitlements held by City West Water, South East Water & Yarra Valley Water	Source bulk entitlements held by City West Water, South East Water & Yarra Valley Water  Two-step process: 1. Conversion of MWC's existing entitlement under s 47 of the Water Act 2. Transfer of MWC's bulk entitlement to the Melbourne retail authorities under s 46 of the Water Act
Environmental flows	Passing flows in accordance with MWC's operating rules	Environmental entitlement held by the environment Minister (under negotiation in the preparation of King Parrot Creek management plan).	Allocation of environmental entitlement under s 48B of the Water Act

## 5. ALLOCATION FOR THE ENVIRONMENT

Completion of the bulk entitlements for Melbourne is a major step in establishing the Yarra's environmental water reserve. For example, the Yarra bulk entitlements set an upper limit on how much water can be taken from the Yarra River and its tributaries for Melbourne. The minimum environmental flows recommended in the 2005 scientific study for the Yarra River are protected by way of a separate environmental entitlement issued to the environment Minister. Water for the environmental water reserve in addition to the minimum recommended flows is protected by way of the upper limits (caps) on consumptive use under bulk entitlements and licences.

A number of instruments contribute to protecting the full Environmental Water Reserve. Environmental flows in the Yarra will be protected by a combination of:

- Minimum passing flows (Yarra EE Schedule 1);
- The basin and system-wide caps (Yarra BE Section 10) – cap compliance will be based on a cap model which includes environmental flow rules designed to achieve the recommended environmental flow regime and a consumptive limit of 400 Gl/yr. The storage management rules need to be consistent with the cap model to ensure consumptive users stay within the cap;
- Storage management rules addressing both the rights of BE holders and the Operating Arrangements established under the Yarra EE (Storage Operator Instrument Section 5, Yarra EE clauses 12–15);

- Use by the environment Minister of the 17 G1 annual high-security streamflow allocation (Yarra EE clause 4);
- Inability of BE holders to harvest water being transferred by others (Yarra BE Clause 9.2) – this will ensure that consumptive entitlement holders cannot create a Storage Management Rule providing for the harvest of water released from the environmental allocation for the purpose of creating environmental benefits at or downstream of Yering Gorge;
- Pumping and harvesting weir capacity limitation (Yarra BE Schedule 3);
- The program to manage local environmental effects (Storage Operator Appointment Section 7) – this will ensure that the rate of change of flow in the river is limited to avoid adverse environmental impacts;
- The EWR provisions of the **Water Act 1989** together with the formal statement to be established defining the EWR in the Yarra.

The environmental water reserve for the Silver and Wallaby Creeks is established similarly to the Yarra. An environmental entitlement is allocated to the environment Minister to protect the minimum passing flows and the higher flows are protected by the placing of a cap on the water that can be taken under bulk entitlements.

There are two environmental entitlements associated with the Melbourne entitlements covered under this note, one for the Yarra River and one for Silver and Wallaby Creeks.

## 6. ALLOCATION OF CONSUMPTIVE ENTITLEMENTS

The rights to water for consumptive purposes currently bestowed on Melbourne Water will be firstly converted to bulk entitlements and then transferred to the Melbourne retail authorities. The form of entitlement to be held by the Melbourne retail authorities is a source entitlement. A source entitlement provides a right to harvest and store water directly at source (as opposed to a delivery entitlement that specifies rights to given volumes and security of water released from works of a source entitlement holder and delivered to defined take-off points). The source entitlements held by the three Melbourne retail authorities will be 'pooled' to allow the integrated operation of the bulk water supply system to continue largely unchanged (as explained below).

Given the relatively small volumes of water involved and impact on the overall system operation, Western Water's current contractual rights (specified in its bulk water supply agreement with Melbourne Water) to receive a supply of water from the Melbourne system will be granted to a delivery entitlement to be provided out of the source entitlements held by the 'pool'. This does not preclude subsequent amendment of Western Water's delivery entitlement into an equivalent capacity share which may enable it to better manage its alternative sources of supply.

The licences held by private diverters in the Yarra Valley and water taken by individuals as private rights (section 8(1) of the **Water Act 1989**) are not supplied from the Melbourne headworks and are unaffected by the bulk entitlement conversion process.

## 7. INSTITUTIONAL ARRANGEMENTS TO CLARIFY ACCOUNTABILITIES

### 7.1 Roles and accountabilities

The establishment and assignment of the consumptive bulk entitlements to Melbourne retail water authorities (rather than to Melbourne Water) also needs to be seen within the evolving industry institutional frameworks designed to achieve increased efficiency and accountability.

The metropolitan Melbourne water industry has been characterised by a wholesale-retail structure. Melbourne Water acts a wholesaler of bulk water (and sewerage) services to the three Melbourne retail businesses each of which undertakes distribution and retail functions in a defined region in Melbourne. These relationships are governed by Bulk Water Supply Agreements between Melbourne Water and each of the Melbourne retail authorities (and Western Water). Melbourne Water as the bulk supplier has had prime decision-making powers with respect to long-term resource management and operation of the storages and bulk transfer systems.

Assigning the consumptive entitlements to the Melbourne retail authorities seeks to build on the strengths of the current institutional arrangements in the sector by:

- clarifying the respective accountabilities of the retail authorities and Melbourne Water;
- embedding collaborative long-term water supply and demand planning for Melbourne; and
- ensuring that the long-term water supply and demand planning for Melbourne is undertaken in a collaborative fashion involving both the Melbourne retail authorities and Melbourne Water. In particular, a Water Supply-Demand Strategy is to be developed jointly by Melbourne Water and the Melbourne retail authorities by early 2007.

Notwithstanding the importance of joint planning, the assignment of bulk entitlements to the Melbourne retail businesses also assigns to them primary accountability for security of supply. Thus the White Paper states (p.149) that:

*The assignment of Melbourne's source bulk entitlements to the retail water authorities will clarify and strengthen the link between management of water supply and demand, consistent with principles that underpin the water entitlement framework. It will clearly define the volume of water allocated to the authorities from traditional sources to meet customer demand, providing a strong incentive for the water authorities to work with the community in effectively managing demand.*

*'Pooling' of the bulk water entitlements assigned to the retail water authorities will allow the integrated operation of the bulk water supply system to continue largely unchanged. However, it will be subject to improved transparency and customer engagement in critical bulk water management decisions.*

As holders of the bulk entitlements, primary accountability for long-term management of water resources to meet demand would now rest more clearly with the Melbourne retail authorities. The principle of devolving bulk entitlements as far as possible to end-users is well-established in the program of preparing bulk entitlements across the State.

A complicating feature of the Melbourne system is the integrated nature of the bulk transfer system to deliver water from its source to the interface points, where the Melbourne retail authorities take over the distribution of water to their end customers. Melbourne Water has, and will continue to have, the role of planning, managing and operating the headworks and bulk transfer systems.

There is strong argument that given the inherent trade-offs between the range of competing consumptive and non-consumptive interests in respect of Melbourne's water supply system, the storage operator/manager role should be clearly separated from that of managing the consumptive entitlements for Melbourne. This needs to be considered in terms of the protected catchments to protect water quality and the management of the headworks and bulk transfer system to meet the Bulk Water Supply Agreement quantity and quality obligations. This is consistent with a key reform outlined in the White Paper to more clearly define the Storage Manager role as one of managing storages to deliver a broader range of community benefits and to facilitate stakeholder engagement to establish appropriate trade-offs between competing interests, e.g. recreational use of storages vs. water supply catchments closed to the public for drinking water purposes.

Melbourne Water's role however extends well beyond the statutory role of simply operating the storages to encompass its broader planning, management and operation of the harvesting and bulk transfer system in order to meet contractual obligations under the Bulk Water Supply Agreements. It also has a range of other statutory roles and accountabilities including:

- manager of waterways, drainage and floodplains for the Port Phillip and Westernport catchments;
- environmental flow manager with obligations to act on the environment Minister's behalf in relation to the environmental entitlements; and
- Resource Manager for the Yarra bulk entitlements – appointed by the Minister to prepare the Yarra Basin Water accounts and report on Yarra Basin bulk entitlement holders' compliance with the conditions of their bulk entitlements (specified in a separate Instrument of Appointment).

Clarity of accountabilities requires separation of responsibility for these interests, or at least transparency over decisions where potential trade-offs are involved. The roles and accountabilities of the parties under the new arrangements are summarised in the table below.

**Table 2** Roles and accountabilities

<b>Role</b>	<b>Functions Performed</b>	<b>Organisation</b>
Source bulk entitlement holder	<ul style="list-style-type: none"> <li>● Own Melbourne's consumptive-use water allocation (ie: source entitlement holders)</li> <li>● Provide water supply service to end-customers / community</li> <li>● Meet primary entitlement obligations.</li> </ul>	City West Water, South East Water, Yarra Valley Water
West of Melbourne water authority	<ul style="list-style-type: none"> <li>● Request/receive water as required per delivery entitlement</li> <li>● Provide water supply service to end-customers/community</li> </ul>	Western Water
Rural water authority	<p><b>Thomson</b></p> <ul style="list-style-type: none"> <li>● Manage source bulk entitlement</li> <li>● Request/receive water as required per source entitlement</li> </ul> <p><b>Tarago</b></p> <ul style="list-style-type: none"> <li>● Manage delivery bulk entitlement</li> </ul>	Southern Rural Water
Environmental flow manager	<ul style="list-style-type: none"> <li>● Responsible for releases of environmental flows and other obligations under the environmental entitlement</li> </ul>	Environment Minister – proposed to be delegated to Melbourne Water for the Yarra and Tarago, Goulburn–Broken CMA for the Goulburn,
Headworks infrastructure owner	<ul style="list-style-type: none"> <li>● Builds and maintains Melbourne headworks infrastructure (dams, weirs, tunnels, pipes, aqueducts, water treatment plans, pumping stations, etc).</li> </ul>	Melbourne Water
Storage Operator	<ul style="list-style-type: none"> <li>● Makes releases from storages (as agreed), manages catchments (as agreed).</li> <li>● Prepare and maintain Storage Management Rules for the management of water harvesting operations and water storages in consultation with bulk entitlement holders and DSE</li> <li>● Audit in accordance with DSE specifications</li> </ul>	Melbourne Water

Role	Functions Performed	Organisation
Bulk transfer system Operator	<ul style="list-style-type: none"> <li>Builds, maintains and operates transfer system to meet metro BWSA obligations (ie: pressure/flow rate, quality, efficiency)</li> <li>Builds, maintains and operates transfer system to meet WW BWSA obligations (ie: pressure/flow rate, quality, efficiency)</li> </ul>	Melbourne Water
Resource Manager – data collection	<ul style="list-style-type: none"> <li>Compile water accounts</li> </ul>	Melbourne Water (Yarra and Tarago) West Gippsland CMA (Thomson) Goulburn–Murray Water (Goulburn)
Resource Manager – supervisory	<ul style="list-style-type: none"> <li>Resolve any disputes</li> </ul>	Minister for Water

## 7.2 Governance and management arrangements

As owners of the water entitlements, the Melbourne retail authorities need to have sufficient input into Melbourne Water's system strategic management and planning to ensure their long-term interests in managing within their bulk entitlements are protected. At the same time the arrangements need to enable Melbourne Water to manage its risks and accountabilities.

### a) Storage management and operation

There are various decisions to be made about the management and operation of the system. Some of these are annual, seasonal or weekly decisions, while some issues require day-to-day decisions.

Melbourne Water would continue to plan, manage and operate the bulk supply system as an integrated system, with considerable discretion over day-to-day decision-making. However, under the terms and conditions of its appointment as Storage Operator, Melbourne Water will be required to prepare and maintain a set of Storage Management Rules refined in consultation with bulk entitlement holders and DSE.

These would reflect a range of consumptive, environmental and broader public (eg flood protection) interests and accountabilities associated with managing the storages and catchments. They must address matters of significance to stakeholders, including management of the harvesting storages' catchments and bushfires and flood management. In addition, they must incorporate any bulk entitlement management rules (see below) proposed by entitlement holders unless due cause can be given not to do so.

The intention is that these Storage Management Rules focus on the high-level principles and strategic rules that impact on the long-term management of water resources, rather than being detailed prescriptive rules on shorter-term operational matters. The Storage Management Rules will be used by Melbourne Water to manage the system on behalf of entitlement holders including the environment, while enabling Melbourne Water to meet its various obligations (e.g. to meet their Bulk Water Service Agreement obligations with respect to quantity, pressure and quality, fulfil their responsibilities as environmental manager and storage operator, flood protection etc). Subject to clearly-defined emergency provisions, the Storage Operator will be required to operate according to these rules, and have their compliance with them demonstrated by an annual independent audit.

**Table 3:** Examples of Storage Management Rules

<b>Topic</b>	<b>Relevance to management of Melbourne's BWE</b>
Catchment management (including timber harvesting agreements and practices, bushfire risk management practices)	Yield risk management, water quality risk management.
Yarra tributary harvesting practices	Trade-off between yield vs water quality. Broader considerations include downstream benefits from additional flows.
Sugarloaf/Winneke utilisation strategy	Trade-off between yield vs cost. Broader considerations include downstream benefits from additional flows.
Discretionary hydro-power releases from Thomson Reservoir	Trade-off between yield vs revenue. Broader considerations include Thomson River downstream benefits, flood management.
Transfers through Cardinia hydro	Trade-off between yield vs revenue. Broader considerations include water pressure and quality below the reservoir.
Storage target levels (particularly Greenvale, Cardinia), and minimum operating levels	Trade-off between yield, security of supply at various locations, and water quality.
Practices for suspending the use of Yan Yean and Greenvale reservoirs.	Trade-off between water quality vs security of supply.
Flood management	Trade-off between yield vs downstream flood damage risk.

An Operating Plan, outlining the proposed storage management strategy consistent with the Storage Management Rules (given current and possible scenarios), would be developed by Melbourne Water as Storage Operator in consultation with entitlement holders. The Operating Plan would include forward-look scenarios based on a range of possible climatic conditions; and a multi-year outlook consistent with the planning cycle for preparation of authorities' Water Plans.

These Storage Management Rules and the Operating Plan represent the principal mechanisms by which the entitlement holders' entitlements are managed. They would reflect both system constraints and Melbourne retail authority preferences for the trade-offs between reliability and operating cost. Unlike rural systems, there would be no issuing of discrete release instructions – rather Melbourne Water would have an obligation to meet its Bulk Water Supply Agreements and system demand subject to adhering to the rules and the operating plan (while retaining discretion over day-to-day operation of the system).

Changes to the Storage Management Rules and/or the Operating Plan could be proposed by either the Melbourne retail businesses or Melbourne Water. Decision-making powers will depend on the nature of the issue and underlying accountabilities.

Changes that would endanger system integrity or undermine the ability to meet statutory or other obligations (e.g. to meet environmental flow obligations) would not be permitted. Similarly, changes that would impact on the ability of Melbourne Water to meet the delivery standards (quantity, pressure, quality etc) at interface points under the Bulk Water Supply Agreements could

only proceed if consequent changes (including impacts on costs) to these contractual obligations were agreed. Melbourne Water would have a key role in demonstrating the implications of any proposed variations to the Operating Plan and Storage Management Rules and identifying any issues that would preclude proposed variations being adopted.

**b) Collaborative management of bulk entitlements**

The Yarra Basin bulk entitlements will be held jointly by the three Melbourne retail authorities, as outlined in section 7.1. Separate bulk entitlements are specified in respect of each system (ie Yarra, Thomson, Tarago and Goulburn) and define the total share for the Melbourne 'pool', but without specifying shares for each Melbourne retail authority.

This approach allows the ownership of the Melbourne entitlements to be vested with the three Melbourne retail authorities with minimal change to operation of the supply system.

There are two ways in which the Melbourne retail authorities' bulk entitlements could be 'pooled', either by:

- granting a single bulk entitlement to the three Melbourne retail authorities; or
- granting each Melbourne retail authority a separate bulk entitlement, but not specifying in each individual bulk entitlement the actual proportion of the total diversion limit that each Melbourne retail authority is entitled to use.

While both of these options is allowed under the **Water Act 1989**, the second approach was considered preferable as it better reinforces the accountability of each Melbourne retail authority and is likely to provide a better starting point for possible future evolution of the arrangements.

With the entitlements held jointly by the three Melbourne retail businesses, a clearly-defined process for collaborative management of the bulk entitlements is required. These arrangements are best developed co-operatively by the stakeholders rather than being prescribed in detail in the Order. These arrangements will be contained in a Management Agreement to which the three Melbourne retail businesses, Melbourne Water and other entitlement holders would be a party.

Bulk entitlement Management Rules can be developed in relation to issues that represent trade-offs for which the consumptive bulk entitlement holders are entirely or almost entirely accountable (e.g. yield vs. cost). Examples are:

- water quality in the headworks system;
- the filling of Sugarloaf Reservoir from the Yarra River and Maroondah aqueduct;
- the use of hydro-electric power generation facilities;
- the impacts of drought on Melbourne's water supply; and
- emergency situations.

The Management Agreement will define the process for each party to initiate a change to the Management Rules where that change is likely to have an impact on other parties.

### YARRA BULK ENTITLEMENTS

There are four bulk entitlement Orders and one environmental entitlement within the Yarra Basin.

#### 8. MELBOURNE RETAIL AUTHORITIES' BULK ENTITLEMENTS

The source bulk entitlements for Melbourne Water are contained in three Orders, viz:

- Bulk Entitlement (Yarra River – Melbourne Water for City West Water) Conversion Order 2006
- Bulk Entitlement (Yarra River – Melbourne Water for South East Water) Conversion Order 2006
- Bulk Entitlement (Yarra River – Melbourne Water for Yarra Valley Water) Conversion Order 2006

These three bulk entitlement Orders are identical in every material respect (except for the name of the holder).

Each of the Orders is initially granted to Melbourne Water as a conversion of its existing rights to water in the Yarra system, and is then transferred to one of the retail authorities. For the purposes of this Note, the authorities holding the bulk entitlements are the retail authorities. The term 'authority' is used interchangeably with 'retail authority'.

#### PART 1 – INTRODUCTORY STATEMENTS

**Empowering Provisions (Clause 2)** Establishes the Minister's powers under the **Water Act 1989** to make this Order.

#### PART 2 – ENTITLEMENT

This Part defines the nature and quantum of the bulk entitlements.

**Conversion to a Bulk Entitlement (Clause 5)** This clause makes it clear that this is a conversion of only part of Melbourne Water's pre-existing rights to a bulk entitlement – specifically, the part required to supply one of the three Melbourne retail authorities. Conversion into one or more parts is consistent with s 47 of the **Water Act 1989**.

**Bulk Entitlement (clause 6)** This clause establishes two things. The first is that there is a finite limit to the amount that can be taken by the authority. The second is that the entitlements of the three Melbourne retail authorities are pooled.

Each Melbourne retail authority is granted a notional capacity share in this Order. These are not quantified but, collectively, they add up to 100% of the amount available to Melbourne – a finite limit which is quantified in Part 3.

The approach was preferred to issuing a single entitlement to the three Melbourne retail authorities as a group as it reinforces the accountability of each Melbourne retail authority and provides a basis for possible future evolution of the arrangements (also see Part 7 below).

**Obligations to supply primary entitlements (Clause 7)** As holders of the right to harvest and store inflows to the system, the Melbourne retail authorities have the complementary obligation to ensure that all primary entitlement holders receive their entitlement. At present, the only primary entitlement is Western Water's delivery entitlement.

For the purposes of restricting the primary entitlement in drought, the authority has the obligation to advise primary rights holders when the Melbourne retail authorities' customers are on restrictions.

**Share of Storage Capacity and Flow (Clauses 8 and 9)** In keeping with their source entitlements, clauses 8 and 9 entitle the three retail authorities to harvest and store their share of the flow in the waterway in the headworks. However, they can only harvest the flow once the Storage Operator is satisfied the environmental flow described in the environment's Yarra bulk entitlement has been passed. The capacities of the headworks reservoirs, weirs and conduits are part of the

conditions of the bulk entitlement, so the authorised capacities are documented in Schedule 3. The rights of entitlement holders to storage capacity are subject to constraints specified in the Storage Management Rules developed by the Storage Operator (e.g. maximum operating levels for flood management purposes).

### PART 3 – AVAILABLE WATER RESOURCES

The Government's 2005 Central Region Sustainable Water Strategy sets the annual diversion limit on the water Melbourne uses from the Yarra River to a long term average of 400,000 ML per year, subject to an upper limit on 555,000 ML on the total extractions for Melbourne from the Yarra, Thomson and Goulburn basins.

**Diversion limit (Clause 10)** This clause establishes the upper limit on the amount the three source entitlement holders can take from waterway (the diversion limit). There are two upper limits. The first is a 400,000 ML/year upper limit on the amount of water that can be taken from the Yarra River. This upper limit is consistent with the Central Region Sustainable Water Strategy and is equivalent to about 38% of the total average annual Yarra flow (before any water is extracted) of 1,054,000 ML/year. However it is conditional on the second upper limit of 555,000 ML/year on Melbourne's total extractions. The modelled estimate of 400,000 ML/year for the Yarra cap assumed a total average annual extraction for Melbourne of 555,000 ML/year. The conditional cap is necessary because the sum of the separate caps estimated for Yarra, Thomson and Goulburn basins is greater than 555,000 ML/year.

The diversion limits are a key element in giving effect to the Environmental Water Reserve for the Yarra and has a several very significant characteristics –

- the diversion limits are expressed as a long term average, allowing the amount taken by the three source entitlement holders to vary from year to year depending on the prevailing climate;
- the authorities' compliance with the diversion limits will be demonstrated with the support of Melbourne Water's REALM model of the Melbourne water supply system. This model simulates the historical climate conditions from 1913 to date. The initial estimates of the average annual diversion limits will be determined from this model and would correspond to a value of 400,000 ML for the Yarra River and 555,000 ML for Melbourne's total extractions from the Yarra, Goulburn and Thomson basins. However, with time, these values could vary slightly as the average flows vary;
- the diversion limits include water taken by the retail authorities to supply their own customers and primary entitlement holders (i.e. Western Water), but does not include water taken by licensed diverters in the Yarra Basin.

Clause 10.2 is a reminder not to double-count Western Water's usage when determining the retail authorities' total usage under their bulk entitlements.

Clauses 10.3 to 10.5 give the entitlement holders, in consultation with the Storage Operator, 12 months in which to develop a method to demonstrate compliance with this type of diversion limit, to the satisfaction of the Minister. This type of climatically varying diversion limit is similar to that adopted in the Murray–Darling Basin cap. However, in the case of the Yarra system, the method for demonstrating compliance can be tailored to local conditions.

### PART 4 - GENERAL CONDITIONS AND PROVISIONS

**Management arrangements (Clauses 11 and 12)** In the Yarra system, the source entitlements held by the Melbourne retail authorities are pooled for the purpose of operating and managing the system and showing compliance. This gives rise to a need for co-operative arrangements between the three Melbourne retail authorities in jointly managing their entitlements. Another key player in the arrangements for management of the bulk entitlements is Melbourne Water, in its role as Storage Operator, Bulk Transfer System Manager, and its various other roles. In addition, the management of the bulk entitlements has the potential to affect other entitlement holders, including Western Water who receives supply from the Yarra system, and the environment Minister.

Clause 5 of the **Instrument of Appointment of Storage Operator for the Melbourne System** together with clauses 11 and 12 of this Order provide for the Storage Operator and bulk entitlement holders to develop arrangements that provide for effective management of the long-term supply-demand balance through the bulk entitlements. They ensure that the bulk water supply system continues to be planned and operated as an integrated system, and other interests and accountabilities are appropriately recognised and protected. These arrangements are best developed co-operatively by the stakeholders rather than being prescribed in detail in the Order.

The Management Agreement prepared under clause 11 is intended to contain the governance arrangements dealing with the making and changing of rules and management of the bulk entitlements to which all entitlement holders (including the retail authorities, Western Water and the environment Minister) and Melbourne Water would be a party.

Clause 12 enables the three retail authorities to establish and update rules for managing their bulk entitlements. These are the high-level principles and rules that impact on the yield of the Melbourne retail authorities' bulk entitlements.

The Management Rules established by the source bulk entitlement holders are distinct from, but may ultimately be reflected in, the Storage Management Rules adopted by the Storage Operator. As noted in section 7.2(a) of this Note, these would reflect the full range of consumptive, environmental and broader public (e.g. flood protection) interests and accountabilities associated with managing the storages and catchments.

The Instrument of Appointment of the Storage Operator requires the Storage Operator to consider rules proposed by bulk entitlement holders, and sets out a procedure for the Storage Operator to respond to such a proposal.

**Transfer of Entitlement and adjustment of schedules (Clause 13)** One of the key principles underpinning the water allocation framework in Victoria is that water entitlements for consumptive uses will be allocated by market mechanisms wherever possible, and be allowed to trade between entitlement holders. Subject to broader water planning processes, trading between the Melbourne entitlement holders (as a pool) and other entitlement holders will be permitted. Given the interdependent nature of the entitlements, however, any such trade will require the agreement of all three Melbourne retail authorities.

Consistent with trading arrangements for bulk entitlements in the rest of the State under the **Water Act 1989**, an entitlement holder may apply to the Minister to transfer, either temporarily or permanently, all or part of its bulk entitlement for any purpose (including in-stream use of water).

**Dispute Resolution (Clause 14)** This section provides for formal dispute resolution in the event that a difference or dispute concerning the interpretation or application of the bulk entitlement order cannot be resolved by the parties. Parties to a dispute may include one or more of the Melbourne retail authority, the Minister, other entitlement holders, the Storage Operator and the Resource Manager.

#### **PART 5 – DEMONSTRATING COMPLIANCE**

Each Melbourne retail authority is required to report, in conjunction with the other Melbourne retail authorities, on compliance with its bulk entitlement (including compliance with the Yarra diversion limit).

Given that the Melbourne Water owns and operates the headworks assets, including meters, the obligation to prepare a metering plan in order to demonstrate compliance with these orders has been given to the Storage Operator via the Instrument of Appointment.

**Reporting requirements (Clause 15)** Clause 15 specifies matters on which the Minister may require the Melbourne retail authority holding the bulk entitlement to report. These include the status of the bulk entitlement to water in the headworks system, any temporary or permanent transfers of the bulk entitlement, any failure to comply with the entitlement, and any difficulty experienced or anticipated by the authority in complying with the bulk entitlement.

It is also required to report any breach of the entitlement in its annual report.

**Data (Clause 16)** The purpose of this clause is to ensure open access to hydrological and other data held by other authorities but required by any authority to report on compliance with its bulk entitlement.

#### PART 6 – COSTS

The Essential Services Commission is responsible for regulating charges for certain services provided by water authorities in Victoria. It will determine the prices to apply for the first regulatory period from 1 July 2005 to 30 June 2008, after which it will make a determination every 5 years. The initial determination includes the bulk charges to be levied by Melbourne Water on the Melbourne retail authorities in meeting its regulatory and customer service obligations provisions. The Essential Services Commission's role obviates the need to include cost sharing arrangements associated with maintaining and operating the headworks and bulk transfer systems within the bulk entitlements.

**Resource Manager (Clause 17)** Provides for the payment by the Melbourne retail authorities, and Western Water, of costs incurred by the Resource Manager in undertaking its functions including preparing the Yarra Basin Water Accounts, reporting on whether entitlement holders in the Yarra Basin comply with the conditions of their bulk entitlements, reporting on disputes between entitlement holders in the Yarra Basin, reporting on significant unauthorised uses of water in the Yarra Basin, and co-ordinating the process for application and implementation of the qualification of any rights to water made by the Minister during periods of declared water shortage under section 13 of the Act. These costs are not currently regulated by the Essential Services Commission, but would be included as costs to be covered by proposed tariffs in the metropolitan retailers' Water Plans.

Melbourne Water is to be appointed as Resource Manager for the Yarra catchment under a separate Instrument of Appointment.

#### PART 7 – FURTHER WORK

The initial establishment of bulk entitlements for the Yarra system was designed to achieve a range of benefits as outlined earlier in this Note. However, it is recognised that further evolution of the new entitlement structure has the potential to achieve a long-term supply-demand balance for the Melbourne system with reduced economic, social and environmental costs. **Clause 18** encourages this evolution by requiring the Melbourne retail authorities to submit a proposal to the Minister within two years. In particular, it is anticipated that consideration will be given to the merits of disaggregating the 'pooled' entitlements into individual shares.

#### 9. WESTERN WATER'S BULK ENTITLEMENT

Prior to this entitlement, Western Water had an agreement with Melbourne Water for a supply from Melbourne's bulk transfer system which is replaced with a bulk entitlement. This is consistent with the Government's program to establish a system of secure and tradeable bulk entitlements for all significant water allocations to water authorities throughout the State.

The agreement does not meet the provisions of s 47 of the Water Act which allows for conversion of an authority's existing entitlement if it predates the **Water Act 1989**. For this reason, Western Water's bulk entitlement is granted as a new entitlement under s 43.

The bulk entitlement is established as a delivery entitlement. That is, it is supplied from the works of another authority (Melbourne Water), and in this case, supplied with water owned by another authority (the three Melbourne retail authorities acting jointly).

Western Water's bulk entitlement is defined as a primary entitlement in each of the Melbourne retail authorities' bulk entitlements for the Yarra system. Acting jointly, the retail authorities have an obligation to supply Western Water under the terms and conditions expressed in Western Water's Order. Therefore, Western Water's entitlement is part of Melbourne's diversion limit for the Yarra of 400,000 ML.

Western Water's bulk entitlement was established as a Yarra bulk entitlement because the Yarra is the main source of water. However, it is recognised that Western Water can also receive water sourced from Silver and Wallaby Creeks and Thomson systems.

#### **PART 2 – ENTITLEMENT**

**Bulk Entitlement (Clause 7)** allows Western Water to take up to 11,250 ML in any year, subject to restriction rules. This is identical to the amount in the pre-existing agreement between Western Water and Melbourne Water.

**Restriction of Supply (Clause 8)** describes how Western Water's bulk entitlement is to be restricted if restrictions are imposed in Melbourne.

#### **PART 3 – GENERAL CONDITIONS AND PROVISIONS**

**Operating Arrangements (Clause 9)** formalises the establishment of an agreement between Western Water and Melbourne Water to cover operating arrangements for the supply – this agreement would replace the pre-existing supply agreement.

Flexibility as to the take-off points for supplying water to Western Water is provided under **clause 10**.

**Transfer of Entitlement and Adjustment of Orders (Clause 11)** allows for all or part of Western Water's bulk entitlement to be traded.

**Review of the Bulk Entitlement (Clause 12)** encourages Western Water to participate, together with other authorities, the Storage Operator and the Department, in a review of the bulk entitlements. The reasons for the review, in Western Water's case, would be exploration of the benefits of converting Western Water's delivery entitlement to a capacity share source entitlement.

**Dispute Resolution (Clause 13)** establishes an independent dispute resolution procedure in respect of the interpretation or application of the bulk entitlement order. This clause is identical in all bulk entitlement Orders for the Melbourne system.

#### **PART 4 – COST SHARING**

The provisions of Resource Manager costs in **clause 14** are covered in the comments in the Note on Part 6 of the Melbourne retail authorities' bulk entitlement Orders.

Similarly, **clause 15** requires Western Water pay a share of the headworks and bulk transfer system costs. These charges will be subject to regulation by the Essential Services Commission, to take effect when the existing bulk supply agreement with Melbourne Water expires.

#### **PART 5 – DEMONSTRATING COMPLIANCE**

**Metering program (Clause 16)** requires Western Water to prepare a metering program for the purposes of demonstrating its compliance with its bulk entitlement.

This is Western Water's obligation (unlike the Melbourne retail authorities) because the meters are Western Water's own assets.

**Reporting requirements (Clause 17)** requires Western Water to report on compliance with its bulk entitlement Order. This clause is standard in all bulk entitlement Orders for the Melbourne system.

**Data (Clause 18)** creates an obligation for the Minister to make the available to Western Water – refer comments in this Note on Part 5 of the Melbourne retail authorities' bulk entitlement Orders.

### **10. THE ENVIRONMENTAL ENTITLEMENT**

Environmental entitlements are allocated to the environment Minister in the Yarra River and Silver and Wallaby Creeks.

The environmental entitlement is based on the recommendations of two scientific assessments of the river's needs –

- The recommendations of 'Determination of the Environmental Flow Requirements for the Yarra River, Final, Sinclair Knight Merz, December 2005' were adopted for the main stem

of the Yarra River and the Plenty and Watts Rivers. The decision to adopt these recommendations is an outcome from the Government's Central Region Sustainable Water Strategy (2006).

- The recommendations of 'O'Shannassy River: Minimum environmental flow requirements; Report by Ewert J. et al for Melbourne Water, March 2006' were adopted for the O'Shannassy River.
- The recommendations of 'Environmental Flow Recommendations for the Yarra and Tributaries – Final Report, January 2000' and 'Environmental flow assessment for the Melbourne water supply system – Joint Environmental Working Group and Technical Working Group Final Summary Report – Yarra River, May 2001' were adopted for all other harvesting points on the Yarra tributaries.

#### QUANTIFYING THE ENTITLEMENT

**Clause 4** describes the water allocated to the environment in the Yarra Basin. This water includes:

- minimum summer and winter flows described in Schedule 1, which are those recommended in the 2001 and 2005 scientific studies (see references above); and
- an amount of 17,000 ML that can be stored and released as needed to provide operational flexibility to maximise environmental benefits.

The 17,000 ML amount is an annual allocation comprising the first 17,000 ML of net inflow into the Yarra headworks system from 1 July each year. As stated in the Central Region Sustainable Water Strategy (page 95) published in October 2006, this annual allocation is to become available from July 2007, however, it may be provided in stages from 2007 if restrictions in Melbourne become more severe.

#### WATER ACCOUNTING PROCEDURES

##### Share of Storage Capacity

Clause 6 describes the environment's share of storage capacity which consists of 17,000 ML in Melbourne's reservoirs plus any air space available in the reservoirs which is not being used by other entitlement holders. Air space refers to other entitlement holders' unused storage capacity in the Melbourne's headworks reservoirs at any point in time.

The Melbourne supply system is operated as an integrated system. This means that the environment's share of storage capacity can be described as a share of the total capacity of all Melbourne's headworks reservoirs (including Thomson) and does not need to refer to any one reservoir. Melbourne Water can operate the environment's share of storage as a water account which, at any given time, has an upper limit equal to the greater of 17,000 ML and the air space in the Melbourne headworks storages.

An amount of 17,000 ML is to be credited to this account each year. Releases to meet environmental flows are to be debited to the account. The environment's access to air space means that the environmental manager has discretion over when water in the account is released. Subject to there being unused capacity in the Melbourne headworks reservoirs, a reserve can be accumulated to provide flexibility in meeting the environment's variable flow needs.

If the environment has accumulated water in excess of 17,000 ML and inflows are such that the other entitlement holders need that storage capacity in excess of 17,000 ML to store their own share of inflows, then the environment's water is deemed to be the first to spill from the reservoir.

**Clauses 8 and 9** describe the meaning of a reservoir 'spill'. For operational and safety reasons, some reservoirs have a maximum operating level below their official full capacity. The maximum operating capacity of the Melbourne headworks reservoirs is defined in Schedule 2.

**Data**

**Clauses 10 and 11** ensure that the entitlement holder has open access to hydrological and other data held by other authorities but required by the entitlement holder to report on compliance with its entitlement.

**OPERATION AND MANAGEMENT CONDITIONS****Operating Arrangements**

The environment Minister, in consultation with the Melbourne Water and the other entitlement holders, is to develop water accounting and operating arrangements associated with this entitlement. The operating arrangements are to be submitted to the Minister for approval. They would be expected to include (but not be limited to) such things as –

- responsibilities of each of the parties;
- ordering arrangements for releases, including timing, frequency and cancellations;
- rates of rise and fall of releases to protect river bank stability; and
- details of consultation and the position of the other parties in respect of the operating arrangements.

**Releases**

In **clause 20**, Melbourne Water is to ensure that the minimum summer and winter minimum environmental flows specified in Schedule 1 are met – this may involve releasing water from a storage to achieve a flow (e.g. at O'Shannassy Reservoir), or regulating diversion to maintain the flow already in the river (e.g. at Yering). The location, rate and timing of release of this water are fully defined in Schedule 1.

Also, Melbourne Water is to release water from the environment's account to meet the high flows and flushes recommended by the 2005 Yarra scientific study. These flows would be released in accordance with the Operating Arrangements which establish the arrangements for scheduling and varying environmental flows.

This clause also provides for tolerances in the meeting of the environmental flows to be specified in the Operating Agreement (or its subsidiary plans).

**Payments in relation to services provided in relation to this entitlement**

**Clauses 22** explicitly exempts the environment Minister from contributing to the headworks and Resource Manager's costs. The Government's policy on charges associated with the environment's water is described in Chapter 3 of the Government's 2004 White Paper 'Our Water Our Future'.

**Reporting requirements**

**Clauses 32 and 33** describe the reporting requirements associated with the environmental entitlement. The reporting task would be undertaken by Melbourne Water in its capacity as environmental manager for the Yarra River.

### SILVER & WALLABY CREEKS BULK ENTITLEMENTS

Melbourne Water has a number of small weirs on the Silver and Wallaby Creeks and their tributaries, which are located in the upper reaches of the King Parrot Creek, itself a tributary of the Goulburn River. Water harvested by the weirs is collected in an aqueduct which runs south over the Great Divide, releasing the water into Jacks Creek. From there it flows into Touroorong Reservoir before being released into the Clear Water Channel to discharge into Yan Yean Reservoir.

Four entitlements are established for the Silver Wallaby Creeks system – three consumptive bulk entitlements for the Melbourne retail authorities, and an environmental entitlement allocated to the environment Minister.

A Storage Operator, Resource Manager and environmental flow manager are to be appointed for the purposes of the entitlements. Melbourne Water is to be appointed as Storage Operator, Goulburn Murray Water has been appointed as Resource Manager for all bulk entitlements in the Goulburn Basin.

#### 11. MELBOURNE RETAIL AUTHORITIES' BULK ENTITLEMENTS

The source bulk entitlements for Melbourne Water are contained in three Orders, viz:

- Bulk Entitlement (Silver & Wallaby Creeks – Melbourne Water for City West Water) Order 2006
- Bulk Entitlement (Silver & Wallaby Creeks – Melbourne Water for South East Water) Order 2006
- Bulk Entitlement (Silver & Wallaby Creeks – Melbourne Water for Yarra Valley Water) Order 2006

These bulk entitlement Orders are identical in every material respect (except for the name of the holder).

Each of the Orders is initially granted to Melbourne Water as a conversion of its existing rights to water in the Silver and Wallaby Creeks system, and is then transferred to one of the retail authorities. For the purposes of this Note, the authorities holding the above bulk entitlements are the retail authorities. In this Note, the term 'authority' is used interchangeably with 'retail authority' and 'Melbourne retail authorities'.

The format of the consumptive bulk entitlement Orders is almost identical to those for the Yarra River.

#### PART 1 – INTRODUCTORY STATEMENTS

**Empowering provisions (Clause 2)** establishes the Minister's powers under the **Water Act 1989** to make this Order.

#### PART 2 – ENTITLEMENT

This Part defines the nature and quantity of the bulk entitlements.

**Conversion to a Bulk Entitlement (clause 5)** This clause makes it clear that this is a conversion of only part of Melbourne Water's pre-existing rights to a bulk entitlement – specifically, the part required to supply one of the three Melbourne retail authorities. Conversion into one or more parts is consistent with s 47 of the Water Act.

**Bulk Entitlement (clause 6)** This clause establishes two things. The first is that there is a finite limit to the amount that can be taken by the authority. The second is that the bulk entitlements of the three Melbourne retail authorities are pooled.

Each Melbourne retail authority is granted a notional capacity share in this Order in Schedule 1. These are not separately quantified but, collectively, they add up to 100% of the amount available to Melbourne.

The approach was preferred to issuing a single entitlement to the three Melbourne retail authorities as a group as it reinforces the accountability of each Melbourne retail authority and provides a basis for possible future evolution of the arrangements (also see Part 7 below).

**Share of Flow (clause 7)** In keeping with the source entitlements, clause 7 entitles the three retail authorities to harvest and store their share of the flow in the waterway in the headworks. However, they can only harvest the flow once the Storage Operator has released the environmental flows described in the environment's bulk entitlement. The capacity of the aqueduct is documented in Schedule 2 as it is part of the conditions of the bulk entitlement.

There is some uncertainty about the capacity of the Wallaby Creek aqueduct and, at the time of establishing the bulk entitlements, there was no way of verifying these capacities. **Clause 16** provides for the practical operating capacity of the aqueduct to be reviewed by the entitlement holders and the bulk entitlement amended.

### PART 3 – AVAILABLE WATER RESOURCES

#### **Diversion Limit (clause 8)**

The upper limit on the total amount of water that can be taken from the waterway by the three Melbourne retail authorities is 66,000 ML over any 3 year period. This volume is based on Melbourne Water's historical records of annual diversions from the system. This limit is conditional on Melbourne's total extractions not exceeding a average annual limit estimated at 555,000 ML/year. The conditional cap is necessary for consistency with the modelling for the Yarra cap which assumed a total average annual extraction for Melbourne of 555,000 ML/year, whereas the sum of the separate caps estimated for the Yarra, Thomson and Goulburn basins is greater than 555,000 ML/year.

Clause 8 acknowledges that the water taken under this bulk entitlement is within the Murray-Darling Basin and must comply with the Murray-Darling Basin cap, more specifically, the Goulburn-Broken-Loddon component of the cap.

Currently the diversions for Melbourne are not part of the cap compliance arrangements. This clause requires the three Melbourne retail authorities, in consultation with the Storage Operator and Goulburn Murray Water, to propose to the Minister within 12 months of the commencement of the Order, a method for including the Silver/Wallaby bulk entitlements in the Goulburn-Broken-Loddon cap compliance arrangements.

### PART 4 – GENERAL CONDITIONS AND PROVISIONS

**Management arrangements (clauses 9 and 10)** These clauses are intended to promote orderly and collaborative management of the three Melbourne retail authorities' bulk entitlements and the environment's bulk entitlement by the respective bulk entitlement holders and the Storage Operator.

**Clause 5** of the Instrument of Appointment of the Storage Operator for the Melbourne system together with clauses 9 and 10 of this Order provide for the Storage Operator and bulk entitlement holders to develop arrangements that provide for effective management of the long-term supply-demand balance through the bulk entitlements while ensuring that the bulk water supply system continues to be planned and operated as an integrated system, and other interests and accountabilities are appropriately recognised and protected. These arrangements are best developed co-operatively by the stakeholders rather than being prescribed in detail in the Order.

The Management Agreement in clause 9 is intended to contain clear governance arrangements regarding the making and changing of rules and management of the bulk entitlements to which all bulk entitlement holders and the Storage Operator would be a party.

Clause 10 enables the three retail authorities to establish and update rules for managing their bulk entitlements. These rules would focus on the high-level principles and rules that impact on the yield of the Melbourne retail authorities' bulk entitlements.

The Management Rules established by the source bulk entitlement holders are distinct from, but may ultimately be reflected in, the Storage Management Rules adopted by the Storage Operator. As noted in section 7.2(a) of this Note, these rules would reflect the full range of consumptive, environmental and broader public (e.g. flood protection) interests and accountabilities associated with managing the storages and catchments.

The Instrument of Appointment of the Storage Operator requires the Storage Operator to consider rules proposed by bulk entitlement holders, and sets out a procedure for the Storage Operator to respond to such a proposal.

**Transfer of Entitlement and adjustment of schedules (clause 11)** One of the key principles underpinning the water allocation framework in Victoria is that water entitlements for consumptive uses will be allocated by market mechanisms wherever possible, and be allowed to trade between entitlement holders. Subject to broader water planning processes, trading between the Melbourne entitlement holders (as a pool) and other entitlement holders will be permitted. Given the interdependent nature of the entitlements, however, any such trade will require the agreement of all three Melbourne retail authorities.

Consistent with trading arrangements for bulk entitlements in the rest of the State under the **Water Act 1989**, the entitlement holders may apply to the Minister to transfer, either temporarily or permanently, all or part of its bulk entitlement for any purpose (including in-stream use of water).

**Dispute Resolution (clause 12)** This section provides for formal dispute resolution in the event that a difference or dispute concerning the interpretation or application of the bulk entitlement order cannot be resolved by the parties. Parties to a dispute may include one or more of the Melbourne retail authority, the Minister, other entitlement holders, the Storage Operator and the Resource Manager.

#### PART 5 – DEMONSTRATING COMPLIANCE

Each Melbourne retail authority is required to report, in conjunction with the other Melbourne retail authorities, on compliance with its bulk entitlement (including compliance with the Goulburn–Broken–Loddon cap).

Given that Melbourne Water owns and operates the headworks assets, including meters, the obligation to prepare a metering plan in order to demonstrate compliance with these orders has been given to the Storage Operator via the Instrument of Appointment.

**Reporting requirements (clause 13)** Clause 13 specifies matters on which the Minister may require the Melbourne retail authority holding the bulk entitlement to report. These include the status of the bulk entitlement to water in the headworks system, any temporary or permanent transfers of the bulk entitlement, any failure to comply with the entitlement, and any difficulty experienced or anticipated by the authority in complying with the bulk entitlement.

It is also required to report any breach of the entitlement in its annual report.

**Data (clause 14)** The purpose of this clause is to ensure open access to hydrological and other data held by other authorities but required by any authority to report on compliance with its bulk entitlement.

#### PART 6 – COSTS

The Essential Services Commission is responsible for regulating charges for certain services provided by water authorities in Victoria. It will determine the prices to apply for the first regulatory period from 1 July 2005 to 30 June 2008, after which it will make a determination every 5 years. The initial determination includes the bulk charges to be levied by Melbourne Water on the Melbourne retail authorities in meeting its regulatory and customer service obligations provisions. The Essential Services Commission's role obviates the need to include cost sharing arrangements associated with maintaining and operating the headworks and bulk transfer systems within the bulk entitlements.

**Resource manager (Clause 15)** provides for the payment by the Melbourne retail authority bulk entitlement holders of costs incurred by the Resource Manager in undertaking its functions including preparing the Goulburn Basin Accounts, reporting on whether entitlement holders in the Goulburn Basin comply with the conditions of their bulk entitlements, reporting on disputes between entitlement holders in the Goulburn Basin, reporting on significant unauthorised uses of water in the Goulburn Basin, and co-ordinating the process for application and implementation of

the qualification of any rights to water made by the Minister during periods of declared water shortage under s 33AAA of the **Water Act 1989**. These costs are not currently regulated by the Essential Services Commission, but would be included as costs to be covered by proposed tariffs in the metropolitan retailers' Water Plans.

Goulburn Murray Water is appointed as Resource Manager for the Goulburn Basin under a separate Instrument of Appointment.

#### **PART 7 – FURTHER WORK**

The initial establishment of bulk entitlements for the Melbourne system was designed to achieve a range of benefits as outlined earlier in this Note. However, it is recognised that further evolution of the new entitlement structure has the potential to achieve a long-term supply-demand balance for the Melbourne system with reduced economic, social and environmental costs. **Clause 16** encourages this evolution by requiring the Melbourne retail authorities to submit a proposal to the Minister within two years. In particular, it is anticipated that consideration will be given to the merits of disaggregating the 'pooled'.

Clause 16 also provides for the practical operating capacity of the Wallaby Creek aqueduct to be reviewed by the entitlement holders and the bulk entitlement amended accordingly.

**Management plan (Clause 17)** makes it clear that these bulk consumptive entitlements are subject to amendment if the Minister accepts the recommendation of a stream flow management plan. This process would be undertaken in an open and consultative manner involving the entitlement holders likely to be affected by the outcomes.

Preparation of a stream flow management plan for the King Parrot Creek was still in progress at the time these bulk entitlement orders were prepared. Whilst there has been some agreement between Goulburn Murray Water and Melbourne Water on the environmental flows from the headworks to maintain a minimum flow in the King Parrot Creek at Flowerdale, the agreement is yet to be endorsed by the community consultative group. Clause 17 requires the authority to participate in any further development of the stream flow management plan.

#### **12. THE ENVIRONMENTAL ENTITLEMENT**

A separate environmental entitlement is to be granted to the environment Minister in respect of water for the environment in the Silver and Wallaby Creeks. A separate environmental entitlement with obligations on the Melbourne Water to pass the environmental flows is preferred because –

- it is not appropriate to include the obligation of meeting environmental flows in the Melbourne retail authorities' bulk entitlement orders as they do not own or operate the headworks weirs; and
- it is appropriate that the obligation to pass environmental flows be given to Melbourne Water in its capacity as Storage Operator, as it owns and operates the headworks.

#### **QUANTIFYING THE ENTITLEMENT**

**Clause 4** describes the water allocated to the environment in the Silver and Wallaby Creeks. This water consists of the minimum flows described in Schedules 1 and 2.

Schedule 1 specifies the current environmental flows which apply at the time of conversion.

Schedule 2 contains environmental flows that were negotiated by Melbourne Water, Goulburn Murray Water and the Department as part of the preparation of a stream flow management plan for the King Parrot Creek. The Schedule 2 flows only apply when the stream flow management plan is approved by the Minister. The plan would contain complementary management rules requiring Goulburn Murray Water to restrict its licensees' access to water during water shortages.

#### **WATER ACCOUNTING PROCEDURES**

##### **Data**

**Clauses 5 and 6** ensure that the entitlement holder has open access to hydrological and other data held by other authorities but required by the entitlement holder to report on compliance with its entitlement.

## OPERATION AND MANAGEMENT CONDITIONS

### Operating Arrangements

**Clauses 7 to 10** require the environment Minister, in consultation with the Melbourne Water and the other entitlement holders, to develop water accounting and operating arrangements associated with the entitlement. The operating arrangements are to be submitted to the Minister for approval. They would be expected to include (but not be limited to) such things as –

- responsibilities of each of the parties; and
- details of consultation and the position of the other parties in respect of the operating arrangements.

**Clause 11** recognises that it may take some time for Melbourne Water to practically implement a new set of environmental flows (e.g. a change to the flows from Schedule 1 to Schedule 2 as a result of the completion of a management plan for King Parrot Creek), and provides a 3 month period before new environmental flows are implemented. This 3 month period does not apply to the current environmental flows or environmental flows which can be implemented relatively easily.

### Releases

In **Clause 12**, Melbourne Water is to ensure that the minimum environmental flows at the weirs specified in Schedule 1 are met. The location, rate and timing of release of this water are fully defined in Schedules 1 and 2.

This clause also provides for tolerances in the meeting of the environmental flows to be specified in the Operating Agreement (or its subsidiary plans).

### Payments in relation to services provided in relation to this entitlement

**Clauses 13** explicitly exempts the environment Minister from contributing to the headworks and Resource Manager costs. The Government's policy on charges associated with the environment's water is described in Chapter 3 of the Government's 2004 White Paper 'Our Water Our Future'.

### Dispute Resolution

The dispute resolution clauses (**clauses 14 to 22**) are standard in all the Melbourne entitlements.

### Reporting requirements

**Clauses 23** and **24** describe the reporting requirements associated with the environmental entitlement.

## INSTRUMENTS OF APPOINTMENT

### 13. STORAGE OPERATOR

Melbourne Water will be formally appointed by the Minister for Water as Storage Operator for the bulk entitlements in the Melbourne headworks system under s 43A(1) of the **Water Act 1989**. The Instrument of Appointment specifies Melbourne Water's rights and obligations as Storage Operator.

This appointment is for an indefinite period and continues until revoked by the Minister (**clause 1**). It applies in respect of all the storages (Thomson, Upper Yarra, Maroondah, O'Shannassy, Sugarloaf, Silvan, Cardinia, Toorourong, Yan Yean and Greenvale Reservoirs) and associated weirs, tunnels, transfer conduits and other water supply works in the Melbourne headworks system nominated by name in the Instrument (**clause 3**) and the system waterway comprising the Thomson River to Coopers Creek Gauging Station, the Yarra River and its tributaries upstream of the Plenty River confluence and the Silver and Wallaby Creek upstream of Melbourne Water's weirs.

As Storage Operator, Melbourne Water will be required to operate, maintain and refurbish the headworks system to meet the requirements of entitlement holders to take water and, in the case of the environmental entitlement, regulate the system to ensure environmental flows are met (**clause 4**).

It is also required to participate in the development of a method to demonstrate the Melbourne retail authorities' compliance with the Yarra cap, the preparation of bulk entitlement management rules by the retail authorities, and any reviews of environmental flows and the bulk entitlements more generally.

**Storage Management Rules (clause 5)** The Instrument of Appointment obliges the Storage Operator to develop Storage Management Rules, in consultation with the bulk entitlement holders and other stakeholders. These rules are for management of the storages and headworks catchments to meet the requirements of the bulk entitlements but also have regard for broader economic, social and environmental costs and benefits (e.g. management of floods).

Any rules or amendments proposed by bulk entitlement holders must be considered by the Storage Operator and either adopted or detailed reasons given for not being adopted provided within set timeframes. Valid reasons could include an inability of the Storage Operator to achieve regulatory or contractual compliance if the proposed rule is adopted. Dispute resolution procedures will apply should the reasons provided be considered inadequate by the retailers. The Storage Operator must update the Rules at least annually, and provide them to all entitlement holders.

The Storage Operator must operate the headworks system in accordance with the Rules. The Rules will need to provide the Storage Operator with sufficient flexibility and discretion to manage the system without undue interference or risk of non-compliance under a range of climatic scenarios and unforeseen circumstances. To facilitate this flexibility it is expected that the Rules will contain provisions allowing for departure from prescribed operations subject to reasonable reporting and explanation after the event. It is expected that the form of the Rules will improve over time to better distinguish the circumstances under which operating flexibility is appropriate from those where strict adherence to prescribed operations is necessary to protect stakeholder interests.

**Operating Plan (clause 6)** The Storage Operator must also prepare an Operating Plan, in consultation with entitlement holders and other stakeholders as appropriate, that is consistent with the Storage Management Rules. The Operating Plan must include forward-looking scenarios based on a range of possible climatic conditions and include a multi-year outlook. An Operating Plan prepared in the period coinciding with preparation of the authorities' Water Plans is expected to facilitate consideration of operating options and tradeoffs in the context of pricing flexibility provided by a new Water Plan. For this reason, the multi-year outlook for an Operating Plan prepared in the period coinciding with preparation of the authorities' Water Plans should cover the same planning period as the Water Plan.

The Storage Operator is required to implement the Plan, update it from time to time, and report monthly and annually to the bulk entitlement holders on the operation of the headworks system against the plan. The plan will need to provide the Storage Operator with sufficient flexibility and discretion to manage the system without undue interference or risk of non-compliance under a range of climatic scenarios and unforeseen circumstances. To facilitate this flexibility it is expected that the plan will contain provisions allowing for departure from planned operations subject to reasonable reporting and explanation after the event. It is expected that the form of the plan will improve over time to better define a range of possible scenarios, and distinguish the circumstances under which operating flexibility is appropriate from those where strict adherence to prescribed operations is necessary to protect stakeholder interests.

**Environmental Management Program (clause 7)** The way in which the storages and headworks are operated can have environmental impacts. The Storage Operator is therefore required to propose to the Minister, within 12 months of appointment, a program to assess and manage the environmental effects of operating the weirs and harvesting storages.

The Storage Operator is required to implement the approved program and may be required to report to the Minister in writing on its implementation.

**Metering Plan (clause 8)** Another key duty required of the Storage Operator is to propose and implement a metering program to demonstrate the environment Minister's and the authorities'

compliance with their entitlements in the Melbourne headworks system. The Instrument also imposes some specific obligations with respect to maintaining metering equipment in good condition, ensuring that metering equipment is periodically re-calibrated, and ensuring that any rating curves used to calculate flows are regularly checked.

**Audit (clause 10)** Given the importance of the operation of the headworks system for the bulk entitlements, the Storage Operator is required to arrange an annual independent audit of the operation of the headworks system. The Department of Sustainability and Environment will determine the scope of the audit in consultation with entitlement holders. The Storage Operator must make available copies of the completed audit to all bulk entitlement holders in the headworks system. The audit will provide feedback on the need to improve the Instrument of Appointment.

**Recovering Costs (clause 11)** The cost of undertaking the activities of Storage Operator are to be recovered from the bulk entitlement holders in the Melbourne headworks system. The costs and tariff structures to be paid by each entitlement holder are to be determined by the Essential Services Commission. If a rule change occurs within the Essential Services Commission's regulatory period, the Storage Operator may recover significant additional costs by agreement between the parties.

**Dispute Resolution** The Instrument contains a dispute resolution clause that mirrors those in the bulk entitlements.

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