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Water Act 1989

BULK ENTITLEMENT (LAL LAL – CENTRAL HIGHLANDS) CONVERSION AMENDMENT ORDER 2010

I, Tim Holding, Minister for Water, under the provisions of the **Water Act 1989**, make the following Order –

1. Title

This Order is called the Bulk Entitlement (Lal Lal – Central Highlands) Conversion Amendment Order 2010.

2. Preliminary

The Bulk Entitlement (Lal Lal – Central Highlands) Conversion Order 1995 (the Bulk Entitlement Order) was made by the Minister on 21 November 1995 and published in the Government Gazette on 7 December 1995. The Bulk Entitlement Order converted the Central Highlands Region Water Authority's (now the Central Highlands Region Water Corporation) entitlement to water from its share of the Lal Lal Reservoir to a bulk entitlement.

3. Purpose

The purpose of this Order is to amend the Bulk Entitlement Order to reduce Central Highlands Region Water Corporation's entitlement to inflows and storage capacity in Lal Lal Reservoir to provide for the allocation of the Moorabool Environmental Entitlement 2010.

4. Authorising provisions

This Order is made in accordance with section 44(1) of the **Water Act 1989**. The Minister makes this Order on the application of the Central Highlands Region Water Corporation.

5. Commencement

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

6. Changes to definitions

- 6.1 For the definition of 'Authority' in the Bulk Entitlement Order, **substitute**
 - ' 'Authority' means the Central Highlands Region Water Corporation.'
- 6.2 Delete the definition of 'surplus water.'
- 6.3 Add the following definition
 - "'environment Minister' has the same meaning as in section 3(1) of the Act."

7. Substitution of clause 6

For clause 6.1 of the Bulk Entitlement Order, substitute –

6. Bulk Entitlement

6.1 The Authority may take from its share of reservoir capacity at specified point A up to 37,725 ML of water in any consecutive 3 year period which includes the current year.'

8. Substitution of clause 7

For clause 7 of the Bulk Entitlement Order, substitute –

'7. Share of Capacity

7.1 The capacity of the reservoir is up to 59,549 ML at the full supply level of 412.39 metres Australian Height Datum.

SPECIAL

- 7.2 Subject to clause 8.3, the Authority is entitled to
 - (a) 59.9 per cent of the capacity of the reservoir; and
 - (b) all water stored in its share of the reservoir

but may not release or transfer any more than its entitlement in any consecutive 3 year period.'

9. Substitution of clause 8

For clause 8 of the Bulk Entitlement Order, substitute –

'8. Share of Flow

- 8.1 Subject to sub-clause 8.2, the Authority is entitled to store in its share of reservoir capacity
 - (a) 59.9 per cent of the flow into the reservoir; or
 - (b) if at least one reservoir entitlement holder's share of reservoir capacity is full, inflows are to be redistributed between the reservoir entitlement holders whose shares of reservoir capacity are not full, in proportion to the inflow shares of those reservoir entitlement holders.
- 8.2 The Authority must not release as part of its bulk entitlement or store in the reservoir
 - (a) the passing flows specified in sub-clause 9.1; or
 - (b) any flow into the reservoir which is being transferred by the holder of
 - i. any other bulk entitlement; or
 - ii. any licence; or
 - (c) any flow into the reservoir when the Authority's share of reservoir capacity is full.'

10. Deletion of clause 11

Delete clause 11 of the Bulk Entitlement Order.

11. Deletion of clause 13.1(f)

Delete clause 13.1(f) of the Bulk Entitlement Order.

12. Deletion of clause 18.1(h)

Delete clause 18.1(h) of the Bulk Entitlement Order.

Dated 19 October 2010

TIM HOLDING Minister for Water

Water Act 1989

BULK ENTITLEMENT (LAL LAL – BARWON) CONVERSION AMENDMENT ORDER 2010

I, Tim Holding, Minister for Water, under the provisions of the **Water Act 1989**, make the following Order –

1. Title

This Order is called the Bulk Entitlement (Lal Lal – Barwon) Conversion Amendment Order 2010.

2. Preliminary

The Bulk Entitlement (Lal Lal – Barwon) Conversion Order 1995 (the Bulk Entitlement Order) was made by the Minister on 21 November 1995 and published in the Government Gazette on 7 December 1995. The Bulk Entitlement Order converted the Barwon Region Water Authority's (now the Barwon Region Water Corporation) entitlement to water from its share of the Lal Lal Reservoir to a bulk entitlement.

3. Purpose

The purpose of this Order is to amend the Bulk Entitlement Order to reduce Barwon Region Water Corporation's entitlement to inflows and storage capacity in Lal Lal Reservoir to provide for the allocation of the Moorabool Environmental Entitlement 2010.

4. Authorising provisions

This Order is made in accordance with section 44(1) of the **Water Act 1989**. The Minister makes this Order on the application of the Barwon Region Water Corporation.

5. Commencement

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

6. Changes to definitions

- 6.1 For the definition of 'Authority' in the Bulk Entitlement Order, **substitute**
 - ' 'Authority' means the Barwon Region Water Corporation.'
- 6.2 Delete the definition of 'surplus water.'
- 6.3 Add the following definition
 - ' 'environment Minister' has the same meaning as in section 3(1) of the Act.'

7. Substitution of clause 6

For clause 6.1 of the Bulk Entitlement Order, substitute –

'6. Bulk Entitlement

6.1 The Authority may take from its share of reservoir capacity at specified point A up to 17,775 ML of water in any consecutive 3 year period which includes the current year.'

8. Substitution of clause 7

For clause 7 of the Bulk Entitlement Order, substitute –

'7. Share of Capacity

- 7.1 The capacity of the reservoir is up to 59,549 ML at the full supply level of 412.39 metres Australian Height Datum.
- 7.2 Subject to clause 8.3, the Authority is entitled to
 - (a) 28.2 per cent of the capacity of the reservoir; and
 - (b) all water stored in its share of the reservoir

but may not release or transfer any more than its entitlement in any consecutive 3 year period.'

9. Substitution of clause 8

For clause 8 of the Bulk Entitlement Order, substitute –

'8. Share of Flow

- 8.1 Subject to sub-clause 8.2, the Authority is entitled to store in its share of reservoir capacity
 - (a) 28.2 per cent of the flow into the reservoir; or
 - (b) if at least one reservoir entitlement holder's share of reservoir capacity is full, inflows are to be redistributed between the reservoir entitlement holders whose shares of reservoir capacity are not full, in proportion to the inflow shares of those reservoir entitlement holders.
- 8.2 The Authority must not release as part of its bulk entitlement or store in the reservoir
 - (a) the passing flows specified in sub-clause 9.1; or
 - (b) any flow into the reservoir which is being transferred by the holder of
 - i. any other bulk entitlement; or
 - ii. any licence; or
 - (c) any flow into the reservoir when the Authority's share of reservoir capacity is full.'

10. Deletion of clause 11

Delete clause 11 of the Bulk Entitlement Order.

11. Deletion of clause 13.1(f)

Delete clause 13.1(f) of the Bulk Entitlement Order.

12. Deletion of clause 19.1(j)

Delete clause 19.1(j) of the Bulk Entitlement Order.

Dated 19 October 2010

TIM HOLDING Minister for Water

Water Act 1989

MOORABOOL RIVER ENVIRONMENTAL ENTITLEMENT 2010

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I, Tim Holding, Minister for Water, as Minister administering the **Water Act 1989**, make the following Instrument –

PART 1 – INTRODUCTORY

Citation

1. This Instrument may be cited as the Moorabool River Environmental Entitlement 2010

Purpose

- 2. The purpose of this Instrument is to establish an environmental entitlement for 2,500 ML per year on average for the Moorabool River, sourced from the Lal Lal Reservoir. This follows major infrastructure augmentations to the water supplies for Ballarat and Geelong, which have reduced the reliance of those communities on harvesting from the Moorabool River.
- 3. Concurrent, complementary amendments to the Bulk Entitlement (Lal Lal Central Highlands) Conversion Order 1995 and Bulk Entitlement (Lal Lal Barwon) Conversion Order 1995 will reduce the consumptive entitlements on the Moorabool River by an equivalent volume.

Empowering Provisions

4. This Instrument is made under section 48B of the **Water Act 1989**.

Commencement

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

Definitions

- 6. In this Instrument
 - 'Act' means the Water Act 1989:
 - **'authorities'** means the authorities holding bulk entitlements, in the Moorabool Basin, granted under Division 1 of Part 4 of the Act;
 - **'Department'** means the Department supporting the Minister administering the Act;
 - **'environment Minister'** has the same meaning as in section 3(1) of the Act;
 - **'environment Minister's share'** means the volume of the water stored in Lal Lal Reservoir that belongs to the environment Minister;
 - **'incremental costs'** means the additional cost burden incurred by the Storage Manager or Resource Manager to perform services for the purposes of this entitlement that are above their normal business in relation to the management of the Moorabool Basin.
 - 'Lal Lal headworks system' means Lal Lal Reservoir and associated weirs, outlets and gauges;
 - **'Lal Lal headworks cost'** means all costs associated with the construction, maintenance, operation and replacement of the Lal Lal headworks system.
 - 'licence' means any licence granted under Part 4 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 section 306 of the Act;
 - **'Moorabool Basin'** means the area of land designated as Basin Number 232 in the South-East Coast Division of the Australian Water Resources Council's Australian Continental Drainage Divisions;
 - **'Moorabool Basin Water Accounts'** means an annual report, required by the Minister, on compliance by entitlement holders and licensees in the Moorabool Basin with the terms of their bulk entitlements;

'reservoir' means the Lal Lal Reservoir formed by Bungal Dam on the West Branch of the Moorabool River;

'reservoir entitlement holder' means any authority or person holding an entitlement to water in the Lal Lal Reservoir.

'Resource Manager' means any person appointed by the Minister to do all or any of the following –

- (a) prepare the Moorabool Basin Water Accounts;
- (b) monitor whether bulk entitlement holders in the Moorabool Basin comply with the conditions of their bulk entitlements;
- (c) investigate and mediate disputes between entitlement holders in the Moorabool Basin;
- investigate and deal with significant unauthorised use of water in the Moorabool Basin;
- (e) supervise the qualification of any rights to water made by the Minister during periods of declared water shortage under section 33AAA of the Act;

'Storage Manager' means any person appointed by the Minister under section 122ZK of the Act to be storage manager for the Lal Lal headworks system;

'waterway' means the West Branch of the Moorabool River;

'year' means the period from 1 July to 30 June.

PART 2 – THE ENTITLEMENT

Allocation of an Environment Entitlement

- 7. The environment Minister is entitled to
 - (a) up to 7,500 ML of water from the environment Minister's share of reservoir capacity in any consecutive 3 year period which includes the current year.

Share of Storage Capacity

- 8. The capacity of the reservoir is up to 59,549 ML at the full supply level of 412.39 metres Australian Height Datum.
- 9. The environment Minister is entitled to
 - (a) 11.9 per cent of the capacity of the reservoir; and
 - (b) all water stored in the environment Minister's share of the reservoir, subject to clause 12.
- 10. At the date of commencement of this Instrument, the volume of water stored by the environment Minister in the reservoir is deemed to be
 - (a) 10.2 per cent of the volume of water held in the reservoir by Central Highlands Region Water Corporation; and
 - (b) 15.4 per cent of the volume of water held in the reservoir by Barwon Region Water Corporation.

Share of Flow

- 11. Subject to clause 12, the environment Minister is entitled to store in its share of reservoir capacity—
 - (a) 11.9 per cent of the flow into the reservoir; or
 - (b) if at least one reservoir entitlement holder's share of reservoir capacity is full, inflows are to be redistributed between the reservoir entitlement holders whose shares of reservoir capacity are not full, in proportion to the inflow shares of those reservoir entitlement holders.

- 12. The environment Minister must not release as part of the environment Minister's environmental entitlement or store in the reservoir
 - (a) the passing flow specified in clause 13; or
 - (b) any flow in the reservoir which is being transferred by the holder of
 - (i) any other bulk entitlement; or
 - (ii) any licence; or
 - (c) any flow into the reservoir when the environment Minister's share of reservoir capacity is full.

PART 3 – OPERATION AND MANAGEMENT CONDITIONS

Passing Flow

- 13. The following passing flow must be provided from the reservoir
 - (a) when the cumulative flow into the reservoir during the preceding 24 month period is greater or equal to Q then:

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when F \le 20 ML/d, P = F; and
when F > 20 ML/d, P = 20 ML/d; and
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(b) when the cumulative flow into the reservoir during the preceding 24 month period is less than Q then:

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when F \le 5 ML/d, P = F; and when F > 5 ML/d, P = 5 ML/d;
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where -

F = the flow into the reservoir calculated in ML/d less any flow under transfer pursuant to sub-clause 12 (b); and

P = the passing flow in ML/d; and

Q = the 24 month cumulative flow into the reservoir that is equalled or exceeded 90 per cent of the time.

14. The Minister may review the calculation of Q if, in the Minister's opinion, the result of the calculation is, at any time, no longer fair and reasonable.

Environmental Flow Manager

15. The environment Minister may appoint an environmental flow manager to act on the environment Minister's behalf in relation to any of the provisions of this entitlement and in accordance with the instrument of appointment.

Environmental Operating Strategy

- 16. The environment Minister must prepare an Environmental Operating Strategy for the supply of water under this entitlement within twelve months of the commencement of this instrument
- 17. The Environmental Operating Strategy must
 - (a) include a framework for the development of an Annual Watering Plan;
 - (b) be consistent with the Environmental Water Reserve Objectives described in section 4B of the Act; and
 - (c) have regard to environmental, social and economic benefits and costs.
- 18. The environment Minister must review and update the Environmental Operating Strategy established under clause 17 at least every five years in consultation with the Department.
- 19. The environment Minister must supply the Department, the Storage Manager and the authorities with the most up to date version of the Environmental Operating Strategy.

Annual Watering Plan

- 20. The environment Minister must develop an Annual Watering Plan in accordance with the framework set out in the Environmental Operating Strategy under clause 17(a). The Annual Watering Plan must be reviewed and updated annually.
- 21. The environment Minister must supply the Department, the Storage Manager and the authorities with the most up to date version of the Annual Watering Plan.

Releases

- 22. The environment Minister must direct the Storage Manager to:
 - (a) release from storage water allocated to the environment Minister under this entitlement, consistent with the Annual Watering Plan; and
 - (b) deduct the amount released to the waterway for environmental releases under paragraph (a) from the environment Minister's share of water in storage.
- 23. Water released under this entitlement must not be used to achieve compliance with passing flow obligations.
- 24. Subject to clause 25, the capacity of the outlet works to the river of the reservoir is to be shared equally between all reservoir entitlement holders.
- 25. The environment Minister may from time to time, jointly with the other reservoir entitlement holders, propose to the Minister fair and reasonable means of sharing the capacity of the outlet works of the reservoir.
- 26. The Minister may
 - (a) approve all or any means proposed under clause 25; or
 - (b) require the reservoir entitlement holders to amend all or any means proposed; and
 - (c) require the reservoir entitlement holders to
 - review all or any of the means approved by the Minister if, in the Minister's opinion, they are, at any time, no longer fair or reasonable;
 - (ii) propose amended means to the Minister.

Accounting for Entitlements to Water from the Reservoir

- 27. The environment Minister and other reservoir entitlement holders must jointly propose to the Minister, within 12 months of the date of this Instrument, means of accounting for
 - (a) the reservoir inflows and passing flows; and
 - (b) losses through evaporation , seepage or any other means from the reservoir; and
 - (c) the amount of water taken or released from the reservoir by each entitlement holder; and
 - (d) the amount of water in each entitlement holder's share of reservoir capacity; and
 - (e) the apportionment of shares of inflows when an entitlement holder's share of reservoir capacity is full.
- 28. The Minister may
 - (a) approve a proposal made under clause 27; or
 - (b) require the environment Minister to amend the proposal; and

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- (c) require the environment Minister
 - to review all or part of any proposal approved by the Minister, if, in the Minister's opinion, it is any time, no longer fair, reasonable or representative; and
 - (ii) to propose an amended proposal to the Minister.

Joint Metering Program

- 29. The environment Minister and other reservoir entitlement holders must jointly propose to the Minister within 12 months of the date of this Instrument a metering program to determine
 - (a) the flow into the reservoir; and
 - (b) the amount of water in the reservoir; and
 - (c) the passing flow.
- 30. The Minister may
 - (a) approve the program proposed under clause 29; or
 - (b) require the reservoir entitlement holders to amend the proposed program; and
 - (c) require the reservoir entitlement holders
 - (i) to review the program approved by the Minister if, in the Minister's opinion, it is, at any time, no longer appropriate; and
 - (ii) to propose an amended program to the Minister.
- 31. Subject to clause 36, the environment Minister is not required to pay the cost to
 - (a) implement and maintain the approved metering program; and
 - (b) operate and maintain metering equipment in good condition and periodically re-calibrate the metering equipment in accordance with any guidelines issued by the Minister –

where the metering is already undertaken by the other reservoir entitlement holders for the purposes of normal headworks operation, in accordance with the requirements of their bulk entitlements.

Environment Minister's Metering Program

- 32. The environment Minister must propose to the Minister within 12 months of the date of this Instrument a metering program to determine the amount of water taken by the environment Minister at the reservoir outlet to the waterway.
- 33. The Minister may
 - (a) approve the program proposed under clause 32; or
 - (b) require the environment Minister to amend the proposed program; and
 - (c) require the environment Minister to
 - (i) review the program approved by the Minister if, in the Minister's opinion, it is, at any time, no longer appropriate; and
 - (ii) propose an amended program to the Minister.
- 34. Subject to clause 36, the environment Minister is not required to pay the cost to
 - (a) implement and maintain the approved metering program; and
 - (b) operate and maintain metering equipment in good condition and periodically re-calibrate the metering equipment in accordance with any guidelines issued by the Minister –

where the metering is already undertaken by the other reservoir entitlement holders for the purposes of normal headworks operation, in accordance with the requirements of their bulk entitlements.

Storage Management Costs

- 35. Subject to clause 36, the environment Minister is not required to make any payment for Lal Lal headworks costs.
- 36. The environment Minister must pay the Storage Manager the reasonable incremental costs incurred by the Storage Manager, to:
 - (a) release water;
 - (b) collect and manage data;
 - (c) meter; and
 - (d) perform any other services agreed to by the environment Minister and the Storage Manager.
- 37. Within six months of the commencement of this Instrument, the environment Minister, jointly with the other authorities and the Storage Manager, must endeavour to agree on the cost-sharing arrangements.
- 38. In determining cost sharing arrangements in relation to clause 36, the parties must have regard to whether the services are performed in relation to this entitlement and would provide a benefit to the environmental water reserve of the Moorabool Basin.
- 39. If the parties cannot reach an agreement, either party may give written notice to the other party requiring the matter to be determined in accordance with clauses 50 to 59
- 40. The parties may vary the cost-sharing arrangements from time to time by agreement.

Water Resource Management Costs

- 41. The environment Minister must pay the Resource Manager the reasonable incremental costs incurred by the Resource Manager to:
 - (a) prepare the Moorabool Basin Water Accounts;
 - (b) monitor whether bulk entitlement holders in the Moorabool Basin comply with the conditions of their bulk entitlements;
 - (c) investigate and mediate disputes between entitlement holders in the Moorabool Basin;
 - (d) investigate and deal with significant unauthorised use of water in the Moorabool Basin: and
 - (e) supervise the qualification of any rights to water made by the Minister during periods of declared water shortage under section 33AAA of the Act, where the environmental water reserve is a beneficiary.
- 42. Within six months of the commencement of this Instrument, the environment Minister, jointly with the other authorities and the Resource Manager, must endeavour to agree on the cost-sharing arrangements.
- 43. In determining cost sharing arrangements in relation to clause 41, the parties must have regard to whether the services are performed in relation to this entitlement and would provide a benefit to the environmental water reserve of the Moorabool Basin.
- 44. If the parties cannot reach an agreement, either party may give written notice to the other party requiring the matter to be determined in accordance with clauses 50 to 59.
- 45. The parties may vary the cost-sharing arrangements from time to time by agreement.

Reporting Requirements

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- 46. The Minister may require the environment Minister to report on all or any of
 - (a) the daily flow into the reservoir;
 - (b) the daily flow into the environment Minister's share of reservoir capacity;
 - (c) the daily passing flow;
 - (d) the daily amount of water released from the reservoir to the waterway under this entitlement;
 - (e) the amount of water in the environment Minister's share of reservoir capacity;
 - (f) the annual flow into the environment Minister's share of reservoir capacity;
 - (g) the annual amount of water released from the reservoir to the waterway under this entitlement:
 - (h) the annual amount of losses debited to the environment Minister's share of reservoir capacity;
 - (i) any bulk entitlement, licence or water share temporarily or permanently transferred to the environment Minister;
 - (j) any amendment to this Instrument;
 - (k) any new environmental entitlement allocated to the environment Minister;
 - (1) the extent to which actual environmental flows have met the recommended Annual Water Plan prepared under clause 20;
 - (m) any failure by the environment Minister to comply with any provision of this Instrument; and
 - (n) any existing or anticipated difficulties experienced by the environment Minister in complying with this Instrument and any remedial action taken or proposed.
- 47. The Minister may require the environment Minister to report on all or any of the matters set out in clause 46
 - (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.

Data

- 48. The Minister will endeavour 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.
- 49. The environment Minister must make available to any person data collected by or on behalf of the environment Minister for the purpose of clause 46 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.

PART 4 – DISPUTE RESOLUTION

Dispute Resolution

50. If a difference or dispute arises between the environment Minister, the Storage Manager and the Resource Manager, or any of them, 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.

- 51. If a difference or dispute arises between the environment Minister and an authority, concerning the interpretation or application of this Instrument, the environment Minister may give written notice to the authority requiring the matter to be determined by an independent expert.
- 52. If a difference or dispute arises between the environment Minister and an authority, concerning the interpretation or application of this Instrument, and the authority gives written notice to the environment Minister requiring the matter to be determined by an independent expert, the environment Minister must comply with the notice.
- 53. 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.
- 54. 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 and Mediators, Australia.
- 55. 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.
- 56. The independent expert must send a copy of the conclusion and its supporting reasons to each party to the difference or dispute.
- 57. In any difference or dispute to which the Minister is a party
 - (a) the independent expert must express the conclusion as a recommendation;
 - (b) the Minister must consider any recommendation made under paragraph (a) before deciding whether there are grounds for giving a direction pursuant to section 48J(2) of the Act.
- 58. 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.
- 59. 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.

Dated 19 October 2010

TIM HOLDING Minister for Water 4

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