



Victoria Government Gazette

No. S 261 Thursday 1 July 2010
By Authority of Victorian Government Printer

Water Act 1989

MACALISTER RIVER ENVIRONMENTAL ENTITLEMENT 2010

I, Tim Holding, Minister for Water, as Minister administering the **Water Act 1989**, allocate the following environmental entitlement –

PART 1 – INTRODUCTORY

TITLE

1. This Instrument is called the Macalister River Environmental Entitlement 2010.

PURPOSE

2. The purpose of this instrument is to allocate an environmental entitlement to water that will be used to provide increased environmental flows along the Macalister River.

COMMENCEMENT

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

EMPOWERING PROVISIONS

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

DEFINITIONS

5. In this Instrument –

‘**Act**’ means the **Water Act 1989**;

‘**Authority**’ has the same meaning as in section 3(1) of the Act;

‘**bulk entitlement holder**’ means an Authority holding a bulk entitlement granted under Division 1 of Part 4 of the Act;

‘**environmental flow manager**’ means any person or persons acting jointly, appointed by the environment Minister to undertake the functions set out in clause 11 of this Order;

‘**environment Minister**’ has the same meaning as in section 3(1) of the Act;

‘**Department**’ means the Department supporting the Minister administering the Act;

‘**Macalister River**’ means the Macalister River between Lake Glenmaggie and its confluence with the Thomson River, including the pools formed by, and immediately upstream of, Glenmaggie Dam and Maffra Weir;

‘**Macalister Storage Manager**’ means a person appointed by the Minister under section 122ZK 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;

‘**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;

‘**Southern Rural Water**’ means Gippsland and Southern Rural Water Corporation trading as Southern Rural Water;

‘**Storage Capacity**’ is the capacity available to the environment Minister for the purposes of storing water to which the environment Minister is entitled to under this Instrument;

‘**year**’ means the period from 1 July to 30 June.

SPECIAL

PART 2 – THE ENTITLEMENT**ENTITLEMENT TO WATER**

6. The environment Minister is entitled to –
- (a) water allocated in accordance with clause 9 and 10 of this Instrument under –
 - (i) a high reliability water entitlement of 2,618 ML from Lake Glenmaggie; and
 - (ii) a low reliability water entitlement of 1,309 ML from Lake Glenmaggie; and
 - (b) after the earlier of 30 September 2012 and when Melbourne is subject to a level of restrictions less than Stage 2, water allocated in accordance with clause 9 and 10 of this Instrument under –
 - (i) a high reliability water entitlement of 4,493 ML from Lake Glenmaggie; and
 - (ii) a low reliability water entitlement of 2,246 ML from Lake Glenmaggie; and
 - (c) subject to clause 7 and 8 of this Instrument, any water to which the environment Minister was entitled under clauses (a) and (b) in the preceding year and years prior to the preceding year which has not been used at the end of that year.

STORAGE CAPACITY IN LAKE GLENMAGGIE

7. Where the environment Minister is entitled to water under clause 6(c) of this Instrument, the environment Minister is entitled to any unused storage capacity in Lake Glenmaggie, until such time as Lake Glenmaggie spills.
8. Lake Glenmaggie is deemed to spill when the water level in Lake Glenmaggie exceeds the full supply level as specified by the Macalister Storage Manager.

PART 3 – WATER AVAILABLE**SEASONAL DETERMINATION FOR HIGH RELIABILITY AND LOW RELIABILITY ENTITLEMENTS**

9. The volume of water to be allocated to the environment Minister in each season under the high reliability and low reliability entitlement provided for in clause 6(a) of this Instrument, is to be determined by the Authority appointed under section 64GA of the Act for the Macalister water system.
10. The annual volume of water available under clauses 6(a) and 6(b) of this Instrument is to be determined as follows –
- (a) the proportion the annual volume of high reliability water bears to the maximum volume available under the entitlement is the same as the proportion a water allocation for a high reliability water share bears to the maximum volume available under a high reliability water share; and
 - (b) the proportion the annual volume of low reliability water bears to the maximum volume available under the entitlement is the same as the proportion a water allocation for a low reliability water share bears to the maximum volume available under a low reliability water share.

PART 4 – OPERATION AND MANAGEMENT CONDITIONS**ENVIRONMENTAL FLOW MANAGER**

11. 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.

ENVIRONMENTAL OPERATING STRATEGY

12. 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.
13. 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.

14. The environment Minister must review and update the Environmental Operating Strategy established under clause 12 at least every five years in consultation with the Department.
15. The environment Minister must supply the Department, the Macalister Storage Manager and the authorities with the most up to date version of the Environmental Operating Strategy.

ANNUAL WATERING PLAN

16. The environment Minister must develop an Annual Watering Plan in accordance with the framework set out in the Environmental Operating Strategy under clause 13(a). The Annual Watering Plan must be reviewed and updated annually.
17. The environment Minister must supply the Department, the Macalister Storage Manager and the authorities with the most up to date version of the Annual Watering Plan.

OPERATING ARRANGEMENTS

18. The environment Minister, jointly with Southern Rural Water and the Macalister Storage Manager, must endeavour to agree on operating arrangements for the water stored in and released from the environment Minister's share of Lake Glenmaggie under this entitlement.
19. If the environment Minister, Southern Rural Water and the Macalister Storage Manager have not reached agreement under clause 18 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 clauses 29–38.
20. The environment Minister, jointly with Southern Rural Water and the Macalister Storage Manager, may vary the management rules from time to time.

RELEASES

21. The Macalister Storage Manager must release the water stored in the environment's share of Lake Glenmaggie at the rates and times specified in the Annual Watering Plan, and within the tolerances and operating rules set out in the Operating Arrangements.
22. The Macalister Storage Manager 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 releases under clause 21.

METERING PROGRAM

23. The environment Minister must consult with Southern Rural Water to ensure that provision has been made in its metering program to measure water released under the environmental entitlement.

REPORTING REQUIREMENTS

24. The Minister may require the environment Minister to report on all or any of the following:
 - (a) the daily environmental flows under this entitlement;
 - (b) the annual volume of environmental flows under this entitlement;
 - (c) any assignment of all or part of this entitlement;
 - (d) any bulk entitlement, licence or water right, temporarily or permanently transferred to the environment Minister;
 - (e) any amendment to this instrument;
 - (f) any new environmental entitlement allocated to the environment Minister in respect of the headworks system;
 - (g) any failure by the environment Minister to comply with any provision of this instrument; and
 - (h) any existing or anticipated difficulties experienced by the environment Minister in complying with this instrument and any remedial action taken or proposed.

25. The Minister may require the environment Minister to report on all or any of the matters set out in clause 24 –
- (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

26. The Minister will endeavour to ensure that all hydrological and other data required by the environment Minister to comply with this entitlement is made available to the environment Minister.
27. The environment Minister must make available to any person data collected by or on behalf of the environment Minister for the purpose of clause 26 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.

PAYMENTS IN RELATION TO SERVICES PROVIDED IN RELATION TO THIS ENTITLEMENT

28. 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.

PART 5 – DISPUTE RESOLUTION**DISPUTE RESOLUTION**

29. If a difference or dispute arises between the environment Minister, the Macalister Storage Manager or Southern Rural Water, or any of them concerning the interpretation or application of this Order, a party may give written notice to the other party requiring the matter to be determined by an independent expert.
30. If a difference or dispute arises between the environment Minister and an authority, concerning the interpretation or application of this Order, the environment Minister may give written notice to the authority requiring the matter to be determined by an independent expert.
31. If a difference or dispute arises between the environment Minister and an authority, concerning the interpretation or application of this Order, 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.
32. 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 giving of that notice.
33. 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.
34. 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.
35. The independent expert must send a copy of the conclusion and its supporting reasons to each party to the difference or dispute.
36. In any difference or dispute to which the Minister is a party –
- (a) The independent expert must express the conclusions 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 section 48J(2) of the Act.

37. In any difference or dispute to which the Minister is not a party, any conclusions by an independent expert is final and binding on the parties.
38. 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 25 June 2010

Responsible Minister
TIM HOLDING
Minister for Water

Note: An explanatory note that accompanies this instrument is available from the Department of Sustainability and Environment.

This page was left blank intentionally

This page was left blank intentionally

bluestar  **PRINT**

The *Victoria Government Gazette* is published by Blue Star Print with the authority of the Government Printer for the State of Victoria

© State of Victoria 2010

This publication is copyright. No part may be reproduced by any process except in accordance with the provisions of the Copyright Act.

Address all enquiries to the Government Printer for the State of Victoria

Level 2 1 Macarthur Street
Melbourne 3002
Victoria Australia

How To Order**Mail Order****Victoria Government Gazette**

Level 5 460 Bourke Street
Melbourne 3000
PO Box 1957 Melbourne 3001
DX 106 Melbourne

**Telephone**

(03) 8523 4601

**Fax**

(03) 9600 0478

email

gazette@bluestargroup.com.au

**Retail &
Mail Sales****Victoria Government Gazette**

Level 5 460 Bourke Street
Melbourne 3000
PO Box 1957 Melbourne 3001

**Telephone**

(03) 8523 4601

**Fax**

(03) 9600 0478

**Retail
Sales****Information Victoria**

505 Little Collins Street
Melbourne 3000

**Telephone**

1300 366 356

**Fax**

(03) 9603 9920

Price Code A