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## **Water Act 1989**

**BULK ENTITLEMENT (RIVER MURRAY – CITY WEST WATER) ORDER 2012**

### **PART 1 – INTRODUCTORY STATEMENTS**

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

### **PART 2 – ENTITLEMENT**

6. Granting of a Bulk Entitlement
7. Bulk Entitlement

### **PART 3 – AVAILABLE WATER**

8. Water Allocation

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

9. Management Arrangements
10. Dispute Resolution

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

11. Reporting Requirements
12. Data

### **PART 6 – COST SHARING ARRANGEMENTS**

13. Resource Manager Costs
14. Water Storage Costs
15. Duty to Make Payments

### **SCHEDULE 1 – SHARE OF RESOURCES**

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**SPECIAL**

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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 (River Murray – City West Water) Order 2012.

#### 2. EMPOWERING PROVISIONS

This Order is made under Division 1 of Part 4 of the **Water Act 1989**.

#### 3. COMMENCEMENT

This Order comes into operation on 1 July 2012, or the day it is published in the Government Gazette, whichever comes later.

#### 4. PURPOSE

The Melbourne retail authorities are collectively investing \$300 million towards NVIRP Stage 1 to receive one-third of the water recovered across the GMID, up to a long-term average of 75,000 ML per year.

The purpose of this Order is to grant City West Water a bulk entitlement to Melbourne's share of water recovered in the River Murray component of the GMID.

#### 5. DEFINITIONS

In this Order –

**'Act'** means the **Water Act 1989**;

**'Agreement'** means the Water Savings Supply and Transfer Agreement entered into by Goulburn–Murray Rural Water Corporation, Melbourne Water Corporation, City West Water Limited, South East Water Limited and Yarra Valley Water Limited;

**'Audit'** means an independent audit of gross modernisation savings achieved from NVIRP which is undertaken in accordance with the Protocol and the results of which are published each year until the completion of NVIRP;

**'Authority'** means City West Water;

**'City West Water'** means City West Water Corporation;

**'Department'** means the Department of Sustainability and Environment;

**'entitlement holder'** means the holder of any type of entitlement to water in the River Murray System granted under the Act;

**'ESC'** means the Essential Services Commission;

**'GMID'** means the Goulburn Murray Irrigation District;

**'Goulburn–Murray Water'** means the Goulburn–Murray Rural Water Corporation;

**'gross modernisation savings'** means the volume of distribution loss reduction achieved from modernisation works plus mitigation water;

**'MDBA'** means the Murray–Darling Basin Authority;

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

**'Melbourne Bulk Transfer System Operator'** means Melbourne Water in respect of its role to operate and maintain the Melbourne bulk transfer system in accordance with section 171B of the Act;

**'Melbourne headworks system'** means Thomson, Upper Yarra, Maroondah, O'Shannassy, Sugarloaf, Silvan, Cardinia, Toorourrong, Yan Yean, Greenvale and Tarago Reservoirs and the associated weirs, tunnels, transfer conduits, treatment plants and associated water supply works owned by Melbourne Water;

‘**Melbourne retail authorities**’ means any or all of –

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

‘**Melbourne Storage Manager**’ means Melbourne Water acting in respect of its role to manage storages for the Melbourne headworks system in accordance with section 171B of the Act;

‘**Melbourne supply system**’ means the waterways, Melbourne headworks system and Melbourne bulk transfer system works which supply water to the Melbourne retail authorities;

‘**Melbourne Water**’ means Melbourne Water Corporation;

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

‘**mitigation water**’ means the proportion of gross modernisation savings specified for use under environmental watering plans, the annual volume of which is calculated using the method defined in the Water Change Management Framework;

‘**ML**’ means megalitre(s);

‘**modernisation works**’ means a program of works and measures to modernise irrigation infrastructure;

‘**Murray–Darling Basin Agreement**’ means the Murray–Darling Basin Agreement as contained in Schedule F of the **Water Act 2007** (Commonwealth);

‘**NVIRP**’ means the Northern Victoria Irrigation Renewal Project, which is a major irrigation modernisation project aiming to generate long term annual average water savings of 439 gigalitres by upgrading irrigation infrastructure in the GMID;

‘**NVIRP Stage 1**’ means Stage 1 of the NVIRP, which is projected to generate long-term annual average water savings of 225 gigalitres in the GMID in accordance with the ‘Business Case for Northern Victoria Irrigation Renewal Project Stage 1’;

‘**Phase 3 water savings**’ means actual water saved from modernisation works in a given year calculated in accordance with the Protocol;

‘**Phase 4 water savings**’ means long-term average water saved from all modernisation works to date calculated in accordance with the Protocol;

‘**Protocol**’ means the ‘Water Savings Protocol for the Quantification of Water Savings from Irrigation Modernisation Projects’ issued by the Minister in July 2009, as amended from time to time;

‘**Resource Manager**’ means any person appointed by the Minister under s 43A of the Act to be the resource manager for the River Murray;

‘**River Murray Entitlement Holder**’ means the holder of the ‘Bulk Entitlement (River Murray – Goulburn–Murray Water) Conversion Order 1999’;

‘**River Murray System**’ means the River Murray to which Victoria has access and which carries regulated water under the Murray–Darling Basin Agreement; consisting of:

- (a) the main course of the River Murray from Hume Dam to the South Australian border;
- (b) the main course of the Mitta Mitta River below Dartmouth Dam;
- (c) all effluents and anabranches of, or lakes or lagoons (including King’s Billabong) connected to, these main courses, other than those excluded by the MDBA;
- (d) the storages formed by Hume Dam and Dartmouth Dam and by weirs upstream of the South Australian border;

‘**South East Water**’ means South East Water Corporation;

**‘Trading zone 6’** means the Vic Murray Dartmouth to Barmah part of the River Murray System, as described in the ‘Trading Rules for Declared Water Systems’, into or out of or within which trade can occur;

**‘Trading zone 7’** means the Vic Murray Barmah to SA part of the River Murray System, as described in the ‘Trading Rules for Declared Water Systems’, into or out of or within which trade can occur;

**‘Water Change Management Framework’** means the framework prepared by NVIRP and approved by the Minister in accordance with condition 3 of the Minister for Planning’s decision regarding the referral of NVIRP under the **Environmental Effects Act 1989**;

**‘Yarra Valley Water’** means Yarra Valley Water Corporation;

**‘year’** means the 12 months commencing 1 July.

## **PART 2 – ENTITLEMENT**

### **6. GRANTING OF A BULK ENTITLEMENT**

A bulk entitlement to water from the River Murray System is granted to the Authority on the conditions set out in this Order. This granting provision must be read together with the granting provision in both of the bulk entitlements referred to in sub-clause 7.3 below, such that together the three granting provisions encompass all of the water that is available from the River Murray System for the Melbourne supply system.

### **7. BULK ENTITLEMENT**

7.1 The provisions of this bulk entitlement must be read together with those of the two bulk entitlements referred to in sub-clause 7.3 below such that together the three bulk entitlements may take the volumes of water as determined under Part 3.

7.2 The Authority, together with the holders of the bulk entitlements listed in sub-clause 7.3, is entitled to a water entitlement volume in the following parts of the River Murray System equal to one-third of the total Phase 4 water savings achieved in these parts of the GMID from NVIRP Stage 1 as verified in the latest Audit –

- (a) Trading zone 6; and
- (b) Trading zone 7.

7.3 The Authority’s share, together with water allocated under the –

- (a) Bulk Entitlement (River Murray – Yarra Valley Water) Order 2012; and
- (b) Bulk Entitlement (River Murray – South East Water) Order 2012

as described in Schedule 1, make up 100% of the water allocated to Melbourne retail authorities from the River Murray System.

## **PART 3 – AVAILABLE WATER**

### **8. WATER ALLOCATION**

8.1 The water allocation available in a given year for use by the Authority under this bulk entitlement, together with the holders of the bulk entitlements listed in sub-clause 7.3, is equal to one-third of the total Phase 3 water savings achieved in the previous year in the River Murray components of the GMID from NVIRP Stage 1, as verified by an Audit.

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

### **9. MANAGEMENT ARRANGEMENTS**

9.1 The Authority, together with the holders of bulk entitlements listed in sub-clause 7.3, must, within twelve months of the commencement of this Order, review and if necessary amend the current agreed arrangements for the collaborative management of the Melbourne retail authorities’ bulk entitlements to ensure the collaborative management of this bulk entitlement between themselves and –

- (a) the Melbourne Storage Manager; and
- (b) the Melbourne Bulk Transfer System Operator.

**10. DISPUTE RESOLUTION**

- 10.1 If a difference or dispute arises about the interpretation or application of this Order between the Authority and the Melbourne Storage Manager, or the River Murray Entitlement Holder, or the Resource Manager, or another entitlement holder, the Authority may give written notice to another party, or parties, requiring the matter to be determined by the ESC or an independent expert.
- 10.2 If a difference or dispute arises about the interpretation or application of this Order between the Authority and the Melbourne Storage Manager, or the River Murray Entitlement Holder, or the Resource Manager, or another entitlement holder, and the Authority receives written notice requiring the matter to be determined by the ESC or an independent expert, the Authority must comply with the notice.
- 10.3 A notice may not be given under sub-clause 10.1, or considered under sub-clause 10.2, until 14 days have expired after the difference or dispute has arisen.
- 10.4 Where a dispute is referred to the ESC, the ESC may determine the process and timing for facilitating a resolution of the dispute.
- 10.5 Where a dispute is referred to an independent expert, the independent expert must not commence to determine a matter until 14 days have expired after notice is given under sub-clause 10.1 or received under sub-clause 10.2.
- 10.6 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.
- 10.7 The independent expert must reach a conclusion on the matter within 30 days after it has been referred, but has power to extend the period for reaching a conclusion on the matter by a further 30 days.
- 10.8 The independent expert must send a copy of the conclusion and its supporting reasons to each party to the difference or dispute.
- 10.9 Any conclusion by the ESC or an independent expert is final and binding on the parties.
- 10.10 Where a dispute is referred to the ESC, the ESC may determine the apportionment of the costs of and incidental to every reference.
- 10.11 Where a dispute is referred to an independent expert, the costs to the parties of, and incidental to, a reference to an independent expert, including the costs of an independent expert, must be apportioned among the parties to the dispute as determined by the independent expert.

**PART 5 – DEMONSTRATING COMPLIANCE****11. REPORTING REQUIREMENTS**

- 11.1 The Minister may require the Authority, together with the holders of bulk entitlements listed in sub-clause 7.3, to report on all or any of the following –
- (a) the annual water allocation made available to the Authority under clause 8 of this bulk entitlement;
  - (b) any assignment of water allocation made available under this bulk entitlement;
  - (c) any permanent transfer of all or part of this bulk entitlement;
  - (d) any amendment to this bulk entitlement;
  - (e) any failure by either the Authority, or the Authority together with the holders of the bulk entitlements listed in sub-clause 7.3, to comply with any provision of this bulk entitlement; and

- (f) any difficulties experienced or anticipated either by the Authority, or the Authority together with the other holders of the bulk entitlements listed in sub-clause 7.3, in complying with this bulk entitlement and any remedial action taken or proposed.
- 11.2 Any report made under sub-clause 11.1 must be made –
  - (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 of time as the Minister may determine.
- 11.3 The Authority must, in its Annual Report, report on each of the matters referred to in sub-clause 11.1, except, with the approval of the Minister, any matter set out in paragraph (e) of sub-clause 11.1.
- 11.4 If requested by the River Murray Entitlement Holder or Resource Manager from time to time, the Authority, together with the holders of the bulk entitlements listed in sub-clause 7.3, must report on all or any of the matters set out in sub-clause 11.1.
- 11.5 Any report under sub-clause 11.4 must be made –
  - (a) in such form as may be agreed between the Authority, together with the holders of bulk entitlements listed in sub-clause 7.3, and the River Murray Entitlement Holder or Resource Manager; and
  - (b) within such period of time as may be agreed between the Authority, together with the holders of bulk entitlements listed in sub-clause 7.3, and the River Murray Entitlement Holder or Resource Manager.

## 12. DATA

- 12.1 The Authority must make available to any person data collected by or on behalf of the Authority for the purpose of reporting under clause 11, 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 – COST SHARING ARRANGEMENTS

## 13. RESOURCE MANAGER COSTS

- 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 in –
  - (a) reporting on whether entitlement holders in the River Murray Basin comply with the conditions of their bulk entitlements and/or environmental entitlements;
  - (b) reporting on disputes between entitlement holders in the River Murray Basin;
  - (c) reporting on significant unauthorised uses of water in the River Murray Basin;
  - (d) co-ordinating the application and implementation of the qualification of any rights to water in the River Murray Basin made by the Minister under section 33AAA of the Act, during a declared water shortage.
- 13.2 Subject to sub-clause 13.3, the proportion of costs referred to in sub-clause 13.1 is to be determined by the Resource Manager.
- 13.3 Where the Resource Manager provides a prescribed service for the purposes of section 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 ESC in accordance with Part 1A or 1B of the **Water Industry Act 1994**.

**14. WATER STORAGE COSTS**

- 14.1 The Authority, together with the holders of the bulk entitlements listed in sub-clause 7.3, must pay Goulburn–Murray Water a proportionate share of the costs associated with storing Victoria’s share of the water resources in Hume Dam and Dartmouth Dam.
- 14.2 Where Goulburn–Murray Water provides a prescribed service for the purposes of section 4A of the **Water Industry Act 1994**, the charges to be paid by the Authority to Goulburn–Murray Water are to be determined by the ESC in accordance with Part 1A or 1B of the **Water Industry Act 1994**.

**15. DUTY TO MAKE PAYMENTS**

The Authority, together with the holders of the bulk entitlements listed in sub-clause 7.3, has a duty to make its payments for clauses 13 and 14, directly to the Resource Manager and Goulburn–Murray Water.

Dated 2 July 2012

Responsible Minister  
PETER WALSH MLA  
Minister for Water

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**SCHEDULE 1 – SHARE OF RESOURCES**

<b>Bulk entitlement</b>	<b>Share of resources</b>
Bulk Entitlement (River Murray – South East Water) Order 2012	One-third of the available water resources as determined under Part 2 of the bulk entitlement
Bulk Entitlement (River Murray – City West Water) Order 2012	One-third of the available water resources as determined under Part 2 of the bulk entitlement
Bulk Entitlement (River Murray – Yarra Valley Water) Order 2012	One-third of the available water resources as determined under Part 2 of the bulk entitlement.
<b>Total</b>	<b>100% of the entitlement granted to the Melbourne retail authorities from the River Murray System</b>



**Water Act 1989**

**BULK ENTITLEMENT (GOULBURN SYSTEM – YARRA VALLEY WATER) ORDER 2012**

**PART 1 – INTRODUCTORY STATEMENTS**

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

**PART 2 – ENTITLEMENT**

6. Granting of a Bulk Entitlement
7. Bulk Entitlement

**PART 3 – AVAILABLE WATER**

8. Water Allocation
9. Diversion Limit

**PART 4 – GENERAL CONDITIONS AND PROVISIONS**

10. Operating Arrangements
11. Management Arrangements
12. Dispute Resolution

**PART 5 – DEMONSTRATING COMPLIANCE**

13. Metering and Monitoring
14. Reporting Requirements
15. Data

**PART 6 – COST SHARING ARRANGEMENTS**

16. Resource Manager Costs
17. Water Storage Costs
18. Duty to Make Payments

**SCHEDULE 1 – SHARE OF RESOURCES**

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 (Goulburn System – Yarra Valley Water) Order 2012.

#### 2. EMPOWERING PROVISIONS

This Order is made under Division 1 of Part 4 of the of the **Water Act 1989**.

#### 3. COMMENCEMENT

This Order comes into operation on 1 July 2012, or the day it is published in the Government Gazette, whichever comes later.

#### 4. PURPOSE

The Melbourne retail authorities are collectively investing \$300 million towards NVIRP Stage 1 to receive one-third of the water recovered across the GMID, up to a long-term average of 75,000 ML per year.

The purpose of this Order is to grant Yarra Valley Water a bulk entitlement to Melbourne's share of water recovered in the Goulburn component of the GMID.

#### 5. DEFINITIONS

In this Order –

**'Act'** means the **Water Act 1989**;

**'Agreement'** means the Water Savings Supply and Transfer Agreement entered into by Goulburn–Murray Rural Water Corporation, Melbourne Water Corporation, City West Water Limited, South East Water Limited and Yarra Valley Water Limited;

**'Audit'** means an independent audit of gross modernisation savings achieved from NVIRP which is undertaken in accordance with the Protocol and the results of which are published each year until the completion of NVIRP;

**'Authority'** means Yarra Valley Water;

**'City West Water'** means City West Water Corporation;

**'Department'** means the Department of Sustainability and Environment;

**'daily diversion rate'** means the volume of water pumped from the Goulburn River into the North–South Pipeline over a period of 24 hours;

**'entitlement holder'** means the holder of any type of entitlement to water in the Goulburn System granted under the Act;

**'ESC'** means the Essential Services Commission;

**'GMID'** means the Goulburn Murray Irrigation District;

**'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 Entitlement Holder'** means the holder of the 'Bulk Entitlement (Eildon – Goulburn Weir) Conversion Order 1995';

**'Goulburn headworks system'** means:

- (a) the water supply works of Lake Eildon, Goulburn Weir, the Stuart Murray and Cattanach Canals and Waranga Basin; and
- (b) the waterway below Lake Eildon;

**'Goulburn Storage Manager'** means a person appointed by the Minister under section 122ZK of the Act to control, operate and manage the Goulburn headworks system, or to manage or measure the flow into the Goulburn headworks system or the waterway, or to do any combination of those things in the Goulburn System;

**‘Goulburn System’** means the water supply systems supplied by the Goulburn headworks system and other assets, as shown from time to time in the Asset Register of Goulburn–Murray Water as owner of the assets;

**‘gross modernisation savings’** means the volume of distribution loss reduction achieved from modernisation works plus mitigation water;

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

**‘Melbourne Bulk Transfer System Operator’** means Melbourne Water in respect of its role to operate and maintain the Melbourne bulk transfer system in accordance with section 171B of the Act;

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

**‘Melbourne retail authorities’** means any or all of –

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

**‘Melbourne Storage Manager’** means Melbourne Water acting in respect of its role to manage storages for the Melbourne headworks system in accordance with section 171B of the Act;

**‘Melbourne Supply System’** means the waterways, Melbourne headworks system and Melbourne bulk transfer system works which supply water to the Melbourne retail authorities;

**‘Melbourne Water’** means Melbourne Water Corporation;

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

**‘mitigation water’** means the proportion of gross modernisation savings specified for use under environmental watering plans, the annual volume of which is calculated using the method defined in the Water Change Management Framework;

**‘ML’** means megalitre(s);

**‘modernisation works’** means a program of works and measures to modernise irrigation infrastructure;

**‘net carryover volume’** has the meaning given to it in clause 9 of the instrument titled ‘Carryover for Bulk Entitlements and Environmental Entitlements in the Murray, Goulburn and Campaspe Water Systems (Declaration and Determination) 2010’.

**‘North–South Pipeline’** means the water transmission pipeline between the specified off-take point in the Goulburn System and the Sugarloaf Reservoir;

**‘NVIRP’** means the Northern Victoria Irrigation Renewal Project, which is a major irrigation modernisation project aiming to generate long term annual average water savings of 439 gegalitres by upgrading irrigation infrastructure in the GMID;

**‘NVIRP Stage 1’** means Stage 1 of the NVIRP, which is projected to generate long-term annual average water savings of 225 gegalitres in the GMID in accordance with the ‘Business Case for Northern Victoria Irrigation Renewal Project Stage 1’.

**‘Phase 3 water savings’** means actual water saved from modernisation works in a given year calculated in accordance with the Protocol;

**‘Phase 4 water savings’** means long-term average water saved from all modernisation works to date calculated in accordance with the Protocol;

**‘Protocol’** means the ‘Water Savings Protocol for the Quantification of Water Savings from Irrigation Modernisation Projects’ issued by the Minister in July 2009, as amended from time to time;

**‘Resource Manager’** means a person appointed by the Minister under section 43A of the Act to be the resource manager for the Goulburn Basin;

**‘South East Water’** means South East Water Corporation;

**‘specified monitoring point’** means the gauging station established to monitor the flow of the Goulburn River as required under sub-clause 13(b);

**‘specified off-take point’** means the pump station near Killingworth Road, Yea;

**‘Water Change Management Framework’** means the framework prepared by NVIRP and approved by the Minister in accordance with condition 3 of the Minister for Planning’s decision regarding the referral of NVIRP under the **Environmental Effects Act 1989**;

**‘Yarra Valley Water’** means Yarra Valley Water Corporation;

**‘year’** means the 12 months commencing 1 July.

### **PART 2 – ENTITLEMENT**

#### **6. GRANTING OF A BULK ENTITLEMENT**

A bulk entitlement to water from the Goulburn System is granted to the Authority on the conditions set out in this Order. This granting provision must be read together with the granting provision in both of the bulk entitlements referred to in sub-clause 7.3 below, such that together the three granting provisions encompass all of the water that is available from the Goulburn System for the Melbourne Supply System.

#### **7. BULK ENTITLEMENT**

7.1 The provisions of this bulk entitlement must be read together with those of the two bulk entitlements referred to in sub-clause 7.3 below such that together the three bulk entitlements may take the volumes of water as determined under Part 3.

7.2 The Authority, together with the holders of the bulk entitlements listed in sub-clause 7.3, is entitled to a water entitlement volume in the Goulburn System equal to one-third of the total Phase 4 water savings achieved in the Goulburn component of the GMID from NVIRP Stage 1 as verified in the latest Audit.

7.3 The Authority’s share, together with shares granted under the -

(a) Bulk Entitlement (Goulburn System – South East Water) Order 2012; and

(b) Bulk Entitlement (Goulburn System – City West Water) Order 2012,

as described in Schedule 1, make up 100% of the water entitled to the Melbourne retail authorities from the Goulburn System.

### **PART 3 – AVAILABLE WATER**

#### **8. WATER ALLOCATION**

8.1 On the commencement of this Order, the Authority, together with the holders of the bulk entitlements listed in sub-clause 7.3, is to be credited a starting water allocation equal to –

(a) the volume of unused water allocation in the water accounts held jointly by the Melbourne retail authorities in the Goulburn System under the Agreement immediately prior to the Agreement being terminated; minus

(b) five per cent to account for evaporation losses, if the Agreement was terminated before 1 July 2012.

8.2 Any water allocation credited under sub-clause 8.1 is to be treated the same as net carryover volume, with access subject to the terms and conditions specified in the instrument titled ‘Carryover for Bulk Entitlements and Environmental Entitlements in the Murray, Goulburn and Campaspe Water Systems (Declaration and Determination) 2010’.

- 8.3 The water allocation available in a given year for use by the Authority under this bulk entitlement, together with the holders of the bulk entitlements listed in sub-clause 7.3, is equal to one-third of the total Phase 3 water savings achieved in the previous year in the Goulburn component of the GMID from NVIRP Stage 1, as verified by an Audit.

## **9. DIVERSION LIMIT**

- 9.1 The Authority, together with the holders of the bulk entitlements listed in sub-clause 7.3, may only divert water from the Goulburn River at the specified off-take point:
- (a) up to a maximum of 75,000 ML in any year; and
  - (b) when the flow of the Goulburn River as measured at the specified monitoring point is at least 300 ML per day; and
  - (c) when the daily diversion rate of the North–South Pipeline does not exceed 360 ML per day; and
  - (d) if all the water taken is met through controlled, pre-ordered releases of available water allocation from Eildon Dam.
- 9.2 Subject to the maximum daily diversion rate established in sub-clause 9.1(c), the Authority, together with the holders of the bulk entitlements listed in sub-clause 7.3, may vary the daily diversion rate:
- (a) in accordance with sub-clause 9.3; or
  - (b) in any other way, with the prior written agreement of the Goulburn–Broken Catchment Management Authority.
- 9.3 The Authority, together with the holders of the bulk entitlements listed in sub-clause 7.3, may increase or decrease the daily diversion rate by up to:
- (a) 75 ML per day when the flow in the Goulburn River at the specified monitoring point is between 300 and 799 ML per day;
  - (b) 120 ML per day when the flow in the Goulburn River at the specified monitoring point is between 800 and 1,499 ML per day; and
  - (c) 180 ML per day when the flow in the Goulburn River at the specified monitoring point is 1,500 ML per day or greater.
- 9.4 The Authority, together with the holders of the bulk entitlements listed in sub-clause 7.3, must advise the Melbourne Storage Manager, the Goulburn Storage Manager, the Resource Manager and the Department in writing of any variation to the daily diversion rate agreed with the Goulburn–Broken Catchment Management Authority under sub-clause 9.2(b).

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

### **10. OPERATING ARRANGEMENTS**

- 10.1 Within twelve months of the commencement of this Order the Authority, together with the holders of the bulk entitlements listed in sub-clause 7.3, must endeavour to agree on operational arrangements with the Melbourne Storage Manager and the Goulburn Storage Manager for the supply of water under this entitlement, together with the bulk entitlements listed in sub-clause 7.3.
- 10.2 If the Authority, together with the holders of the bulk entitlements listed in sub-clause 7.3, has not reached agreement with the Melbourne Storage Manager and the Goulburn Storage Manager on operating arrangements one of them considers appropriate under sub-clause 10.1, any party may give written notice to the other parties requiring the matter to be determined in accordance with clause 12.

**11. MANAGEMENT ARRANGEMENTS**

The Authority, together with the holders of bulk entitlements listed in sub-clause 7.3, must, within twelve months of the commencement of this Order, review and if necessary amend the current agreed arrangements for the collaborative management of the Melbourne retail authorities' bulk entitlements to ensure the collaborative management of this bulk entitlement between themselves and –

- (a) the Melbourne Storage Manager; and
- (b) the Melbourne Bulk Transfer System Operator.

**12. DISPUTE RESOLUTION**

- 12.1 If a difference or dispute arises about the interpretation or application of this Order between the Authority and the Melbourne Storage Manager, or the Goulburn Storage Manager, or the Goulburn Entitlement Holder, or the Resource Manager, or another entitlement holder, the Authority may give written notice to another party, or parties, requiring the matter to be determined by the ESC or an independent expert.
- 12.2 If a difference or dispute arises about the interpretation or application of this Order between the Authority and the Melbourne Storage Manager, or the Goulburn Storage Manager, or the Goulburn Entitlement Holder, or the Resource Manager, or another entitlement holder, and the Authority receives written notice requiring the matter to be determined by the ESC or an independent expert, the Authority must comply with the notice.
- 12.3 A notice may not be given under sub-clause 12.1, or considered under sub-clause 12.2, until 14 days have expired after the difference or dispute has arisen.
- 12.4 Where a dispute is referred to the ESC, the ESC may determine the process and timing for facilitating a resolution of the dispute.
- 12.5 Where a dispute is referred to an independent expert, the independent expert must not commence to determine a matter until 14 days have expired after notice is given under sub-clause 12.1 or received under sub-clause 12.2.
- 12.6 The independent expert is either –
  - (a) a person agreed to by the parties to the difference or dispute; or
  - (b) if the parties to the difference or dispute cannot agree, a person nominated by the President of the Institute of Arbitrators and Mediators, Australia.
- 12.7 The independent expert must reach a conclusion on the matter within 30 days after it has been referred, but has power to extend the period for reaching a conclusion on the matter by a further 30 days.
- 12.8 The independent expert must send a copy of the conclusion and its supporting reasons to each party to the difference or dispute.
- 12.9 Any conclusion by the ESC or an independent expert is final and binding on the parties.
- 12.10 Where a dispute is referred to the ESC, the ESC may determine the apportionment of the costs of and incidental to every reference.
- 12.11 Where a dispute is referred to an independent expert, the costs to the parties of, and incidental to, a reference to an independent expert, including the costs of the independent expert, must be apportioned among the parties to the dispute as determined by the independent expert.

**PART 5 – DEMONSTRATING COMPLIANCE****13. METERING AND MONITORING**

The Authority, together with the holders of the bulk entitlements listed in sub-clause 7.3, must ensure the Melbourne Storage Manager –

- (a) meters how much water is diverted from the Goulburn River in each year;
- (b) monitors the flow of the Goulburn River immediately downstream of the specified off-take point; and
- (c) within twelve months of the commencement of this Order, reviews and if necessary amends the current metering plan for the Melbourne headworks system in accordance with any guidelines issued by the Minister from time to time for the purpose of assessing whether or not the Authority complies with this bulk entitlement.

**14. REPORTING REQUIREMENTS**

14.1 The Minister may require the Authority, together with the holders of bulk entitlements listed in sub-clause 7.3, to report on all or any of the following –

- (a) the daily amount of water taken by the Authority, together with the holders of bulk entitlements listed in sub-clause 7.3, from the waterway;
- (b) the annual amount of water taken by the Authority, together with the holders of bulk entitlements listed in sub-clause 7.3, from the waterway;
- (c) the annual water allocation made available to the Authority under clause 8 of this bulk entitlement;
- (d) any assignment of water allocation made available under this bulk entitlement;
- (e) any permanent transfer of all or part of this bulk entitlement;
- (f) any amendment to this bulk entitlement;
- (g) any failure by either the Authority, or the Authority together with the holders of the bulk entitlements listed in sub-clause 7.3, to comply with any provision of this bulk entitlement; and
- (h) any difficulties experienced or anticipated either by the Authority, or the Authority together with the other holders of the bulk entitlements listed in sub-clause 7.3, in complying with this bulk entitlement and any remedial action taken or proposed.

14.2 Any report made under sub-clause 14.1 must be made -

- (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 of time as the Minister may determine.

14.3 The Authority must, for the period of the preceding year, report in its Annual Report on each of the matters referred to in sub-clause 14.1, except –

- (a) paragraph (a) of sub-clause 14.1; and
- (b) with the approval of the Minister, any matter set out in paragraph (g) of sub-clause 14.1.

14.4 If requested by the Goulburn Entitlement Holder or Resource Manager from time to time, the Authority, together with the holders of the bulk entitlements listed in sub-clause 7.3, must report on all or any of the matters set out in sub-clause 14.1.

14.5 Any report under sub-clause 14.4 must be made –

- (a) in such form as may be agreed between the Authority, together with the holders of bulk entitlements listed in sub-clause 7.3, and the Goulburn Entitlement Holder or Resource Manager; and

- (b) within such period of time as may be agreed between the Authority, together with the holders of bulk entitlements listed in sub-clause 7.3, and the Goulburn Entitlement Holder or Resource Manager.

#### 15. DATA

- 15.1 The Authority must make available to any person, data collected by or on behalf of the Authority for the purpose of metering, monitoring and reporting under clauses 13 and 14, 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 – COST SHARING ARRANGEMENTS

#### 16. RESOURCE MANAGER COSTS

- 16.1 Subject to sub-clause 16.3, the Authority must pay the Resource Manager a fair and reasonable proportion of the costs incurred by the Resource Manager in –
  - (a) reporting on whether entitlement holders in the Goulburn Basin comply with the conditions of their bulk entitlements and/or environmental entitlements;
  - (b) reporting on disputes between entitlement holders in the Goulburn Basin;
  - (c) reporting on significant unauthorised uses of water in the Goulburn Basin;
  - (d) co-ordinating the application and implementation of any qualification of any rights to water in the Goulburn Basin made by the Minister under section 33AAA of the Act, during a declared water shortage.
- 16.2 Subject to sub-clause 16.3, the proportion of costs referred to in sub-clause 16.1 is to be determined by the Resource Manager.
- 16.3 Where the Resource Manager provides a prescribed service for the purposes of section 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 ESC in accordance with Part 1A or 1B of the **Water Industry Act 1994**.

#### 17. WATER STORAGE COSTS

- 17.1 The Authority, together with the holders of the bulk entitlements listed in sub-clause 7.3, must pay the Goulburn Storage Manager a proportionate share of the costs associated with the Goulburn headworks system.
- 17.2 Where the Goulburn Storage Manager provides a prescribed service for the purposes of section 4A of the **Water Industry Act 1994**, the charges to be paid by the Authority to the Goulburn Storage Manager are to be determined by the ESC in accordance with Part 1A or 1B of the **Water Industry Act 1994**.

#### 18. DUTY TO MAKE PAYMENTS

The Authority, together with the holders of the bulk entitlements listed in sub-clause 7.3, has a duty to make its payments for clauses 16 and 17, directly to the Resource Manager and the Goulburn Storage Manager.

Dated 2 July 2012

Responsible Minister  
PETER WALSH MLA  
Minister for Water



**SCHEDULE 1 – SHARE OF RESOURCES**

<b>Bulk Entitlement</b>	<b>Share of Resources</b>
Bulk Entitlement (Goulburn System – South East Water) Order 2012	One-third of the water resources as determined under Part 2 of the bulk entitlement
Bulk Entitlement (Goulburn System – City West Water) Order 2012	One-third of the water resources as determined under Part 2 of the bulk entitlement
Bulk Entitlement (Goulburn System – Yarra Valley Water) Order 2012	One-third of the water resources as determined under Part 2 of the bulk entitlement
<b>Total</b>	<b>100% of the entitlement granted to the Melbourne retail authorities from the Goulburn System</b>

**Water Act 1989**

**BULK ENTITLEMENT (GOULBURN SYSTEM – SOUTH EAST WATER) ORDER 2012**

**PART 1 – INTRODUCTORY STATEMENTS**

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

**PART 2 – ENTITLEMENT**

6. Granting of a Bulk Entitlement
7. Bulk Entitlement

**PART 3 – AVAILABLE WATER**

8. Water Allocation
9. Diversion Limit

**PART 4 – GENERAL CONDITIONS AND PROVISIONS**

10. Operating Arrangements
11. Management Arrangements
12. Dispute Resolution

**PART 5 – DEMONSTRATING COMPLIANCE**

13. Metering and Monitoring
14. Reporting Requirements
15. Data

**PART 6 – COST SHARING ARRANGEMENTS**

16. Resource Manager Costs
17. Water Storage Costs
18. Duty to Make Payments

**SCHEDULE 1 – SHARE OF RESOURCES**

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 (Goulburn System – South East Water) Order 2012.

#### 2. EMPOWERING PROVISIONS

This Order is made under Division 1 of Part 4 of the of the **Water Act 1989**.

#### 3. COMMENCEMENT

This Order comes into operation on 1 July 2012, or the day it is published in the Government Gazette, whichever comes later.

#### 4. PURPOSE

The Melbourne retail authorities are collectively investing \$300 million towards NVIRP Stage 1 to receive one-third of the water recovered across the GMID, up to a long-term average of 75,000 ML per year.

The purpose of this Order is to grant South East Water a bulk entitlement to Melbourne's share of water recovered in the Goulburn component of the GMID.

#### 5. DEFINITIONS

In this Order –

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

‘**Agreement**’ means the Water Savings Supply and Transfer Agreement entered into by Goulburn–Murray Rural Water Corporation, Melbourne Water Corporation, City West Water Limited, South East Water Limited and Yarra Valley Water Limited;

‘**Audit**’ means an independent audit of gross modernisation savings achieved from NVIRP which is undertaken in accordance with the Protocol and the results of which are published each year until the completion of NVIRP;

‘**Authority**’ means South East Water;

‘**City West Water**’ means City West Water Corporation;

‘**Department**’ means the Department of Sustainability and Environment;

‘**daily diversion rate**’ means the volume of water pumped from the Goulburn River into the North–South Pipeline over a period of 24 hours;

‘**entitlement holder**’ means the holder of any type of entitlement to water in the Goulburn System granted under the Act;

‘**ESC**’ means the Essential Services Commission;

‘**GMID**’ means the Goulburn Murray Irrigation District;

‘**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 Entitlement Holder**’ means the holder of the ‘Bulk Entitlement (Eildon – Goulburn Weir) Conversion Order 1995’;

‘**Goulburn headworks system**’ means:

- (a) the water supply works of Lake Eildon, Goulburn Weir, the Stuart Murray and Cattanach Canals and Waranga Basin; and
- (b) the waterway below Lake Eildon;

‘**Goulburn Storage Manager**’ means a person appointed by the Minister under section 122ZK of the Act to control, operate and manage the Goulburn headworks system, or to manage or measure the flow into the Goulburn headworks system or the waterway, or to do any combination of those things in the Goulburn System;

**‘Goulburn System’** means the water supply systems supplied by the Goulburn headworks system and other assets, as shown from time to time in the Asset Register of Goulburn–Murray Water as owner of the assets;

**‘gross modernisation savings’** means the volume of distribution loss reduction achieved from modernisation works plus mitigation water;

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

**‘Melbourne Bulk Transfer System Operator’** means Melbourne Water in respect of its role to operate and maintain the Melbourne bulk transfer system in accordance with section 171B of the Act;

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

**‘Melbourne retail authorities’** means any or all of –

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

**‘Melbourne Storage Manager’** means Melbourne Water acting in respect of its role to manage storages for the Melbourne headworks system in accordance with section 171B of the Act;

**‘Melbourne Supply System’** means the waterways, Melbourne headworks system and Melbourne bulk transfer system works which supply water to the Melbourne retail authorities;

**‘Melbourne Water’** means Melbourne Water Corporation;

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

**‘mitigation water’** means the proportion of gross modernisation savings specified for use under environmental watering plans, the annual volume of which is calculated using the method defined in the Water Change Management Framework;

**‘ML’** means megalitre(s);

**‘modernisation works’** means a program of works and measures to modernise irrigation infrastructure;

**‘net carryover volume’** has the meaning given to it in clause 9 of the instrument titled ‘Carryover for Bulk Entitlements and Environmental Entitlements in the Murray, Goulburn and Campaspe Water Systems (Declaration and Determination) 2010’.

**‘North–South Pipeline’** means the water transmission pipeline between the specified off-take point in the Goulburn System and the Sugarloaf Reservoir;

**‘NVIRP’** means the Northern Victoria Irrigation Renewal Project, which is a major irrigation modernisation project aiming to generate long term annual average water savings of 439 gegalitres by upgrading irrigation infrastructure in the GMID;

**‘NVIRP Stage 1’** means Stage 1 of the NVIRP, which is projected to generate long-term annual average water savings of 225 gegalitres in the GMID in accordance with the ‘Business Case for Northern Victoria Irrigation Renewal Project Stage 1’.

**‘Phase 3 water savings’** means actual water saved from modernisation works in a given year calculated in accordance with the Protocol;

**‘Phase 4 water savings’** means long-term average water saved from all modernisation works to date calculated in accordance with the Protocol;

‘**Protocol**’ means the ‘Water Savings Protocol for the Quantification of Water Savings from Irrigation Modernisation Projects’ issued by the Minister in July 2009, as amended from time to time;

‘**Resource Manager**’ means a person appointed by the Minister under section 43A of the Act to be the resource manager for the Goulburn Basin;

‘**South East Water**’ means South East Water Corporation;

‘**specified monitoring point**’ means the gauging station established to monitor the flow of the Goulburn River as required under sub-clause 13(b);

‘**specified off-take point**’ means the pump station near Killingworth Road, Yea;

‘**Water Change Management Framework**’ means the framework prepared by NVIRP and approved by the Minister in accordance with condition 3 of the Minister for Planning’s decision regarding the referral of NVIRP under the **Environmental Effects Act 1989**;

‘**Yarra Valley Water**’ means Yarra Valley Water Corporation;

‘**year**’ means the 12 months commencing 1 July.

## PART 2 – ENTITLEMENT

### 6. GRANTING OF A BULK ENTITLEMENT

A bulk entitlement to water from the Goulburn System is granted to the Authority on the conditions set out in this Order. This granting provision must be read together with the granting provision in both of the bulk entitlements referred to in sub-clause 7.3 below, such that together the three granting provisions encompass all of the water that is available from the Goulburn System for the Melbourne Supply System.

### 7. BULK ENTITLEMENT

7.1 The provisions of this bulk entitlement must be read together with those of the two bulk entitlements referred to in sub-clause 7.3 below such that together the three bulk entitlements may take the volumes of water as determined under Part 3.

7.2 The Authority, together with the holders of the bulk entitlements listed in sub-clause 7.3, is entitled to a water entitlement volume in the Goulburn System equal to one-third of the total Phase 4 water savings achieved in the Goulburn component of the GMID from NVIRP Stage 1 as verified in the latest Audit.

7.3 The Authority’s share, together with shares granted under the -

(a) Bulk Entitlement (Goulburn System – Yarra Valley Water) Order 2012; and

(b) Bulk Entitlement (Goulburn System – City West Water) Order 2012,

as described in Schedule 1, make up 100% of the water entitled to the Melbourne retail authorities from the Goulburn System.

## PART 3 – AVAILABLE WATER

### 8. WATER ALLOCATION

8.1 On the commencement of this Order, the Authority, together with the holders of the bulk entitlements listed in sub-clause 7.3, is to be credited a starting water allocation equal to –

(a) the volume of unused water allocation in the water accounts held jointly by the Melbourne retail authorities in the Goulburn System under the Agreement immediately prior to the Agreement being terminated; minus

(b) five per cent to account for evaporation losses, if the Agreement was terminated before 1 July 2012.

- 8.2 Any water allocation credited under sub-clause 8.1 is to be treated the same as net carryover volume, with access subject to the terms and conditions specified in the instrument titled 'Carryover for Bulk Entitlements and Environmental Entitlements in the Murray, Goulburn and Campaspe Water Systems (Declaration and Determination) 2010'.
- 8.3 The water allocation available in a given year for use by the Authority under this bulk entitlement, together with the holders of the bulk entitlements listed in sub-clause 7.3, is equal to one-third of the total Phase 3 water savings achieved in the previous year in the Goulburn component of the GMID from NVIRP Stage 1, as verified by an Audit.

## 9. DIVERSION LIMIT

- 9.1 The Authority, together with the holders of the bulk entitlements listed in sub-clause 7.3, may only divert water from the Goulburn River at the specified off-take point:
- (a) up to a maximum of 75,000 ML in any year; and
  - (b) when the flow of the Goulburn River as measured at the specified monitoring point is at least 300 ML per day; and
  - (c) when the daily diversion rate of the North–South Pipeline does not exceed 360 ML per day; and
  - (d) if all the water taken is met through controlled, pre-ordered releases of available water allocation from Eildon Dam.
- 9.2 Subject to the maximum daily diversion rate established in sub-clause 9.1(c), the Authority, together with the holders of the bulk entitlements listed in sub-clause 7.3, may vary the daily diversion rate:
- (a) in accordance with sub-clause 9.3; or
  - (b) in any other way, with the prior written agreement of the Goulburn–Broken Catchment Management Authority.
- 9.3 The Authority, together with the holders of the bulk entitlements listed in sub-clause 7.3, may increase or decrease the daily diversion rate by up to:
- (a) 75 ML per day when the flow in the Goulburn River at the specified monitoring point is between 300 and 799 ML per day;
  - (b) 120 ML per day when the flow in the Goulburn River at the specified monitoring point is between 800 and 1,499 ML per day; and
  - (c) 180 ML per day when the flow in the Goulburn River at the specified monitoring point is 1,500 ML per day or greater.
- 9.4 The Authority, together with the holders of the bulk entitlements listed in sub-clause 7.3, must advise the Melbourne Storage Manager, the Goulburn Storage Manager, the Resource Manager and the Department in writing of any variation to the daily diversion rate agreed with the Goulburn–Broken Catchment Management Authority under sub-clause 9.2(b).

## PART 4 – GENERAL CONDITIONS AND PROVISIONS

### 10. OPERATING ARRANGEMENTS

- 10.1 Within twelve months of the commencement of this Order the Authority, together with the holders of the bulk entitlements listed in sub-clause 7.3, must endeavour to agree on operational arrangements with the Melbourne Storage Manager and the Goulburn Storage Manager for the supply of water under this entitlement, together with the bulk entitlements listed in sub-clause 7.3.

- 10.2 If the Authority, together with the holders of the bulk entitlements listed in sub-clause 7.3, has not reached agreement with the Melbourne Storage Manager and the Goulburn Storage Manager on operating arrangements one of them considers appropriate under sub-clause 10.1, any party may give written notice to the other parties requiring the matter to be determined in accordance with clause 12.

## **11. MANAGEMENT ARRANGEMENTS**

The Authority, together with the holders of bulk entitlements listed in sub-clause 7.3, must, within twelve months of the commencement of this Order, review and if necessary amend the current agreed arrangements for the collaborative management of the Melbourne retail authorities' bulk entitlements to ensure the collaborative management of this bulk entitlement between themselves and –

- (a) the Melbourne Storage Manager; and
- (b) the Melbourne Bulk Transfer System Operator.

## **12. DISPUTE RESOLUTION**

- 12.1 If a difference or dispute arises about the interpretation or application of this Order between the Authority and the Melbourne Storage Manager, or the Goulburn Storage Manager, or the Goulburn Entitlement Holder, or the Resource Manager, or another entitlement holder, the Authority may give written notice to another party, or parties, requiring the matter to be determined by the ESC or an independent expert.
- 12.2 If a difference or dispute arises about the interpretation or application of this Order between the Authority and the Melbourne Storage Manager, or the Goulburn Storage Manager, or the Goulburn Entitlement Holder, or the Resource Manager, or another entitlement holder, and the Authority receives written notice requiring the matter to be determined by the ESC or an independent expert, the Authority must comply with the notice.
- 12.3 A notice may not be given under sub-clause 12.1, or considered under sub-clause 12.2, until 14 days have expired after the difference or dispute has arisen.
- 12.4 Where a dispute is referred to the ESC, the ESC may determine the process and timing for facilitating a resolution of the dispute.
- 12.5 Where a dispute is referred to an independent expert, the independent expert must not commence to determine a matter until 14 days have expired after notice is given under sub-clause 12.1 or received under sub-clause 12.2.
- 12.6 The independent expert is either -
- (a) a person agreed to by the parties to the difference or dispute; or
  - (b) if the parties to the difference or dispute cannot agree, a person nominated by the President of the Institute of Arbitrators and Mediators, Australia.
- 12.7 The independent expert must reach a conclusion on the matter within 30 days after it has been referred, but has power to extend the period for reaching a conclusion on the matter by a further 30 days.
- 12.8 The independent expert must send a copy of the conclusion and its supporting reasons to each party to the difference or dispute.
- 12.9 Any conclusion by the ESC or an independent expert is final and binding on the parties.
- 12.10 Where a dispute is referred to the ESC, the ESC may determine the apportionment of the costs of and incidental to every reference.
- 12.11 Where a dispute is referred to an independent expert, the costs to the parties of, and incidental to, a reference to an independent expert, including the costs of the independent expert, must be apportioned among the parties to the dispute as determined by the independent expert.

**PART 5 – DEMONSTRATING COMPLIANCE****13. METERING AND MONITORING**

The Authority, together with the holders of the bulk entitlements listed in sub-clause 7.3, must ensure the Melbourne Storage Manager –

- (a) meters how much water is diverted from the Goulburn River in each year;
- (b) monitors the flow of the Goulburn River immediately downstream of the specified off-take point; and
- (c) within twelve months of the commencement of this Order, reviews and if necessary amends the current metering plan for the Melbourne headworks system in accordance with any guidelines issued by the Minister from time to time for the purpose of assessing whether or not the Authority complies with this bulk entitlement.

**14. REPORTING REQUIREMENTS**

14.1 The Minister may require the Authority, together with the holders of bulk entitlements listed in sub-clause 7.3, to report on all or any of the following –

- (a) the daily amount of water taken by the Authority, together with the holders of bulk entitlements listed in sub-clause 7.3, from the waterway;
- (b) the annual amount of water taken by the Authority, together with the holders of bulk entitlements listed in sub-clause 7.3, from the waterway;
- (c) the annual water allocation made available to the Authority under clause 8 of this bulk entitlement;
- (d) any assignment of water allocation made available under this bulk entitlement;
- (e) any permanent transfer of all or part of this bulk entitlement;
- (f) any amendment to this bulk entitlement;
- (g) any failure by either the Authority, or the Authority together with the holders of the bulk entitlements listed in sub-clause 7.3, to comply with any provision of this bulk entitlement; and
- (h) any difficulties experienced or anticipated either by the Authority, or the Authority together with the other holders of the bulk entitlements listed in sub-clause 7.3, in complying with this bulk entitlement and any remedial action taken or proposed.

14.2 Any report made under sub-clause 14.1 must be made –

- (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 of time as the Minister may determine.

14.3 The Authority must, for the period of the preceding year, report in its Annual Report on each of the matters referred to in sub-clause 14.1, except –

- (a) paragraph (a) of sub-clause 14.1; and
- (b) with the approval of the Minister, any matter set out in paragraph (g) of sub-clause 14.1.

14.4 If requested by the Goulburn Entitlement Holder or Resource Manager from time to time, the Authority, together with the holders of the bulk entitlements listed in sub-clause 7.3, must report on all or any of the matters set out in sub-clause 14.1.

14.5 Any report under sub-clause 14.4 must be made –

- (a) in such form as may be agreed between the Authority, together with the holders of bulk entitlements listed in sub-clause 7.3, and the Goulburn Entitlement Holder or Resource Manager; and



- (b) within such period of time as may be agreed between the Authority, together with the holders of bulk entitlements listed in sub-clause 7.3, and the Goulburn Entitlement Holder or Resource Manager.

#### 15. DATA

- 15.1 The Authority must make available to any person, data collected by or on behalf of the Authority for the purpose of metering, monitoring and reporting under clauses 13 and 14, 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 – COST SHARING ARRANGEMENTS

#### 16. RESOURCE MANAGER COSTS

- 16.1 Subject to sub-clause 16.3, the Authority must pay the Resource Manager a fair and reasonable proportion of the costs incurred by the Resource Manager in –
  - (a) reporting on whether entitlement holders in the Goulburn Basin comply with the conditions of their bulk entitlements and/or environmental entitlements;
  - (b) reporting on disputes between entitlement holders in the Goulburn Basin;
  - (c) reporting on significant unauthorised uses of water in the Goulburn Basin;
  - (d) co-ordinating the application and implementation of any qualification of any rights to water in the Goulburn Basin made by the Minister under section 33AAA of the Act, during a declared water shortage.
- 16.2 Subject to sub-clause 16.3, the proportion of costs referred to in sub-clause 16.1 is to be determined by the Resource Manager.
- 16.3 Where the Resource Manager provides a prescribed service for the purposes of section 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 ESC in accordance with Part 1A or 1B of the **Water Industry Act 1994**.

#### 17. WATER STORAGE COSTS

- 17.1 The Authority, together with the holders of the bulk entitlements listed in sub-clause 7.3, must pay the Goulburn Storage Manager a proportionate share of the costs associated with the Goulburn headworks system.
- 17.2 Where the Goulburn Storage Manager provides a prescribed service for the purposes of section 4A of the **Water Industry Act 1994**, the charges to be paid by the Authority to the Goulburn Storage Manager are to be determined by the ESC in accordance with Part 1A or 1B of the **Water Industry Act 1994**.

#### 18. DUTY TO MAKE PAYMENTS

The Authority, together with the holders of the bulk entitlements listed in sub-clause 7.3, has a duty to make its payments for clauses 16 and 17, directly to the Resource Manager and the Goulburn Storage Manager.

Dated 2 July 2012

Responsible Minister  
PETER WALSH MLA  
Minister for Water

**SCHEDULE 1 – SHARE OF RESOURCES**

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<b>Bulk entitlement</b>	<b>Share of resources</b>
Bulk Entitlement (Goulburn System – South East Water) Order 2012	One-third of the water resources as determined under Part 2 of the bulk entitlement
Bulk Entitlement (Goulburn System – City West Water) Order 2012	One-third of the water resources as determined under Part 2 of the bulk entitlement
Bulk Entitlement (Goulburn System – Yarra Valley Water) Order 2012	One-third of the water resources as determined under Part 2 of the bulk entitlement
<b>Total</b>	<b>100% of the entitlement granted to the Melbourne retail authorities from the Goulburn System</b>

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**Water Act 1989**

**BULK ENTITLEMENT (GOULBURN SYSTEM – CITY WEST WATER) ORDER 2012**

**PART 1 – INTRODUCTORY STATEMENTS**

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

**PART 2 – ENTITLEMENT**

6. Granting of a Bulk Entitlement
7. Bulk Entitlement

**PART 3 – AVAILABLE WATER**

8. Water Allocation
9. Diversion Limit

**PART 4 – GENERAL CONDITIONS AND PROVISIONS**

10. Operating Arrangements
11. Management Arrangements
12. Dispute Resolution

**PART 5 – DEMONSTRATING COMPLIANCE**

13. Metering and Monitoring
14. Reporting Requirements
15. Data

**PART 6 – COST SHARING ARRANGEMENTS**

16. Resource Manager Costs
17. Water Storage Costs
18. Duty to Make Payments

**SCHEDULE 1 – SHARE OF RESOURCES**

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 (Goulburn System – City West Water) Order 2012.

**2. EMPOWERING PROVISIONS**

This Order is made under Division 1 of Part 4 of the of the **Water Act 1989**.

**3. COMMENCEMENT**

This Order comes into operation on 1 July 2012, or the day it is published in the Government Gazette, whichever comes later.

**4. PURPOSE**

The Melbourne retail authorities are collectively investing \$300 million towards NVIRP Stage 1 to receive one-third of the water recovered across the GMID, up to a long-term average of 75,000 ML per year.

The purpose of this Order is to grant City West Water a bulk entitlement to Melbourne’s share of water recovered in the Goulburn component of the GMID.

**5. DEFINITIONS**

In this Order –

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

‘**Agreement**’ means the Water Savings Supply and Transfer Agreement entered into by Goulburn–Murray Rural Water Corporation, Melbourne Water Corporation, City West Water Limited, South East Water Limited and Yarra Valley Water Limited;

‘**Audit**’ means an independent audit of gross modernisation savings achieved from NVIRP which is undertaken in accordance with the Protocol and the results of which are published each year until the completion of NVIRP;

‘**Authority**’ means City West Water;

‘**City West Water**’ means City West Water Corporation;

‘**Department**’ means the Department of Sustainability and Environment;

‘**daily diversion rate**’ means the volume of water pumped from the Goulburn River into the North–South Pipeline over a period of 24 hours;

‘**entitlement holder**’ means the holder of any type of entitlement to water in the Goulburn System granted under the Act;

‘**ESC**’ means the Essential Services Commission;

‘**GMID**’ means the Goulburn Murray Irrigation District;

‘**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 Entitlement Holder**’ means the holder of the ‘Bulk Entitlement (Eildon – Goulburn Weir) Conversion Order 1995’;

‘**Goulburn headworks system**’ means:

- (a) the water supply works of Lake Eildon, Goulburn Weir, the Stuart Murray and Cattanach Canals and Waranga Basin; and
- (b) the waterway below Lake Eildon;

‘**Goulburn Storage Manager**’ means a person appointed by the Minister under section 122ZK of the Act to control, operate and manage the Goulburn headworks system, or to manage or measure the flow into the Goulburn headworks system or the waterway, or to do any combination of those things in the Goulburn System;

‘**Goulburn System**’ means the water supply systems supplied by the Goulburn headworks system and other assets, as shown from time to time in the Asset Register of Goulburn–Murray Water as owner of the assets;

‘**gross modernisation savings**’ means the volume of distribution loss reduction achieved from modernisation works plus mitigation water;

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

‘**Melbourne Bulk Transfer System Operator**’ means Melbourne Water in respect of its role to operate and maintain the Melbourne bulk transfer system in accordance with section 171B of the Act;

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

‘**Melbourne retail authorities**’ means any or all of –

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

‘**Melbourne Storage Manager**’ means Melbourne Water acting in respect of its role to manage storages for the Melbourne headworks system in accordance with section 171B of the Act;

‘**Melbourne Supply System**’ means the waterways, Melbourne headworks system and Melbourne bulk transfer system works which supply water to the Melbourne retail authorities;

‘**Melbourne Water**’ means Melbourne Water Corporation;

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

‘**mitigation water**’ means the proportion of gross modernisation savings specified for use under environmental watering plans, the annual volume of which is calculated using the method defined in the Water Change Management Framework;

‘**ML**’ means megalitre(s);

‘**modernisation works**’ means a program of works and measures to modernise irrigation infrastructure;

‘**net carryover volume**’ has the meaning given to it in clause 9 of the instrument titled ‘Carryover for Bulk Entitlements and Environmental Entitlements in the Murray, Goulburn and Campaspe Water Systems (Declaration and Determination) 2010’;

‘**North–South Pipeline**’ means the water transmission pipeline between the specified off-take point in the Goulburn System and the Sugarloaf Reservoir;

‘**NVIRP**’ means the Northern Victoria Irrigation Renewal Project, which is a major irrigation modernisation project aiming to generate long term annual average water savings of 439 gegalitres by upgrading irrigation infrastructure in the GMID;

‘**NVIRP Stage 1**’ means Stage 1 of the NVIRP, which is projected to generate long-term annual average water savings of 225 gegalitres in the GMID in accordance with the ‘Business Case for Northern Victoria Irrigation Renewal Project Stage 1’;

‘**Phase 3 water savings**’ means actual water saved from modernisation works in a given year calculated in accordance with the Protocol;

‘**Phase 4 water savings**’ means long-term average water saved from all modernisation works to date calculated in accordance with the Protocol;

**‘Protocol’** means the ‘Water Savings Protocol for the Quantification of Water Savings from Irrigation Modernisation Projects’ issued by the Minister in July 2009, as amended from time to time;

**‘Resource Manager’** means a person appointed by the Minister under section 43A of the Act to be the resource manager for the Goulburn Basin;

**‘South East Water’** means South East Water Corporation;

**‘specified monitoring point’** means the gauging station established to monitor the flow of the Goulburn River as required under sub-clause 13(b);

**‘specified off-take point’** means the pump station near Killingworth Road, Yea;

**‘Water Change Management Framework’** means the framework prepared by NVIRP and approved by the Minister in accordance with condition 3 of the Minister for Planning’s decision regarding the referral of NVIRP under the **Environmental Effects Act 1989**;

**‘Yarra Valley Water’** means Yarra Valley Water Corporation;

**‘year’** means the 12 months commencing 1 July.

## **PART 2 – ENTITLEMENT**

### **6. GRANTING OF A BULK ENTITLEMENT**

A bulk entitlement to water from the Goulburn System is granted to the Authority on the conditions set out in this Order. This granting provision must be read together with the granting provision in both of the bulk entitlements referred to in sub-clause 7.3 below, such that together the three granting provisions encompass all of the water that is available from the Goulburn System for the Melbourne Supply System.

### **7. BULK ENTITLEMENT**

7.1 The provisions of this bulk entitlement must be read together with those of the two bulk entitlements referred to in sub-clause 7.3 below such that together the three bulk entitlements may take the volumes of water as determined under Part 3.

7.2 The Authority, together with the holders of the bulk entitlements listed in sub-clause 7.3, is entitled to a water entitlement volume in the Goulburn System equal to one-third of the total Phase 4 water savings achieved in the Goulburn component of the GMID from NVIRP Stage 1 as verified in the latest Audit.

7.3 The Authority’s share, together with shares granted under the –

- (a) Bulk Entitlement (Goulburn System – Yarra Valley Water) Order 2012; and
- (b) Bulk Entitlement (Goulburn System – South East Water) Order 2012,

as described in Schedule 1, make up 100% of the water entitled to the Melbourne retail authorities from the Goulburn System.

## **PART 3 – AVAILABLE WATER**

### **8. WATER ALLOCATION**

8.1 On the commencement of this Order, the Authority, together with the holders of the bulk entitlements listed in sub-clause 7.3, is to be credited a starting water allocation equal to –

- (a) the volume of unused water allocation in the water accounts held jointly by the Melbourne retail authorities in the Goulburn System under the Agreement immediately prior to the Agreement being terminated; minus
- (b) five per cent to account for evaporation losses, if the Agreement was terminated before 1 July 2012.

- 8.2 Any water allocation credited under sub-clause 8.1 is to be treated the same as net carryover volume, with access subject to the terms and conditions specified in the instrument titled 'Carryover for Bulk Entitlements and Environmental Entitlements in the Murray, Goulburn and Campaspe Water Systems (Declaration and Determination) 2010'.
- 8.3 The water allocation available in a given year for use by the Authority under this bulk entitlement, together with the holders of the bulk entitlements listed in sub-clause 7.3, is equal to one-third of the total Phase 3 water savings achieved in the previous year in the Goulburn component of the GMID from NVIRP Stage 1, as verified by an Audit.

## 9. DIVERSION LIMIT

- 9.1 The Authority, together with the holders of the bulk entitlements listed in sub-clause 7.3, may only divert water from the Goulburn River at the specified off-take point:
- (a) up to a maximum of 75,000 ML in any year; and
  - (b) when the flow of the Goulburn River as measured at the specified monitoring point is at least 300 ML per day; and
  - (c) when the daily diversion rate of the North–South Pipeline does not exceed 360 ML per day; and
  - (d) if all the water taken is met through controlled, pre-ordered releases of available water allocation from Eildon Dam.
- 9.2 Subject to the maximum daily diversion rate established in sub-clause 9.1(c), the Authority, together with the holders of the bulk entitlements listed in sub-clause 7.3, may vary the daily diversion rate:
- (a) in accordance with sub-clause 9.3; or
  - (b) in any other way, with the prior written agreement of the Goulburn–Broken Catchment Management Authority.
- 9.3 The Authority, together with the holders of the bulk entitlements listed in sub-clause 7.3, may increase or decrease the daily diversion rate by up to:
- (a) 75 ML per day when the flow in the Goulburn River at the specified monitoring point is between 300 and 799 ML per day;
  - (b) 120 ML per day when the flow in the Goulburn River at the specified monitoring point is between 800 and 1,499 ML per day; and
  - (c) 180 ML per day when the flow in the Goulburn River at the specified monitoring point is 1,500 ML per day or greater.
- 9.4 The Authority, together with the holders of the bulk entitlements listed in sub-clause 7.3, must advise the Melbourne Storage Manager, the Goulburn Storage Manager, the Resource Manager and the Department in writing of any variation to the daily diversion rate agreed with the Goulburn–Broken Catchment Management Authority under sub-clause 9.2(b).

## PART 4 – GENERAL CONDITIONS AND PROVISIONS

### 10. OPERATING ARRANGEMENTS

- 10.1 Within twelve months of the commencement of this Order the Authority, together with the holders of the bulk entitlements listed in sub-clause 7.3, must endeavour to agree on operational arrangements with the Melbourne Storage Manager and the Goulburn Storage Manager for the supply of water under this entitlement, together with the bulk entitlements listed in sub-clause 7.3.

- 10.2 If the Authority, together with the holders of the bulk entitlements listed in sub-clause 7.3, has not reached agreement with the Melbourne Storage Manager and the Goulburn Storage Manager on operating arrangements one of them considers appropriate under sub-clause 10.1, any party may give written notice to the other parties requiring the matter to be determined in accordance with clause 12.

#### **11. MANAGEMENT ARRANGEMENTS**

The Authority, together with the holders of bulk entitlements listed in sub-clause 7.3, must, within twelve months of the commencement of this Order, review and if necessary amend the current agreed arrangements for the collaborative management of the Melbourne retail authorities' bulk entitlements to ensure the collaborative management of this bulk entitlement between themselves and –

- (a) the Melbourne Storage Manager; and
- (b) the Melbourne Bulk Transfer System Operator.

#### **12. DISPUTE RESOLUTION**

- 12.1 If a difference or dispute arises about the interpretation or application of this Order between the Authority and the Melbourne Storage Manager, or the Goulburn Storage Manager, or the Goulburn Entitlement Holder, or the Resource Manager, or another entitlement holder, the Authority may give written notice to another party, or parties, requiring the matter to be determined by the ESC or an independent expert.
- 12.2 If a difference or dispute arises about the interpretation or application of this Order between the Authority and the Melbourne Storage Manager, or the Goulburn Storage Manager, or the Goulburn Entitlement Holder, or the Resource Manager, or another entitlement holder, and the Authority receives written notice requiring the matter to be determined by the ESC or an independent expert, the Authority must comply with the notice.
- 12.3 A notice may not be given under sub-clause 12.1, or considered under sub-clause 12.2, until 14 days have expired after the difference or dispute has arisen.
- 12.4 Where a dispute is referred to the ESC, the ESC may determine the process and timing for facilitating a resolution of the dispute.
- 12.5 Where a dispute is referred to an independent expert, the independent expert must not commence to determine a matter until 14 days have expired after notice is given under sub-clause 12.1 or received under sub-clause 12.2.
- 12.6 The independent expert is either –
- (a) a person agreed to by the parties to the difference or dispute; or
  - (b) if the parties to the difference or dispute cannot agree, a person nominated by the President of the Institute of Arbitrators and Mediators, Australia.
- 12.7 The independent expert must reach a conclusion on the matter within 30 days after it has been referred, but has power to extend the period for reaching a conclusion on the matter by a further 30 days.
- 12.8 The independent expert must send a copy of the conclusion and its supporting reasons to each party to the difference or dispute.
- 12.9 Any conclusion by the ESC or an independent expert is final and binding on the parties.
- 12.10 Where a dispute is referred to the ESC, the ESC may determine the apportionment of the costs of and incidental to every reference.
- 12.11 Where a dispute is referred to an independent expert, the costs to the parties of, and incidental to, a reference to an independent expert, including the costs of the independent expert, must be apportioned among the parties to the dispute as determined by the independent expert.



**PART 5 – DEMONSTRATING COMPLIANCE****13. METERING AND MONITORING**

The Authority, together with the holders of the bulk entitlements listed in sub-clause 7.3, must ensure the Melbourne Storage Manager –

- (a) meters how much water is diverted from the Goulburn River in each year;
- (b) monitors the flow of the Goulburn River immediately downstream of the specified off-take point; and
- (c) within twelve months of the commencement of this Order, reviews and if necessary amends the current metering plan for the Melbourne headworks system in accordance with any guidelines issued by the Minister from time to time for the purpose of assessing whether or not the Authority complies with this bulk entitlement.

**14. REPORTING REQUIREMENTS**

14.1 The Minister may require the Authority, together with the holders of bulk entitlements listed in sub-clause 7.3, to report on all or any of the following –

- (a) the daily amount of water taken by the Authority, together with the holders of bulk entitlements listed in sub-clause 7.3, from the waterway;
- (b) the annual amount of water taken by the Authority, together with the holders of bulk entitlements listed in sub-clause 7.3, from the waterway;
- (c) the annual water allocation made available to the Authority under clause 8 of this bulk entitlement;
- (d) any assignment of water allocation made available under this bulk entitlement;
- (e) any permanent transfer of all or part of this bulk entitlement;
- (f) any amendment to this bulk entitlement;
- (g) any failure by either the Authority, or the Authority together with the holders of the bulk entitlements listed in sub-clause 7.3, to comply with any provision of this bulk entitlement; and
- (h) any difficulties experienced or anticipated either by the Authority, or the Authority together with the other holders of the bulk entitlements listed in sub-clause 7.3, in complying with this bulk entitlement and any remedial action taken or proposed.

14.2 Any report made under sub-clause 14.1 must be made –

- (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 of time as the Minister may determine.

14.3 The Authority must, for the period of the preceding year, report in its Annual Report on each of the matters referred to in sub-clause 14.1, except –

- (a) paragraph (a) of sub-clause 14.1; and
- (b) with the approval of the Minister, any matter set out in paragraph (g) of sub-clause 14.1.

14.4 If requested by the Goulburn Entitlement Holder or Resource Manager from time to time, the Authority, together with the holders of the bulk entitlements listed in sub-clause 7.3, must report on all or any of the matters set out in sub-clause 14.1.

14.5 Any report under sub-clause 14.4 must be made –

- (a) in such form as may be agreed between the Authority, together with the holders of bulk entitlements listed in sub-clause 7.3, and the Goulburn Entitlement Holder or Resource Manager; and

- (b) within such period of time as may be agreed between the Authority, together with the holders of bulk entitlements listed in sub-clause 7.3, and the Goulburn Entitlement Holder or Resource Manager.

#### 15. DATA

- 15.1 The Authority must make available to any person, data collected by or on behalf of the Authority for the purpose of metering, monitoring and reporting under clauses 13 and 14, 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 – COST SHARING ARRANGEMENTS

#### 16. RESOURCE MANAGER COSTS

- 16.1 Subject to sub-clause 16.3, the Authority must pay the Resource Manager a fair and reasonable proportion of the costs incurred by the Resource Manager in –
  - (a) reporting on whether entitlement holders in the Goulburn Basin comply with the conditions of their bulk entitlements and/or environmental entitlements;
  - (b) reporting on disputes between entitlement holders in the Goulburn Basin;
  - (c) reporting on significant unauthorised uses of water in the Goulburn Basin;
  - (d) co-ordinating the application and implementation of any qualification of any rights to water in the Goulburn Basin made by the Minister under section 33AAA of the Act, during a declared water shortage.
- 16.2 Subject to sub-clause 16.3, the proportion of costs referred to in sub-clause 16.1 is to be determined by the Resource Manager.
- 16.3 Where the Resource Manager provides a prescribed service for the purposes of section 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 ESC in accordance with Part 1A or 1B of the **Water Industry Act 1994**.

#### 17. WATER STORAGE COSTS

- 17.1 The Authority, together with the holders of the bulk entitlements listed in sub-clause 7.3, must pay the Goulburn Storage Manager a proportionate share of the costs associated with the Goulburn headworks system.
- 17.2 Where the Goulburn Storage Manager provides a prescribed service for the purposes of section 4A of the **Water Industry Act 1994**, the charges to be paid by the Authority to the Goulburn Storage Manager are to be determined by the ESC in accordance with Part 1A or 1B of the **Water Industry Act 1994**.

#### 18. DUTY TO MAKE PAYMENTS

The Authority, together with the holders of the bulk entitlements listed in sub-clause 7.3, has a duty to make its payments for clauses 16 and 17, directly to the Resource Manager and the Goulburn Storage Manager.

Dated 2 July 2012

Responsible Minister  
PETER WALSH MLA  
Minister for Water

**SCHEDULE 1 – SHARE OF RESOURCES**

<b>Bulk entitlement</b>	<b>Share of resources</b>
Bulk Entitlement (Goulburn System – South East Water) Order 2012	One-third of the water resources as determined under Part 2 of the bulk entitlement
Bulk Entitlement (Goulburn System – City West Water) Order 2012	One-third of the water resources as determined under Part 2 of the bulk entitlement
Bulk Entitlement (Goulburn System – Yarra Valley Water) Order 2012	One-third of the water resources as determined under Part 2 of the bulk entitlement
<b>Total</b>	<b>100% of the entitlement granted to the Melbourne retail authorities from the Goulburn System</b>

**Water Act 1989**

ENVIRONMENTAL ENTITLEMENT (RIVER MURRAY – NVIRP STAGE 1) 2012

**PART 1 – INTRODUCTORY STATEMENTS**

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

**PART 2 – ENTITLEMENT**

6. Repeal of Previous Environmental Entitlement
7. Environmental Entitlement

**PART 3 – WATER RESOURCES**

8. Water Allocation
9. Water Application
10. Right to Use Return Flows

**PART 4 – GENERAL CONDITIONS AND PROVISIONS**

11. Operating Arrangements
12. Dispute Resolution

**PART 5 – DEMONSTRATING COMPLIANCE**

13. Metering Program
14. Reporting Requirements
15. Data

**PART 6 – COST SHARING ARRANGEMENTS**

16. Water Storage and Supply Costs
17. Resource Manager Costs
18. Delivery Costs

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

### PART 1 – INTRODUCTORY STATEMENTS

#### 1. CITATION

This Instrument may be cited as the Environmental Entitlement (River Murray – NVIRP Stage 1) 2012.

#### 2. EMPOWERING PROVISIONS

This Instrument is made under section 48B of the **Water Act 1989** and section 27 of the **Interpretation of Legislation Act 1984**.

#### 3. COMMENCEMENT

This Instrument comes into effect on 1 July 2012, or the day it is published in the Government Gazette, whichever comes later.

#### 4. PURPOSE

Under the Northern Victoria Irrigation Renewal Project (NVIRP), the Water Holder is entitled to receive one-third of the water recovered from NVIRP Stage 1, which is expected to be a long-term average of 75,000 ML per year, plus any mitigation water.

The purpose of this Instrument is to repeal an existing environmental entitlement with zero volume, and grant the Water Holder a new environmental entitlement to the environment's share of water recovered in the Murray component of the GMID as part of NVIRP Stage 1.

#### 5. DEFINITIONS

In this Instrument –

**'Act'** means the **Water Act 1989**;

**'Agreement'** means the Murray–Darling Basin Agreement as contained in Schedule F of the **Water Act 2007** (Commonwealth);

**'ATS 4747'** means the Australian Technical Specification 'ATS 4747 – Meters for Non-Urban Supply' as published by Standards Australia and amended from time to time;

**'Audit'** means an independent audit of gross modernisation savings achieved from NVIRP, which is undertaken in accordance with the Protocol and the results of which are published each year until the completion of NVIRP;

**'channel system'** means the part of the distribution system comprising the channels, pipes and other distribution infrastructure maintained by Goulburn–Murray Water;

**'Deed'** means the River Murray Environmental Water Savings Supply Deed, agreed between Goulburn–Murray Water and the Water Holder;

**'Department'** means the Department of Sustainability and Environment;

**'distribution system'** means channels, pipes and other works, and the natural or modified waterways and wetlands, which are used to transport water from the River Murray to primary entitlement holders;

**'entitlement holder'** means the holder of any type of entitlement to take water from the River Murray System granted under the Act;

**'environmental watering plan'** means an approved plan with mitigation water requirements that is developed in accordance with the conditions of the State and Commonwealth environmental approvals granted for NVIRP;

**'GMID'** means the Goulburn Murray Irrigation District;

**'Goulburn–Murray Water'** means the Goulburn–Murray Rural Water Corporation;

**'gross modernisation savings'** means the volume of distribution loss reduction achieved from modernisation works plus mitigation water;

**'interruptible access'** means when access to spare capacity in the channel system is permitted only after all other users' needs have been met,

**‘MDBA’** means the Murray–Darling Basin Authority;

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

**‘mitigation water’** means the proportion of gross modernisation savings specified for use under environmental watering plans, the annual volume of which is calculated using the method defined in the Water Change Management Framework;

**‘Modernisation Savings Account’** means the account established under Schedule 5 of the ‘Bulk Entitlement (River Murray – Goulburn–Murray Water) Conversion Order 1999’ to recognise and reserve gross modernisation savings achieved in the River Murray;

**‘modernisation works’** means a program of works and measures to modernise irrigation infrastructure;

**‘natural waterway’** means any natural or modified waterway that is part of the distribution system;

**‘net carryover volume’** has the meaning given to it in clause 9 of the instrument titled ‘Carryover for Bulk Entitlements and Environmental Entitlements in the Murray, Goulburn and Campaspe Water Systems (Declaration and Determination) 2010’;

**‘nominated delivery point’** means the location at which the Water Holder has placed an order for a volume of water to be supplied under this environmental entitlement;

**‘NVIRP’** means the Northern Victoria Irrigation Renewal Project, which is a major irrigation modernisation project aiming to generate long term annual average water savings of 439 gegalitres by upgrading irrigation infrastructure in the GMID;

**‘NVIRP Stage 1’** means Stage 1 of the NVIRP, which is projected to generate long-term annual average water savings of 225 gegalitres in the GMID in accordance with the ‘Business Case for Northern Victoria Irrigation Renewal Project Stage 1’.

**‘Phase 3 water savings’** means actual water saved from modernisation works in a given year calculated in accordance with the Protocol;

**‘Phase 4 water savings’** means long-term average water saved from all modernisation works to date calculated in accordance with the Protocol;

**‘Protocol’** means the ‘Water Savings Protocol for the Quantification of Water Savings from Irrigation Modernisation Projects’ issued by the Minister in July 2009, as amended from time to time;

**‘Resource Manager’** means any person appointed by the Minister under section 43A of the Act to be the resource manager for the River Murray;

**‘return point’** means a location downstream of a nominated delivery point where water which was delivered under this environmental entitlement is subsequently returned to the River Murray System as a return flow;

**‘River Murray Entitlement Holder’** means the holder of the ‘Bulk Entitlement (River Murray – Goulburn–Murray Water) Conversion Order 1999’;

**‘River Murray System’** means the River Murray to which Victoria has access and which carries regulated water under the Agreement; consisting of:

- (a) the main course of the River Murray from Hume Dam to the South Australian border;
- (b) the main course of the Mitta Mitta River below Dartmouth Dam;
- (c) all effluents and anabranches of, or lakes or lagoons (including King’s Billabong) connected to, these main courses, other than those excluded by the MDBA;
- (d) the storages formed by Hume Dam and Dartmouth Dam and by weirs upstream of the South Australian border;

**‘Trading Rules for Declared Water Systems’** means the rules specified in the Order ‘Trading Rules for Regulated Water Systems in Northern Victoria’, which was gazetted on 28 June 2007, and all subsequent amendments, and as published on the Victorian Water Register;

**‘Trading zone 6’** means the Vic. Murray Dartmouth to Barmah part of the River Murray System, as described in the ‘Trading Rules for Declared Water Systems’, into or out of or within which trade can occur;

**‘Trading zone 7’** means the Vic. Murray Barmah to SA part of the River Murray System, as described in the ‘Trading Rules for Declared Water Systems’, into or out of or within which trade can occur;

**‘Water Change Management Framework’** means the framework prepared by NVIRP and approved by the Minister in accordance with condition 3 of the Minister for Planning’s decision regarding the referral of NVIRP under the **Environmental Effects Act 1989**;

**‘Water Holder’** has the same meaning as provided for under section 3(1) of the Act;

**‘year’** means the 12 months commencing 1 July.

#### **PART 2 – ENTITLEMENT**

##### **6. REPEAL OF PREVIOUS ENVIRONMENTAL ENTITLEMENT**

The following Instrument held by the Water Holder is repealed –

‘Environmental Entitlement (River Murray – Environmental Water Reserve) 2010’.

##### **7. Environmental Entitlement**

The Water Holder is entitled to a water entitlement volume in the River Murray System equal to –

- (a) one-third of the total phase 4 water savings from NVIRP Stage 1 achieved in the Murray component of the GMID in –
  - (i) trading zone 6; and
  - (ii) trading zone 7 –  
as verified by the latest Audit; and
- (b) any mitigation water available in the River Murray System in that year.

#### **PART 3 – WATER RESOURCES**

##### **8. WATER ALLOCATION**

8.1 On the commencement of this Instrument, the Water Holder is to be credited a starting water allocation equal to –

- (a) the volume of unused water allocation in the water accounts held by the Water Holder in the River Murray System under the Deed immediately prior to the Deed being terminated; minus
- (b) five per cent to account for evaporation losses, if the Deed was terminated before 1 July 2012.

8.2 Any water allocation credited under sub-clause 8.1 is to be treated the same as net carryover volume, with access subject to the terms and conditions specified in the instrument titled ‘Carryover for Bulk Entitlements and Environmental Entitlements in the Murray, Goulburn and Campaspe Water Systems (Declaration and Determination) 2010’.

8.3 The water allocation available in a given year for use by the Water Holder is equal to:

- (a) one-third of the total phase 3 water savings achieved in the previous year in the Murray component of the GMID from NVIRP Stage 1 as verified by an Audit; and
- (b) any mitigation water available in the River Murray System –  
as determined by the River Murray Entitlement Holder in accordance with the procedure for estimating, accounting, reserving and allocating gross modernisation savings in Schedule 5 of the ‘Bulk Entitlement (River Murray – Goulburn–Murray Water) Conversion Order 1995’.

**9. WATER APPLICATION**

- 9.1 The Water Holder may apply water available under sub-clause 8.3(a) at any nominated delivery point in the River Murray System or another system, subject to any relevant Trading Rules for Declared Water Systems.
- 9.2 The Water Holder may only apply water allocated under sub-clause 8.3(b) in accordance with the conditions of an approved environmental watering plan and subject to any relevant Trading Rules for Declared Water Systems.

**10. RIGHT TO USE RETURN FLOWS**

- 10.1 The Water Holder may apply to the Resource Manager to re-use or be credited for water used under this entitlement that is returned to the River Murray System or another system in accordance with clause 10.
- 10.2 Before any re-use or credit can be granted, the Water Holder must –
- (a) come to an agreement with the Resource Manager on the likely volume, timing and location of any return flow for the purposes of adjusting system operations; and
  - (b) notify the Resource Manager if it intends to re-use any flows specified under paragraph (a).
- 10.3 Subject to sub-clause 10.4, the Resource Manager may grant approval of an application under sub-clause 10.1 for –
- (a) re-use by the Water Holder; or
  - (b) credit to the Water Holder in a nominated storage, where water returned under this entitlement was supplied to any person other than the Water Holder or stored for the Resource Manager's purposes.
- 10.4 The Resource Manager may only grant approval under sub-clause 10.3 if –
- (a) water supplied to and used by the Water Holder during the current water season has subsequently been returned to the River Murray System or another system;
  - (b) the volume of water so returned has either:
    - (i) been measured by a meter that complies with ATS 4747 or an equivalent meter accuracy standard; or,
    - (ii) been calculated by a method that has been agreed under clause 11;
  - (c) any water re-used by the Water Holder or another person was used downstream of the place where the return flow occurred and within a reasonable time of the return flow;
  - (d) it can re-regulate the return flows downstream, with no material impact on other entitlement holders in the River Murray System or another system;
  - (e) the volume of any water credited to the Water Holder under sub-clause 10.3(b) is equal to that volume of returned water which was able to be used or stored; and,
  - (f) approval is consistent with any rules regarding the supply, use and accounting of return flows issued by the Minister from time to time.
- 10.5 If the Water Holder and the Resource Manager cannot reach agreement within one month of an application under sub-clause 10.1, either party may make a written request to the Minister to make a decision on the right to re-use return flows or the granting of water credits.
- 10.6 Any decision made by the Minister in relation to sub-clause 10.5 is final and binding on the parties.



**PART 4 – GENERAL CONDITIONS AND PROVISIONS****11. OPERATING ARRANGEMENTS**

- 11.1 Within 12 months of 1 July 2012, the Water Holder, together with the River Murray Entitlement Holder, must –
- (a) review any existing operating arrangements; or
  - (b) in the absence of operating arrangements, develop new operating arrangements – for the supply of water under this entitlement.
- 11.2 If the Water Holder and the River Murray Entitlement Holder have not reached agreement under sub-clause 11.1 within 12 months of 1 July 2012, either party may give written notice to the other party requiring the matter to be determined in accordance with clause 12.
- 11.3 The Water Holder, together with the River Murray Entitlement Holder, may agree to vary the operating arrangements from time to time.

**12. DISPUTE RESOLUTION**

- 12.1 If a difference or dispute arises between the Water Holder, Goulburn–Murray Water, the River Murray Entitlement Holder, or the Resource Manager, or any of them, concerning the interpretation or application of this Instrument, a party may give written notice to another party, or parties, requiring the matter to be determined by an independent expert.
- 12.2 The notice requiring that the matter be determined by independent expert may be given no sooner than 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 independent expert is either –
- (a) a person agreed to by the parties to the difference or dispute; or
  - (b) if the parties to the difference or dispute cannot agree, a person nominated by the President of the Institute of Arbitrators and Mediators, Australia.
- 12.4 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.
- 12.5 The independent expert must send a copy of the conclusion and its supporting reasons to each party to the difference or dispute.
- 12.6 Any conclusion by an independent expert is final and binding on the parties.
- 12.7 Where a dispute is referred to an independent expert, the costs to the parties of, and incidental to, a reference to an independent expert, including the costs of the independent expert, must be apportioned among the parties to the dispute as determined by the independent expert.

**PART 5 – DEMONSTRATING COMPLIANCE****13. METERING PROGRAM**

- 13.1 The Water Holder, in agreement with the River Murray Entitlement Holder, must propose to the Minister within 6 months of 1 July 2012, a metering program, which includes any new metering sites required to provide adequate monitoring that are not already included in an existing metering program, to demonstrate compliance with this environmental entitlement with respect to all water taken by the Water Holder under this environmental entitlement and in order to meet the reporting requirements specified in clause 14.
- 13.2 The Minister may:
- (a) approve the program proposed under sub-clause 13.1; or
  - (b) require the Water Holder to amend the proposed program.

- 13.3 The Minister may at any subsequent time, require the Water Holder –
- (a) to review the program approved by the Minister under sub-clause 13.2(a) if, in the Minister’s opinion, it is, no longer appropriate; and
  - (b) to propose an amended program to the Minister for approval.
- 13.4 For those metering sites in the program approved under sub-clause 13.2(a) that are not included in any other authority’s metering program, the Water Holder must, at its cost, and in accordance with any guidelines issued from time to time by the Minister:
- (a) implement and maintain the approved metering program; 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 (a), (b), (c) and (d).
- 13.5 The Water Holder must ensure that there is appropriate metering at nominated delivery points and return points (where applicable) to allow the volume of water that the Water Holder takes under this environmental entitlement to be quantified in order to ensure no adverse impacts on other entitlement holders.
- 13.6 Any application by the Water Holder to the Minister for amendment to this Instrument must address any implications of the proposed amendment for the approved metering program.

#### **14. REPORTING REQUIREMENTS**

- 14.1 The Minister may require the Water Holder to report on all or any of the following -
- (a) daily and annual flows at the nominated delivery points;
  - (b) any assignment of water allocation available under this environmental entitlement;
  - (c) any amendment to this environmental entitlement;
  - (d) compliance with this environmental entitlement;
  - (e) any failures by the Water Holder to comply with any provision of this environmental entitlement; and
  - (f) any difficulties experienced or anticipated by the Water Holder in complying with this environmental entitlement and any remedial action taken or proposed.
- 14.2 The Minister may require the Water Holder to report on all or any of the matters listed in sub-clause 14.1 –
- (a) in writing, or in such electronic form as may be agreed between the Water Holder and the Minister; and
  - (b) within 14 days of receiving the Minister’s written request, or such longer period of time as the Minister may determine.

#### **15. DATA**

The Water Holder must make available to any person data collected by or on behalf of the Water Holder for the purpose of clause 14 subject to:

- (a) the Water Holder being able to obtain all hydrological and other data required by the Water Holder to comply with this bulk entitlement; and
- (b) the person paying any fair and reasonable access fee imposed by the Water Holder, to cover the costs of making the data available.

#### **PART 6 – COST SHARING ARRANGEMENTS**

#### **16. WATER STORAGE AND SUPPLY COSTS**

- 16.1 Subject to sub-clauses 16.2 and 16.3, the Water Holder does not have to make any payment for water storage and supply costs relating to this environmental entitlement.

- 16.2 The Minister may, after reviewing, in consultation with the Water Holder and other entitlement holders, the desirability of a direct contribution being made towards the water supply and storage costs relating to this environmental entitlement, approve alternative arrangements under which the Water Holder makes such a contribution, in whatever circumstances or with whatever limits that the Minister may decide.
- 16.3 The Water Holder must pay any contribution towards water storage and supply costs arising from alternative arrangements approved by the Minister under sub-clause 16.2, to the River Murray Entitlement Holder or to such other person as is determined by the Minister.

**17. RESOURCE MANAGER COSTS**

- 17.1 Subject to sub-clause 17.2, the Water Holder does not have to make any payment to the Resource Manager.
- 17.2 The Minister may, after reviewing, in consultation with the Water Holder and other entitlement holders, the desirability of a contribution being made by the Water Holder towards the costs of the Resource Manager, approve an arrangement under which the Water Holder must make such a contribution.
- 17.3 Depending on the outcome of a review under sub-clause 17.2, the Water Holder may be required to pay to the Resource Manager a fair and reasonable proportion of the costs incurred by the Resource Manager to –
- (a) report on whether entitlement holders in the Goulburn Basin comply with the conditions of their bulk entitlements and environmental entitlements;
  - (b) report on disputes between entitlement holders in the Goulburn Basin;
  - (c) report on significant unauthorised uses of water in the Goulburn Basin;
  - (d) 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 section 33AAA of the Act.

**18. DELIVERY COSTS**

- 18.1 The Water Holder must pay Goulburn–Murray Water a fair and reasonable proportion of the costs associated with delivering water from its distribution system in accordance with clause 18.
- 18.2 The share of the delivery costs charged to the Water Holder is determined by Goulburn–Murray Water in accordance with the following:
- (a) where natural waterways are used to deliver water under this entitlement, there will be no delivery charge;
  - (b) where water is delivered via the channel system with a level of service equivalent to that of other entitlement holders, the charge to the Water Holder will be equal to the tariff charged by Goulburn–Murray Water for that level of service in the relevant irrigation district;
  - (c) where water is provided by Goulburn–Murray Water via the channel system under an interruptible access regime, Goulburn–Murray Water may only charge the Water Holder the out-of-pocket expense it incurs for supplying the service.
- 18.3 The Water Holder and Goulburn–Murray Water may agree to vary the method for determining the delivery costs prescribed in sub-clause 18.2.

Dated 2 July 2012

PETER WALSH MLA  
Minister for Water

**Water Act 1989**

**ENVIRONMENTAL ENTITLEMENT (GOULBURN SYSTEM – NVIRP STAGE 1) 2012**

**PART 1 – INTRODUCTORY STATEMENTS**

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

**PART 2 – ENTITLEMENT**

6. Repeal of Previous Environmental Entitlement
7. Environmental Entitlement

**PART 3 – AVAILABLE WATER**

8. Water Allocation
9. Water Application
10. Right to Use Return Flows

**PART 4 – GENERAL CONDITIONS AND PROVISIONS**

11. Operating Arrangements
12. Dispute Resolution

**PART 5 – DEMONSTRATING COMPLIANCE**

13. Metering Program
14. Reporting Requirements
15. Data

**PART 6 – COST SHARING ARRANGEMENTS**

16. Water Storage and Supply Costs
17. Resource Manager Costs
18. Delivery Costs

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

### PART 1 – INTRODUCTORY STATEMENTS

#### 1. CITATION

This Instrument may be cited as the Environmental Entitlement (Goulburn System – NVIRP Stage 1) 2012.

#### 2. EMPOWERING PROVISIONS

This Instrument is made under section 48B of the **Water Act 1989** and section 27 of the **Interpretation of Legislation Act 1984**.

#### 3. COMMENCEMENT

This Instrument comes into effect on 1 July 2012, or the day it is published in the Government Gazette, whichever comes later.

#### 4. PURPOSE

Under the Northern Victoria Irrigation Renewal Project (NVIRP), the Water Holder is entitled to receive one-third of the water recovered from NVIRP Stage 1, which is expected to be a long-term average of 75,000 ML per year, plus any mitigation water.

The purpose of this Instrument is to repeal an existing environmental entitlement with zero volume, and grant the Water Holder a new environmental entitlement for the environment's share of water recovered in the Goulburn component of the GMID as part of NVIRP Stage 1.

#### 5. DEFINITIONS

In this Instrument –

**'Act'** means the **Water Act 1989**;

**'ATS 4747'** means the Australian Technical Specification 'ATS 4747 – Meters for Non-Urban Supply' as published by Standards Australia and amended from time to time;

**'Audit'** means an independent audit of gross modernisation savings achieved from NVIRP, which is undertaken in accordance with the Protocol and the results of which are published each year until the completion of NVIRP;

**'channel system'** means the part of the distribution system comprising the channels, pipes and other distribution infrastructure maintained by Goulburn–Murray Water;

**'Deed'** means the Goulburn Environmental Water Savings Supply Deed, agreed between Goulburn–Murray Water and the Water Holder;

**'Department'** means the Department of Sustainability and Environment;

**'distribution system'** means channels, pipes and other works, and the natural or modified waterways and wetlands, which are used to transport water from the Goulburn System to primary entitlement holders;

**'entitlement holder'** means the holder of any type of entitlement to water in the Goulburn System granted under the Act;

**'environmental watering plan'** means an approved plan with mitigation water requirements that is developed in accordance with the conditions of the State and Commonwealth environmental approvals granted for NVIRP;

**'GMID'** means the Goulburn Murray Irrigation District;

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

**'Goulburn Entitlement Holder'** means the holder of the 'Bulk Entitlement (Eildon – Goulburn Weir) Conversion Order 1995';

**‘Goulburn headworks system’** means:

- (a) the water supply works of Lake Eildon, Goulburn Weir, the Stuart Murray and Cattanach Canals and Waranga Basin; and
- (b) the waterway below Lake Eildon;

**‘Goulburn–Murray Water’** means the Goulburn–Murray Rural Water Corporation;

**‘Goulburn System’** means the water supply systems supplied by the Goulburn headworks system and other assets, as shown from time to time in the Asset Register of Goulburn–Murray Water as owner of the assets;

**‘gross modernisation savings’** means the volume of distribution loss reduction achieved from modernisation works plus mitigation water;

**‘interruption access’** means when access to spare capacity in the channel system is permitted only after all other users’ needs have been met;

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

**‘mitigation water’** means the proportion of gross modernisation savings specified for use under environmental watering plans, the annual volume of which is calculated using the method defined in the Water Change Management Framework;

**‘Modernisation Savings Account’** means the account established under Schedule 3 of the ‘Bulk Entitlement (Eildon – Goulburn Weir) Conversion Order 1995’ to recognise and reserve gross modernisation savings achieved in the Goulburn System;

**‘modernisation works’** means a program of works and measures to modernise irrigation infrastructure;

**‘natural waterway’** means any natural or modified waterway that is part of the distribution system;

**‘net carryover volume’** has the meaning given to it in clause 9 of the instrument titled ‘Carryover for Bulk Entitlements and Environmental Entitlements in the Murray, Goulburn and Campaspe Water Systems (Declaration and Determination) 2010’;

**‘nominated delivery point’** means the location at which the Water Holder has placed an order for a volume of water to be supplied under this environmental entitlement;

**‘NVIRP’** means the Northern Victoria Irrigation Renewal Project, which is a major irrigation modernisation project aiming to generate long term annual average water savings of 439 gegalitres by upgrading irrigation infrastructure in the GMID;

**‘NVIRP Stage 1’** means Stage 1 of the NVIRP, which is projected to generate long-term annual average water savings of 225 gegalitres in the GMID in accordance with the ‘Business Case for Northern Victoria Irrigation Renewal Project Stage 1’;

**‘Phase 3 water savings’** means actual water saved from modernisation works in a given year calculated in accordance with the Protocol;

**‘Phase 4 water savings’** means long-term average water saved from all modernisation works to date calculated in accordance with the Protocol;

**‘Protocol’** means the ‘Water Savings Protocol for the Quantification of Water Savings from Irrigation Modernisation Projects’ issued by the Minister in July 2009, as amended from time to time;

**‘Resource Manager’** means a person appointed by the Minister under section 43A of the Act to be the resource manager for the Goulburn Basin;

**‘return point’** means a location downstream of a nominated delivery point where water which was delivered under this environmental entitlement is subsequently returned to the waterway as a return flow;

**‘Storage Manager’** means a person appointed by the Minister under section 122ZK of the Act to be the Storage Manager for the Goulburn System;

**‘Trading Rules for Declared Water Systems’** means the rules specified in the Order ‘Trading Rules for Regulated Water Systems in Northern Victoria’, which was gazetted on 28 June 2007, and all subsequent amendments, and as published on the Victorian Water Register;

**‘Water Change Management Framework’** means the framework prepared by NVIRP and approved by the Minister in accordance with condition 3 of the Minister for Planning’s decision regarding the referral of NVIRP under the **Environmental Effects Act 1989**;

**‘Water Holder’** has the same meaning as provided for under section 3(1) of the Act;

**‘waterway’** means the Goulburn River between Lake Eildon and the River Murray, including the pools formed by, and immediately upstream of, Eildon Dam and Goulburn Weir;

**‘year’** means the 12 months commencing 1 July.

#### **PART 2 – ENTITLEMENT**

#### **6. REPEAL OF PREVIOUS ENVIRONMENTAL ENTITLEMENT**

The following Instrument held by the Water Holder is repealed –  
Environmental Entitlement (Goulburn System – Environmental Water Reserve) 2010.

#### **7. ENVIRONMENTAL ENTITLEMENT**

The Water Holder is entitled to a water entitlement volume in the Goulburn System equal to –

- (a) one-third of the total phase 4 water savings from NVIRP Stage 1 achieved in the Goulburn component of the GMID, as verified in the latest Audit; and
- (b) any mitigation water available in the Goulburn System in that year.

#### **PART 3 –AVAILABLE WATER**

#### **8. WATER ALLOCATION**

8.1 On the commencement of this Instrument, the Water Holder is to be credited a starting water allocation equal to –

- (a) the volume of unused water allocation in the water accounts held by the Water Holder in the Goulburn System under the Deed immediately prior to the Deed being terminated; minus
- (b) five per cent to account for evaporation losses, if the Deed was terminated before 1 July 2012.

8.2 Any water allocation credited under sub-clause 8.1 is to be treated the same as net carryover volume, with access subject to the terms and conditions specified in the instrument titled ‘Carryover for Bulk Entitlements and Environmental Entitlements in the Murray, Goulburn and Campaspe Water Systems (Declaration and Determination) 2010’.

8.3 The water allocation available in a given year for use by the Water Holder is equal to:

- (a) one-third of the total phase 3 water savings achieved in the previous year in the Goulburn component of the GMID from NVIRP Stage 1, as verified by an Audit;
- (b) any mitigation water available in the Goulburn System –  
as determined by the Goulburn Entitlement Holder in accordance with the procedure for estimating, accounting, reserving and allocating gross modernisation savings in Schedule 3 of the ‘Bulk Entitlement (Eildon – Goulburn Weir) Conversion Order 1995’.

#### **9. WATER APPLICATION**

9.1 The Water Holder may apply water available under sub-clause 8.3(a) at any nominated delivery point in the Goulburn System or another system, subject to any relevant

Trading Rules for Declared Water Systems.

- 9.2 The Water Holder may only apply water allocated under sub-clause 8.3(b) in accordance with the conditions of an approved environmental watering plan and subject to any relevant Trading Rules for Declared Water Systems.

## 10. RIGHT TO USE RETURN FLOWS

- 10.1 The Water Holder may apply to the Storage Manager to re-use or be credited for water used under this entitlement that is returned to the Goulburn System or another system in accordance with clause 10.
- 10.2 Before any re-use or credit can be granted, the Water Holder must –
- (a) come to an agreement with the Storage Manager on the likely volume, timing and location of any return flow for the purposes of adjusting system operations; and
  - (b) notify the Storage Manager if it intends to re-use any flows specified under paragraph (a).
- 10.3 Subject to sub-clause 10.4, the Storage Manager may grant approval of an application under sub-clause 10.1 for –
- (a) re-use by the Water Holder; or
  - (b) credit to the Water Holder in a nominated storage, where water returned under this entitlement was supplied to any person other than the Water Holder or stored for the Storage Manager's purposes.
- 10.4 The Storage Manager may only grant approval under sub-clause 10.3 if –
- (a) water supplied to and used by the Water Holder during the current water season has subsequently been returned to the Goulburn System or another system;
  - (b) the volume of water so returned has either:
    - (i) been measured by a meter that complies with ATS 4747 or an equivalent meter accuracy standard; or,
    - (ii) been calculated by a method that has been agreed under clause 11;
  - (c) any water re-used by the Water Holder or another person was used downstream of the place where the return flow occurred and within a reasonable time of the return flow;
  - (d) it can re-regulate the return flows downstream, with no material impact on other entitlement holders in the Goulburn System or another system;
  - (e) the volume of any water credited to the Water Holder under sub-clause 10.3(b) is equal to that volume of returned water which was able to be used or stored; and,
  - (f) approval is consistent with any rules regarding the supply, use and accounting of return flows issued by the Minister from time to time.
- 10.5 If the Water Holder and the Storage Manager cannot reach agreement within one month of an application under sub-clause 10.1, either party may make a written request to the Minister to make a decision on the right to re-use return flows or the granting of water credits.
- 10.6 Any decision made by the Minister in relation to sub-clause 10.5 is final and binding on the parties.

## PART 4 – GENERAL CONDITIONS AND PROVISIONS

### 11. OPERATING ARRANGEMENTS

- 11.1 Within 12 months of 1 July 2012, the Water Holder, together with the Storage Manager, must –
- (a) review any existing operating arrangements; or
  - (b) in the absence of operating arrangements, develop new operating arrangements –



for the supply of water under this entitlement.

- 11.2 If the Water Holder and the Storage Manager have not reached agreement under sub-clause 11.1 within 12 months of 1 July 2012, either party may give written notice to the other party requiring the matter to be determined in accordance with clause 12.
- 11.3 The Water Holder, together with the Storage Manager, may agree to vary the operating arrangements from time to time.

## **12. DISPUTE RESOLUTION**

- 12.1 If a difference or dispute arises between the Water Holder, Goulburn–Murray Water, the Goulburn Entitlement Holder, the Storage Manager or the Resource Manager, or any of them, concerning the interpretation or application of this Instrument, a party may give written notice to another party, or parties, requiring the matter to be determined by an independent expert.
- 12.2 The notice requiring that the matter be determined by independent expert may be given no sooner than 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 independent expert is either –
- (a) a person agreed to by the parties to the difference or dispute; or
  - (b) if the parties to the difference or dispute cannot agree, a person nominated by the President of the Institute of Arbitrators and Mediators, Australia.
- 12.4 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.
- 12.5 The independent expert must send a copy of the conclusion and its supporting reasons to each party to the difference or dispute.
- 12.6 Any conclusion by an independent expert is final and binding on the parties.
- 12.7 Where a dispute is referred to an independent expert, the costs to the parties of, and incidental to, a reference to an independent expert, including the costs of the independent expert, must be apportioned among the parties to the dispute as determined by the independent expert.

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

## **13. METERING PROGRAM**

- 13.1 The Water Holder, in agreement with the Storage Manager, must propose to the Minister within 6 months of 1 July 2012 a metering program, which includes any new metering sites required to provide adequate monitoring that are not already included in an existing metering program, to demonstrate compliance with this environmental entitlement with respect to all water taken by the Water Holder under this environmental entitlement and in order to meet the reporting requirements specified in clause 14.
- 13.2 The Minister may:
- (a) approve the program proposed under sub-clause 13.1; or
  - (b) require the Water Holder to amend the proposed program.
- 13.3 The Minister may at any subsequent time, require the Water Holder –
- (a) to review the program approved by the Minister under sub-clause 13.2(a) if, in the Minister’s opinion, it is, no longer appropriate; and
  - (b) to propose an amended program to the Minister for approval.
- 13.4 For those metering sites in the program approved under sub-clause 13.2(a) that are not included in any other authority’s metering program, the Water Holder must, at its cost,

and in accordance with any guidelines issued from time to time by the Minister:

- (a) implement and maintain the approved metering program; 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 (a), (b), (c) and (d).
- 13.5 The Water Holder must ensure that there is appropriate metering at nominated delivery points and return points (where applicable) to allow the volume of water that the Water Holder takes under this environmental entitlement to be quantified in order to ensure no adverse impacts on other entitlement holders.
- 13.6 Any application by the Water Holder to the Minister for amendment to this Instrument must address any implications of the proposed amendment for an approved metering program.

#### **14. REPORTING REQUIREMENTS**

- 14.1 The Minister may require the Water Holder to report on all or any of the following –
- (a) daily and annual flows at the nominated delivery points;
  - (b) any assignment of water allocation available under this environmental entitlement;
  - (c) any amendment to this environmental entitlement;
  - (d) compliance with this environmental entitlement;
  - (e) any failures by the Water Holder to comply with any provision of this environmental entitlement; and
  - (f) any difficulties experienced or anticipated by the Water Holder in complying with this environmental entitlement and any remedial action taken or proposed.
- 14.2 The Minister may require the Water Holder to report on all or any of the matters listed in sub-clause 14.1 –
- (a) in writing, or in such electronic form as may be agreed between the Water Holder and the Minister; and
  - (b) within 14 days of receiving the Minister's written request, or such longer period of time as the Minister may determine.

#### **15. DATA**

The Water Holder must make available to any person data collected by or on behalf of the Water Holder for the purpose of clause 14 subject to:

- (a) the Water Holder being able to obtain all hydrological and other data required by the Water Holder to comply with this bulk entitlement; and
- (b) the person paying any fair and reasonable access fee imposed by the Water Holder, to cover the costs of making the data available.

### **PART 6 – COST SHARING ARRANGEMENTS**

#### **16. WATER STORAGE AND SUPPLY COSTS**

- 16.1 Subject to sub-clauses 16.2 and 16.3, the Water Holder does not have to make any payment for water storage and supply costs relating to this environmental entitlement.
- 16.2 The Minister may, after reviewing, in consultation with the Water Holder and other entitlement holders, the desirability of a direct contribution being made towards the water supply and storage costs relating to this environmental entitlement, approve

alternative arrangements under which the Water Holder makes such a contribution, in whatever circumstances or with whatever limits that the Minister may decide.

- 16.3 The Water Holder must pay any contribution towards water storage and supply costs arising from alternative arrangements approved by the Minister under sub-clause 16.2, to the Storage Manager or to such other person as is determined by the Minister.

#### **17. RESOURCE MANAGER COSTS**

- 17.1 Subject to sub-clause 17.2, the Water Holder does not have to make any payment to the Resource Manager.
- 17.2 The Minister may, after reviewing, in consultation with the Water Holder and other entitlement holders, the desirability of a contribution being made by the Water Holder towards the costs of the Resource Manager, approve an arrangement under which the Water Holder must make such a contribution.
- 17.3 Depending on the outcome of a review under sub-clause 17.2, the Water Holder may be required to pay to the Resource Manager a fair and reasonable proportion of the costs incurred by the Resource Manager to –
- (a) report on whether entitlement holders in the Goulburn Basin comply with the conditions of their bulk entitlements and environmental entitlements;
  - (b) report on disputes between entitlement holders in the Goulburn Basin;
  - (c) report on significant unauthorised uses of water in the Goulburn Basin;
  - (d) 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 section 33AAA of the Act.

#### **18. DELIVERY COSTS**

- 18.1 The Water Holder must pay Goulburn–Murray Water a fair and reasonable proportion of the costs associated with delivering water from its distribution system in accordance with clause 18.
- 18.2 The share of the delivery costs charged to the Water Holder is determined by Goulburn–Murray Water in accordance with the following:
- (a) where natural waterways are used to deliver water under this entitlement, there will be no delivery charge;
  - (b) where water is delivered via the channel system with a level of service equivalent to that of other entitlement holders, the charge to the Water Holder will be equal to the tariff charged by Goulburn–Murray Water for that level of service in the relevant irrigation district;
  - (c) where water is provided by Goulburn–Murray Water via the channel system under an interruptible access regime, Goulburn–Murray Water may only charge the Water Holder the out-of-pocket expense it incurs for supplying the service.
- 18.3 The Water Holder and Goulburn–Murray Water may agree to vary the method for determining the delivery costs prescribed in sub-clause 18.2.

Dated 2 July 2012

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PETER WALSH MLA  
Minister for Water

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**Water Act 1989**

**BULK ENTITLEMENT (RIVER MURRAY – YARRA VALLEY WATER) ORDER 2012**

**PART 1 – INTRODUCTORY STATEMENTS**

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

**PART 2 – ENTITLEMENT**

6. Granting of a Bulk Entitlement
7. Bulk Entitlement

**PART 3 – AVAILABLE WATER**

8. Water Allocation

**PART 4 – GENERAL CONDITIONS AND PROVISIONS**

9. Management Arrangements
10. Dispute Resolution

**PART 5 – DEMONSTRATING COMPLIANCE**

11. Reporting Requirements
12. Data

**PART 6 – COST SHARING ARRANGEMENTS**

13. Resource Manager Costs
14. Water Storage Costs
15. Duty to Make Payments

**SCHEDULE 1 – SHARE OF RESOURCES**

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 (River Murray – Yarra Valley Water) Order 2012.

##### **2. EMPOWERING PROVISIONS**

This Order is made under Division 1 of Part 4 of the **Water Act 1989**.

##### **3. COMMENCEMENT**

This Order comes into operation on 1 July 2012, or the day it is published in the Government Gazette, whichever comes later.

##### **4. PURPOSE**

The Melbourne retail authorities are collectively investing \$300 million towards NVIRP Stage 1 to receive one-third of the water recovered across the GMID, up to a long-term average of 75,000 ML per year.

The purpose of this Order is to grant Yarra Valley Water a bulk entitlement to Melbourne's share of water recovered in the River Murray component of the GMID.

##### **5. DEFINITIONS**

In this Order –

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

‘**Agreement**’ means the Water Savings Supply and Transfer Agreement entered into by Goulburn–Murray Rural Water Corporation, Melbourne Water Corporation, City West Water Limited, South East Water Limited and Yarra Valley Water Limited;

‘**Audit**’ means an independent audit of gross modernisation savings achieved from NVIRP which is undertaken in accordance with the Protocol and the results of which are published each year until the completion of NVIRP;

‘**Authority**’ means Yarra Valley Water;

‘**City West Water**’ means City West Water Corporation;

‘**Department**’ means the Department of Sustainability and Environment;

‘**entitlement holder**’ means the holder of any type of entitlement to water in the River Murray System granted under the Act;

‘**ESC**’ means the Essential Services Commission;

‘**GMID**’ means the Goulburn Murray Irrigation District;

‘**Goulburn–Murray Water**’ means the Goulburn–Murray Rural Water Corporation;

‘**gross modernisation savings**’ means the volume of distribution loss reduction achieved from modernisation works plus mitigation water;

‘**MDBA**’ means the Murray–Darling Basin Authority;

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

‘**Melbourne Bulk Transfer System Operator**’ means Melbourne Water in respect of its role to operate and maintain the Melbourne bulk transfer system in accordance with section 171B of the Act;

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

**‘Melbourne retail authorities’** means any or all of –

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

**‘Melbourne Storage Manager’** means Melbourne Water acting in respect of its role to manage storages for the Melbourne headworks system in accordance with section 171B of the Act;

**‘Melbourne supply system’** means the waterways, Melbourne headworks system and Melbourne bulk transfer system works which supply water to the Melbourne retail authorities;

**‘Melbourne Water’** means Melbourne Water Corporation;

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

**‘mitigation water’** means the proportion of gross modernisation savings specified for use under environmental watering plans, the annual volume of which is calculated using the method defined in the Water Change Management Framework;

**‘ML’** means megalitre(s);

**‘modernisation works’** means a program of works and measures to modernise irrigation infrastructure;

**‘Murray–Darling Basin Agreement’** means the Murray–Darling Basin Agreement as contained in Schedule F of the **Water Act 2007** (Commonwealth);

**‘NVIRP’** means the Northern Victoria Irrigation Renewal Project, which is a major irrigation modernisation project aiming to generate long term annual average water savings of 439 gigalitres by upgrading irrigation infrastructure in the GMID;

**‘NVIRP Stage 1’** means Stage 1 of the NVIRP, which is projected to generate long-term annual average water savings of 225 gigalitres in the GMID in accordance with the ‘Business Case for Northern Victoria Irrigation Renewal Project Stage 1’;

**‘Phase 3 water savings’** means actual water saved from modernisation works in a given year calculated in accordance with the Protocol;

**‘Phase 4 water savings’** means long-term average water saved from all modernisation works to date calculated in accordance with the Protocol;

**‘Protocol’** means the ‘Water Savings Protocol for the Quantification of Water Savings from Irrigation Modernisation Projects’ issued by the Minister in July 2009, as amended from time to time;

**‘Resource Manager’** means any person appointed by the Minister under section 43A of the Act to be the resource manager for the River Murray;

**‘River Murray Entitlement Holder’** means the holder of the ‘Bulk Entitlement (River Murray – Goulburn–Murray Water) Conversion Order 1999’;

**‘River Murray System’** means the River Murray to which Victoria has access and which carries regulated water under the Murray–Darling Basin Agreement; consisting of:

- (a) the main course of the River Murray from Hume Dam to the South Australian border;
- (b) the main course of the Mitta Mitta River below Dartmouth Dam;
- (c) all effluents and anabranches of, or lakes or lagoons (including King’s Billabong) connected to, these main courses, other than those excluded by the MDBA;
- (d) the storages formed by Hume Dam and Dartmouth Dam and by weirs upstream of the South Australian border;

**‘South East Water’** means South East Water Corporation;

**‘Trading zone 6’** means the Vic. Murray Dartmouth to Barmah part of the River Murray System, as described in the ‘Trading Rules for Declared Water Systems’, into or out of or within which trade can occur;

**‘Trading zone 7’** means the Vic. Murray Barmah to SA part of the River Murray System, as described in the ‘Trading Rules for Declared Water Systems’, into or out of or within which trade can occur;

**‘Water Change Management Framework’** means the framework prepared by NVIRP and approved by the Minister in accordance with condition 3 of the Minister for Planning’s decision regarding the referral of NVIRP under the **Environmental Effects Act 1989**;

**‘Yarra Valley Water’** means Yarra Valley Water Corporation;

**‘year’** means the 12 months commencing 1 July.

#### **PART 2 – ENTITLEMENT**

##### **6. GRANTING OF A BULK ENTITLEMENT**

A bulk entitlement to water from the River Murray System is granted to the Authority on the conditions set out in this Order. This granting provision must be read together with the granting provision in both of the bulk entitlements referred to in sub-clause 7.3 below, such that together the three granting provisions encompass all of the water that is available from the River Murray System for the Melbourne supply system.

##### **7. BULK ENTITLEMENT**

7.1 The provisions of this bulk entitlement must be read together with those of the two bulk entitlements referred to in sub-clause 7.3 below such that together the three bulk entitlements may take the volumes of water as determined under Part 3.

7.2 The Authority, together with the holders of the bulk entitlements listed in sub-clause 7.3, is entitled to a water entitlement volume in the following parts of the River Murray System equal to one-third of the total Phase 4 water savings achieved in these parts of the GMID from NVIRP Stage 1 as verified in the latest Audit –

- (a) Trading zone 6; and
- (b) Trading zone 7.

7.3 The Authority’s share, together with water allocated under the -

- (a) Bulk Entitlement (River Murray – South East Water) Order 2012; and
- (b) Bulk Entitlement (River Murray – City West Water) Order 2012

as described in Schedule 1, make up 100% of the water allocated to Melbourne retail authorities from the River Murray System.

#### **PART 3 – AVAILABLE WATER**

##### **8. WATER ALLOCATION**

8.1 The water allocation available in a given year for use by the Authority under this bulk entitlement, together with the holders of the bulk entitlements listed in sub-clause 7.3, is equal to one-third of the total Phase 3 water savings achieved in the previous year in the River Murray components of the GMID from NVIRP Stage 1, as verified by an Audit.

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

##### **9. MANAGEMENT ARRANGEMENTS**

9.1 The Authority, together with the holders of bulk entitlements listed in sub-clause 7.3, must, within twelve months of the commencement of this Order, review and if necessary amend the current agreed arrangements for the collaborative management of the Melbourne retail authorities’ bulk entitlements to ensure the collaborative management of this bulk entitlement between themselves and –

- (a) the Melbourne Storage Manager; and
- (b) the Melbourne Bulk Transfer System Operator.

**10. DISPUTE RESOLUTION**

- 10.1 If a difference or dispute arises about the interpretation or application of this Order between the Authority and the Melbourne Storage Manager, or the River Murray Entitlement Holder, or the Resource Manager, or another entitlement holder, the Authority may give written notice to another party, or parties, requiring the matter to be determined by the ESC or an independent expert.
- 10.2 If a difference or dispute arises about the interpretation or application of this Order between the Authority and the Melbourne Storage Manager, or the River Murray Entitlement Holder, or the Resource Manager, or another entitlement holder, and the Authority receives written notice requiring the matter to be determined by the ESC or an independent expert, the Authority must comply with the notice.
- 10.3 A notice may not be given under sub-clause 10.1, or considered under sub-clause 10.2, until 14 days have expired after the difference or dispute has arisen.
- 10.4 Where a dispute is referred to the ESC, the ESC may determine the process and timing for facilitating a resolution of the dispute.
- 10.5 Where a dispute is referred to an independent expert, the independent expert must not commence to determine a matter until 14 days have expired after notice is given under sub-clause 10.1 or received under sub-clause 10.2.
- 10.6 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.
- 10.7 The independent expert must reach a conclusion on the matter within 30 days after it has been referred, but has power to extend the period for reaching a conclusion on the matter by a further 30 days.
- 10.8 The independent expert must send a copy of the conclusion and its supporting reasons to each party to the difference or dispute.
- 10.9 Any conclusion by the ESC or an independent expert is final and binding on the parties.
- 10.10 Where a dispute is referred to the ESC, the ESC may determine the apportionment of the costs of and incidental to every reference.
- 10.11 Where a dispute is referred to an independent expert, the costs to the parties of, and incidental to, a reference to an independent expert, including the costs of an independent expert, must be apportioned among the parties to the dispute as determined by the independent expert.

**PART 5 – DEMONSTRATING COMPLIANCE****11. REPORTING REQUIREMENTS**

- 11.1 The Minister may require the Authority, together with the holders of bulk entitlements listed in sub-clause 7.3, to report on all or any of the following -
  - (a) the annual water allocation made available to the Authority under clause 8 of this bulk entitlement;
  - (b) any assignment of water allocation made available under this bulk entitlement;
  - (c) any permanent transfer of all or part of this bulk entitlement;
  - (d) any amendment to this bulk entitlement;
  - (e) any failure by either the Authority, or the Authority together with the holders of the bulk entitlements listed in sub-clause 7.3, to comply with any provision of this bulk entitlement; and



- (f) any difficulties experienced or anticipated either by the Authority, or the Authority together with the other holders of the bulk entitlements listed in sub-clause 7.3, in complying with this bulk entitlement and any remedial action taken or proposed.
- 11.2 Any report made under sub-clause 11.1 must be made –
  - (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 of time as the Minister may determine.
- 11.3 The Authority must, in its Annual Report, report on each of the matters referred to in sub-clause 11.1, except, with the approval of the Minister, any matter set out in paragraph (e) of sub-clause 11.1.
- 11.4 If requested by the River Murray Entitlement Holder or Resource Manager from time to time, the Authority, together with the holders of the bulk entitlements listed in sub-clause 7.3, must report on all or any of the matters set out in sub-clause 11.1.
- 11.5 Any report under sub-clause 11.4 must be made –
  - (a) in such form as may be agreed between the Authority, together with the holders of bulk entitlements listed in sub-clause 7.3, and the River Murray Entitlement Holder or Resource Manager; and
  - (b) within such period of time as may be agreed between the Authority, together with the holders of bulk entitlements listed in sub-clause 7.3, and the River Murray Entitlement Holder or Resource Manager.

## 12. DATA

- 12.1 The Authority must make available to any person data collected by or on behalf of the Authority for the purpose of reporting under clause 11, 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 – COST SHARING ARRANGEMENTS

## 13. RESOURCE MANAGER COSTS

- 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 in –
  - (a) reporting on whether entitlement holders in the River Murray Basin comply with the conditions of their bulk entitlements and/or environmental entitlements;
  - (b) reporting on disputes between entitlement holders in the River Murray Basin;
  - (c) reporting on significant unauthorised uses of water in the River Murray Basin;
  - (d) co-ordinating the application and implementation of the qualification of any rights to water in the River Murray Basin made by the Minister under section 33AAA of the Act, during a declared water shortage.
- 13.2 Subject to sub-clause 13.3, the proportion of costs referred to in sub-clause 13.1 is to be determined by the Resource Manager.
- 13.3 Where the Resource Manager provides a prescribed service for the purposes of section 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 ESC in accordance with Part 1A or 1B of the **Water Industry Act 1994**.

**14. WATER STORAGE COSTS**

14.1 The Authority, together with the holders of the bulk entitlements listed in sub-clause 7.3, must pay Goulburn–Murray Water a proportionate share of the costs associated with storing Victoria’s share of the water resources in Hume Dam and Dartmouth Dam.

14.2 Where Goulburn–Murray Water provides a prescribed service for the purposes of section 4A of the **Water Industry Act 1994**, the charges to be paid by the Authority to Goulburn–Murray Water are to be determined by the ESC in accordance with Part 1A or 1B of the **Water Industry Act 1994**.

**15. DUTY TO MAKE PAYMENTS**

The Authority, together with the holders of the bulk entitlements listed in sub-clause 7.3, has a duty to make its payments for clauses 13 and 14, directly to the Resource Manager and Goulburn–Murray Water.

Dated 2 July 2012

Responsible Minister  
PETER WALSH MLA  
Minister for Water

**SCHEDULE 1 – SHARE OF RESOURCES**

<b>Bulk entitlement</b>	<b>Share of resources</b>
Bulk Entitlement (River Murray – South East Water) Order 2012	One-third of the available water resources as determined under Part 2 of the bulk entitlement
Bulk Entitlement (River Murray – City West Water) Order 2012	One-third of the available water resources as determined under Part 2 of the bulk entitlement
Bulk Entitlement (River Murray – Yarra Valley Water) Order 2012	One-third of the available water resources as determined under Part 2 of the bulk entitlement.
<b>Total</b>	<b>100% of the entitlement granted to the Melbourne retail authorities from the River Murray System</b>

**Water Act 1989**

**BULK ENTITLEMENT (RIVER MURRAY – SOUTH EAST WATER) ORDER 2012**

**PART 1 – INTRODUCTORY STATEMENTS**

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

**PART 2 – ENTITLEMENT**

6. Granting of a Bulk Entitlement
7. Bulk Entitlement

**PART 3 – AVAILABLE WATER**

8. Water Allocation

**PART 4 – GENERAL CONDITIONS AND PROVISIONS**

9. Management Arrangements
10. Dispute Resolution

**PART 5 – DEMONSTRATING COMPLIANCE**

11. Reporting Requirements
12. Data

**PART 6 – COST SHARING ARRANGEMENTS**

13. Resource Manager Costs
14. Water Storage Costs
15. Duty to Make Payments

**SCHEDULE 1 – SHARE OF RESOURCES**

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 (River Murray – South East Water) Order 2012.

##### **2. EMPOWERING PROVISIONS**

This Order is made under Division 1 of Part 4 of the **Water Act 1989**.

##### **3. COMMENCEMENT**

This Order comes into operation on 1 July 2012, or the day it is published in the Government Gazette, whichever comes later.

##### **4. PURPOSE**

The Melbourne retail authorities are collectively investing \$300 million towards NVIRP Stage 1 to receive one-third of the water recovered across the GMID, up to a long-term average of 75,000 ML per year.

The purpose of this Order is to grant South East Water a bulk entitlement to Melbourne's share of water recovered in the River Murray component of the GMID.

##### **5. DEFINITIONS**

In this Order –

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

‘**Agreement**’ means the Water Savings Supply and Transfer Agreement entered into by Goulburn–Murray Rural Water Corporation, Melbourne Water Corporation, City West Water Limited, South East Water Limited and Yarra Valley Water Limited;

‘**Audit**’ means an independent audit of gross modernisation savings achieved from NVIRP which is undertaken in accordance with the Protocol and the results of which are published each year until the completion of NVIRP;

‘**Authority**’ means South East Water;

‘**City West Water**’ means City West Water Corporation;

‘**Department**’ means the Department of Sustainability and Environment;

‘**entitlement holder**’ means the holder of any type of entitlement to water in the River Murray System granted under the Act;

‘**ESC**’ means the Essential Services Commission;

‘**GMID**’ means the Goulburn Murray Irrigation District;

‘**Goulburn–Murray Water**’ means the Goulburn–Murray Rural Water Corporation;

‘**gross modernisation savings**’ means the volume of distribution loss reduction achieved from modernisation works plus mitigation water;

‘**MDBA**’ means the Murray–Darling Basin Authority;

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

‘**Melbourne Bulk Transfer System Operator**’ means Melbourne Water in respect of its role to operate and maintain the Melbourne bulk transfer system in accordance with section 171B of the Act;

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

**‘Melbourne retail authorities’** means any or all of –

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

**‘Melbourne Storage Manager’** means Melbourne Water acting in respect of its role to manage storages for the Melbourne headworks system in accordance with section 171B of the Act;

**‘Melbourne supply system’** means the waterways, Melbourne headworks system and Melbourne bulk transfer system works which supply water to the Melbourne retail authorities;

**‘Melbourne Water’** means Melbourne Water Corporation;

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

**‘mitigation water’** means the proportion of gross modernisation savings specified for use under environmental watering plans, the annual volume of which is calculated using the method defined in the Water Change Management Framework;

**‘ML’** means megalitre(s);

**‘modernisation works’** means a program of works and measures to modernise irrigation infrastructure;

**‘Murray–Darling Basin Agreement’** means the Murray–Darling Basin Agreement as contained in Schedule F of the **Water Act 2007** (Commonwealth);

**‘NVIRP’** means the Northern Victoria Irrigation Renewal Project, which is a major irrigation modernisation project aiming to generate long term annual average water savings of 439 gigalitres by upgrading irrigation infrastructure in the GMID;

**‘NVIRP Stage 1’** means Stage 1 of the NVIRP, which is projected to generate long-term annual average water savings of 225 gigalitres in the GMID in accordance with the ‘Business Case for Northern Victoria Irrigation Renewal Project Stage 1’;

**‘Phase 3 water savings’** means actual water saved from modernisation works in a given year calculated in accordance with the Protocol;

**‘Phase 4 water savings’** means long-term average water saved from all modernisation works to date calculated in accordance with the Protocol;

**‘Protocol’** means the ‘Water Savings Protocol for the Quantification of Water Savings from Irrigation Modernisation Projects’ issued by the Minister in July 2009, as amended from time to time;

**‘Resource Manager’** means any person appointed by the Minister under section 43A of the Act to be the resource manager for the River Murray;

**‘River Murray Entitlement Holder’** means the holder of the ‘Bulk Entitlement (River Murray – Goulburn–Murray Water) Conversion Order 1999’;

**‘River Murray System’** means the River Murray to which Victoria has access and which carries regulated water under the Murray–Darling Basin Agreement; consisting of:

- (a) the main course of the River Murray from Hume Dam to the South Australian border;
- (b) the main course of the Mitta Mitta River below Dartmouth Dam;
- (c) all effluents and anabranches of, or lakes or lagoons (including King’s Billabong) connected to, these main courses, other than those excluded by the MDBA;
- (d) the storages formed by Hume Dam and Dartmouth Dam and by weirs upstream of the South Australian border;

**‘South East Water’** means South East Water Corporation;

**‘Trading zone 6’** means the Vic. Murray Dartmouth to Barmah part of the River Murray System, as described in the ‘Trading Rules for Declared Water Systems’, into or out of or within which trade can occur;

**‘Trading zone 7’** means the Vic. Murray Barmah to SA part of the River Murray System, as described in the ‘Trading Rules for Declared Water Systems’, into or out of or within which trade can occur;

**‘Water Change Management Framework’** means the framework prepared by NVIRP and approved by the Minister in accordance with condition 3 of the Minister for Planning’s decision regarding the referral of NVIRP under the **Environmental Effects Act 1989**;

**‘Yarra Valley Water’** means Yarra Valley Water Corporation;

**‘year’** means the 12 months commencing 1 July.

## **PART 2 – ENTITLEMENT**

### **6. GRANTING OF A BULK ENTITLEMENT**

A bulk entitlement to water from the River Murray System is granted to the Authority on the conditions set out in this Order. This granting provision must be read together with the granting provision in both of the bulk entitlements referred to in sub-clause 7.3 below, such that together the three granting provisions encompass all of the water that is available from the River Murray System for the Melbourne supply system.

### **7. BULK ENTITLEMENT**

7.1 The provisions of this bulk entitlement must be read together with those of the two bulk entitlements referred to in sub-clause 7.3 below such that together the three bulk entitlements may take the volumes of water as determined under Part 3.

7.2 The Authority, together with the holders of the bulk entitlements listed in sub-clause 7.3, is entitled to a water entitlement volume in the following parts of the River Murray System equal to one-third of the total Phase 4 water savings achieved in these parts of the GMID from NVIRP Stage 1 as verified in the latest Audit –

- (a) Trading zone 6; and
- (b) Trading zone 7.

7.3 The Authority’s share, together with water allocated under the –

- (a) Bulk Entitlement (River Murray – Yarra Valley Water) Order 2012; and
- (b) Bulk Entitlement (River Murray – City West Water) Order 2012

as described in Schedule 1, make up 100% of the water allocated to Melbourne retail authorities from the River Murray System.

## **PART 3 – AVAILABLE WATER**

### **8. WATER ALLOCATION**

8.1 The water allocation available in a given year for use by the Authority under this bulk entitlement, together with the holders of the bulk entitlements listed in sub-clause 7.3, is equal to one-third of the total Phase 3 water savings achieved in the previous year in the River Murray components of the GMID from NVIRP Stage 1, as verified by an Audit.

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

### **9. MANAGEMENT ARRANGEMENTS**

9.1 The Authority, together with the holders of bulk entitlements listed in sub-clause 7.3, must, within twelve months of the commencement of this Order, review and if necessary amend the current agreed arrangements for the collaborative management of the Melbourne retail authorities’ bulk entitlements to ensure the collaborative management of this bulk entitlement between themselves and –

- (a) the Melbourne Storage Manager; and
- (b) the Melbourne Bulk Transfer System Operator.

**10. DISPUTE RESOLUTION**

- 10.1 If a difference or dispute arises about the interpretation or application of this Order between the Authority and the Melbourne Storage Manager, or the River Murray Entitlement Holder, or the Resource Manager, or another entitlement holder, the Authority may give written notice to another party, or parties, requiring the matter to be determined by the ESC or an independent expert.
- 10.2 If a difference or dispute arises about the interpretation or application of this Order between the Authority and the Melbourne Storage Manager, or the River Murray Entitlement Holder, or the Resource Manager, or another entitlement holder, and the Authority receives written notice requiring the matter to be determined by the ESC or an independent expert, the Authority must comply with the notice.
- 10.3 A notice may not be given under sub-clause 10.1, or considered under sub-clause 10.2, until 14 days have expired after the difference or dispute has arisen.
- 10.4 Where a dispute is referred to the ESC, the ESC may determine the process and timing for facilitating a resolution of the dispute.
- 10.5 Where a dispute is referred to an independent expert, the independent expert must not commence to determine a matter until 14 days have expired after notice is given under sub-clause 10.1 or received under sub-clause 10.2.
- 10.6 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.
- 10.7 The independent expert must reach a conclusion on the matter within 30 days after it has been referred, but has power to extend the period for reaching a conclusion on the matter by a further 30 days.
- 10.8 The independent expert must send a copy of the conclusion and its supporting reasons to each party to the difference or dispute.
- 10.9 Any conclusion by the ESC or an independent expert is final and binding on the parties.
- 10.10 Where a dispute is referred to the ESC, the ESC may determine the apportionment of the costs of and incidental to every reference.
- 10.11 Where a dispute is referred to an independent expert, the costs to the parties of, and incidental to, a reference to an independent expert, including the costs of an independent expert, must be apportioned among the parties to the dispute as determined by the independent expert.

**PART 5 – DEMONSTRATING COMPLIANCE****11. REPORTING REQUIREMENTS**

- 11.1 The Minister may require the Authority, together with the holders of bulk entitlements listed in sub-clause 7.3, to report on all or any of the following –
  - (a) the annual water allocation made available to the Authority under clause 8 of this bulk entitlement;
  - (b) any assignment of water allocation made available under this bulk entitlement;
  - (c) any permanent transfer of all or part of this bulk entitlement;
  - (d) any amendment to this bulk entitlement;
  - (e) any failure by either the Authority, or the Authority together with the holders of the bulk entitlements listed in sub-clause 7.3, to comply with any provision of this bulk entitlement; and



- (f) any difficulties experienced or anticipated either by the Authority, or the Authority together with the other holders of the bulk entitlements listed in sub-clause 7.3, in complying with this bulk entitlement and any remedial action taken or proposed.
- 11.2 Any report made under sub-clause 11.1 must be made –
  - (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 of time as the Minister may determine.
- 11.3 The Authority must, in its Annual Report, report on each of the matters referred to in sub-clause 11.1, except, with the approval of the Minister, any matter set out in paragraph (e) of sub-clause 11.1.
- 11.4 If requested by the River Murray Entitlement Holder or Resource Manager from time to time, the Authority, together with the holders of the bulk entitlements listed in sub-clause 7.3, must report on all or any of the matters set out in sub-clause 11.1.
- 11.5 Any report under sub-clause 11.4 must be made –
  - (a) in such form as may be agreed between the Authority, together with the holders of bulk entitlements listed in sub-clause 7.3, and the River Murray Entitlement Holder or Resource Manager; and
  - (b) within such period of time as may be agreed between the Authority, together with the holders of bulk entitlements listed in sub-clause 7.3, and the River Murray Entitlement Holder or Resource Manager.

## 12. DATA

- 12.1 The Authority must make available to any person data collected by or on behalf of the Authority for the purpose of reporting under clause 11, 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 – COST SHARING ARRANGEMENTS

## 13. RESOURCE MANAGER COSTS

- 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 in –
  - (a) reporting on whether entitlement holders in the River Murray Basin comply with the conditions of their bulk entitlements and/or environmental entitlements;
  - (b) reporting on disputes between entitlement holders in the River Murray Basin;
  - (c) reporting on significant unauthorised uses of water in the River Murray Basin;
  - (d) co-ordinating the application and implementation of the qualification of any rights to water in the River Murray Basin made by the Minister under section 33AAA of the Act, during a declared water shortage.
- 13.2 Subject to sub-clause 13.3, the proportion of costs referred to in sub-clause 13.1 is to be determined by the Resource Manager.
- 13.3 Where the Resource Manager provides a prescribed service for the purposes of section 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 ESC in accordance with Part 1A or 1B of the **Water Industry Act 1994**.

**14. WATER STORAGE COSTS**

14.1 The Authority, together with the holders of the bulk entitlements listed in sub-clause 7.3, must pay Goulburn–Murray Water a proportionate share of the costs associated with storing Victoria’s share of the water resources in Hume Dam and Dartmouth Dam.

14.2 Where Goulburn–Murray Water provides a prescribed service for the purposes of section 4A of the **Water Industry Act 1994**, the charges to be paid by the Authority to Goulburn–Murray Water are to be determined by the ESC in accordance with Part 1A or 1B of the **Water Industry Act 1994**.

**15. DUTY TO MAKE PAYMENTS**

The Authority, together with the holders of the bulk entitlements listed in sub-clause 7.3, has a duty to make its payments for clauses 13 and 14, directly to the Resource Manager and Goulburn–Murray Water.

Dated 2 July 2012

Responsible Minister  
PETER WALSH MLA  
Minister for Water

**SCHEDULE 1 – SHARE OF RESOURCES**

<b>Bulk entitlement</b>	<b>Share of resources</b>
Bulk Entitlement (River Murray – South East Water) Order 2012	One-third of the available water resources as determined under Part 2 of the bulk entitlement
Bulk Entitlement (River Murray – City West Water) Order 2012	One-third of the available water resources as determined under Part 2 of the bulk entitlement
Bulk Entitlement (River Murray – Yarra Valley Water) Order 2012	One-third of the available water resources as determined under Part 2 of the bulk entitlement
<b>Total</b>	<b>100% of the entitlement granted to the Melbourne retail authorities from the River Murray System</b>

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