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Water Act 1989

**BULK ENTITLEMENT (ARARAT, STAWELL, GREAT WESTERN, & HALLS GAP)
CONVERSION ORDER 2005**

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SCHEDULE 1. WATER SUPPLY WORKS

SPECIAL

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 (Ararat, Stawell, Great Western, & Halls Gap) Conversion Order 2005.

2. EMPOWERING PROVISIONS

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

3. COMMENCEMENT

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

4. DEFINITIONS

In this Order –

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

“**Agreement**” means the Murray Darling Basin Agreement;

“**Authority**” means the Grampians Wimmera Mallee Water Authority;

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

“**dead storage**” means the water stored in reservoirs which the Authority deems to be inaccessible for release for consumptive use in any given year;

“**entitlement holder**” means a person holding a bulk entitlement under the Act for the headworks system;

“**Glenelg basin**” means the area of land designated as Basin Number 38 in the South East Coast Division of the Australian Water Resources Council’s Australian Continental Drainage Divisions;

“**headworks system**” means the water supply works described in Schedule 1, including the waterways and offtake points;

“**Hopkins basin**” means the area of land designated as Basin Number 36 in the South East Coast Drainage Division of the Australian Water Resources Council’s Australian Continental Drainage Divisions;

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

“**Minister for Environment**” means the Minister administering the **Conservation, Forests and Lands Act 1987** and includes, in relation to any provision, any person authorised by the Minister for Environment to act on behalf of the Minister for Environment in relation to that provision.

“**offtake points**” means any or all of the locations specified in sub-clause 7.3 for taking water under this Order;

“**resource manager**” means any person or persons appointed by the Minister under section 43A of the Act to do all or any of the tasks set out in sub-clause 13.1;

“**waterway**” means any or all of –

- (a) Mt Cole Creek and its tributaries upstream of and including Mt Cole Reservoir;
- (b) unnamed tributary of Hopkins River upstream of and including Langhi Ghiran Reservoir;
- (c) Fyans Creek and its tributaries upstream and including the upper and lower Fyans Creek diversion weirs;

- (d) Panrock Creek and its tributaries upstream of and including Panrock Reservoir; and
- (e) Dairy Creek and its tributaries upstream of and including Halls Gap diversion weir;

“**Wimmera basin**” means the area of land designated as Basin Number 15 in the Murray Darling Drainage Division of the Australian Water Resources Council’s Australian Continental Drainage Divisions;

“**Wimmera–Mallee Order**” means Bulk Entitlement (Wimmera and Glenelg Rivers–Grampians Water) Conversion Order 2003;

“**year**” means the 12 months next following 1 July.

5. **WATER FOR THE ENVIRONMENT**

All the surface water resources in the headworks system, except for –

- (a) a permissible annual volume declared by the Minister under section 22A of the Act;
- (b) any water allocated to authorities or individuals under Part 4 Division 1 and Division 2 of the Act; and
- (c) any water taken by persons under section 8(1) of the Act;

are available to maintain the environmental values of rivers in the Wimmera and Hopkins basins and other water services dependent on the environmental condition of these rivers.

PART 2 – ENTITLEMENT

6. **CONVERSION TO A BULK ENTITLEMENT**

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

7. **BULK ENTITLEMENT**

7.1 The Authority may take from the headworks system up to an annual total of 3,572 megalitres for the water supply systems of Ararat, Stawell, Great Western, and Halls Gap.

7.2 The Authority is entitled to store water in the headworks system storages up to the amounts and full supply levels listed in Schedule 1.

7.3 The Authority may take –

- (a) at the outlet works of Mt Cole Reservoir, up to a maximum amount of 4 ML/d;
- (b) at the outlet works of Langhi Ghiran Reservoir, up to a maximum amount of 5 ML/d;
- (c) at the lower Fyans Creek diversion weir, a share of flow calculated as follows –
 - (i) when $F \leq 1.0$ ML/d, $E = 0$;
 - (ii) when $1.0 < F \leq 9.5$ ML/d, $E = (F - 1.0)$ ML/d; and
 - (iii) when $F > 9.5$ ML/d, $E = 8.5$ ML/d;

where –

“E” means the Authority’s entitlement in megalitres per day; and

“F” means the total flow immediately upstream of the weir, less water transferred from the Glenelg basin, in megalitres per day; and

- (d) at the outlet works of Panrock Reservoir, up to a maximum amount of 5 ML/d; and
- (e) at Halls Gap diversion weir, a share of flow calculated as follows –
 - (i) December to May inclusive, $E = 0$; and
 - (ii) June to November, $E = 2.5$ ML/d;

where –

“E” means the Authority’s entitlement in megalitres per day; and

“F” means the total flow immediately upstream of the weir in megalitres per day.

- 7.4 The Authority must not take, as part of this entitlement, any flow in the waterway which is being transferred by the holder of another bulk entitlement or licence.

PART 3 – GENERAL CONDITIONS AND PROVISIONS

8. ENVIRONMENTAL OBLIGATIONS

- 8.1 The Authority must propose to the Minister, within 12 months of the date of this Order, a program to assess and manage the environmental effects of operating the headworks system, including –

- (a) the effects on the bed and banks of the waterways in the vicinity of the reservoirs and weirs; and
- (b) the effects on aquatic biota in the waterway; and
- (c) operational practices to remove silt from the reservoirs and weirs; and
- (d) operating practices to manage the water quality, including temperature, in the reservoirs and weirs and in the waterway; and
- (e) operating rules to control releases from the reservoirs and weirs to the waterways.

- 8.2 The Minister may –

- (a) approve the program proposed under sub-clause 8.1; or
- (b) require the Authority to amend the proposed program; or
- (c) not approve the proposed program.

- 8.3 The Minister may, at any time, require the Authority to –

- (a) review the program approved by the Minister if, in the Minister's opinion, it is, at any time, no longer appropriate; and
- (b) propose an amended program to the Minister.

- 8.4 The Authority, must at its cost –

- (a) implement the approved environmental management program; and
- (b) keep a record of all work undertaken under paragraph (a).

9. DISPUTE RESOLUTION

- 9.1 If any difference or dispute arises between the Authority, the Minister, and with its consent, the resource manager, or any of them (the “parties”) concerning the interpretation or application of this Order, which is not resolved within 14 days of it arising, any party may give written notice to the others requiring the matter to be determined by an independent expert, if it is not otherwise resolved, within 14 days of that notice.

- 9.2 The independent expert will be either –

- (a) a person agreed on by the parties to the difference or dispute; or
- (b) if those parties cannot agree, a person nominated by the President of the Institute of Arbitrators, Australia.

- 9.3 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.

- 9.4 The independent expert must send a copy of the conclusion and its supporting reasons to each party to the difference or dispute.

- 9.5 In any difference or dispute to which the Minister is a party –
- (a) the independent expert must express the conclusion as a recommendation; and
 - (b) the Minister must consider any recommendation made under paragraph (a) before deciding to give a direction under section 307 or to take any other action under the Act in relation to the difference or dispute.
- 9.6 In any difference or dispute to which the Minister is not a party, any conclusion by an independent expert is final and binding on the parties.
- 9.7 The apportionment of the costs of and incidental to every reference, including the costs of the independent expert, are at the discretion of the independent expert.

PART 4 – MONITORING WATER TAKEN

10. METERING PROGRAM

- 10.1 The Authority must propose to the Minister within 12 months of the commencement of this Order, a metering program to demonstrate the Authority's compliance with this Order.
- 10.2 A proposal under sub-clause 10.1 must include details of any existing or proposed arrangements made by the Authority for any person other than the Authority to measure or to calculate instream flows.
- 10.3 The Minister may –
- (a) approve a program proposed under sub-clause 10.1; or
 - (b) require the Authority to amend the proposed program; or
 - (c) not approve the proposed program.
- 10.4 The Minister may, at any time, require the Authority to –
- (a) review the program approved by the Minister if, in the Minister's opinion, it is, at any time, no longer appropriate; and
 - (b) propose an amended program to the Minister.
- 10.5 The Authority must, at its cost and in accordance with any guidelines issued from time to time by the Minister –
- (a) implement and maintain any metering program approved by the Minister; and
 - (b) maintain metering equipment and associated measurement structures in good condition; and
 - (c) ensure that metering equipment is periodically re-calibrated; and
 - (d) if rating curves are used to calculate flows, ensure that the curves are regularly checked and, if necessary, revised; and
 - (e) keep a record of all work undertaken under paragraphs (b), (c) and (d).

11. REPORTING REQUIREMENTS

- 11.1 The Authority may be required to report on all or any of the following matters, as provided in this clause –
- (a) the daily amount of water taken under this entitlement at each of the offtake points;
 - (b) the annual amount of water taken under this entitlement at each of the offtake points;
 - (c) the approval, amendment and implementation of the metering program approved under sub-clause 10.3;
 - (d) any temporary or permanent transfer of all or part of this bulk entitlement;
 - (e) any amendment or transfers with respect to this Order;
 - (f) any failure by the Authority to comply with any provision of this Order;
 - (g) any existing or anticipated difficulties experienced by the Authority in complying with this Order and any remedial action taken or proposed by the Authority.

- 11.2 The Minister may require the Authority to report on all or any of the matters set out in sub-clause 11.1–
- (a) in writing, or in such electronic form as may be agreed between the Authority and the Minister; and
 - (b) within 14 days of receiving the Minister’s written request or such longer period as the Minister may determine.
- 11.3 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 11.1, except paragraph (a).

12. DATA

- 12.1 Subject to sub-clause 10.5, the Minister will use the Minister’s best endeavours to ensure that all hydrological and other data required by the Authority to comply with this Order are made available to the Authority.
- 12.2 The Authority must make available to any person data collected by or on behalf of the Authority for the purpose of clause 10 or 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 5 – FINANCIAL OBLIGATIONS

13. WATER RESOURCE MANAGEMENT COSTS

- 13.1 The Authority must pay the resource manager a fair and reasonable share of the costs incurred by the resource manager to –
- (a) prepare water accounts for the Wimmera and Hopkins basins;
 - (b) monitor whether entitlement holders in the Wimmera and Hopkins basins comply with the conditions of their bulk entitlements;
 - (c) investigate and mediate disputes between entitlement holders in the Wimmera and Hopkins basins;
 - (d) investigate and deal with significant unauthorised uses of water in the Wimmera and Hopkins basins; and
 - (e) supervise the qualification of any rights to water made by the Minister during periods of declared water shortage under section 13 of the Act –
- as estimated under sub-clause 14.4 and invoiced under clause 15.

14. DUTY TO KEEP ACCOUNTS AND PROVIDE ESTIMATES

- 14.1 The Authority is not obliged to make any payment to the resource manager under clause 13 unless the resource manager complies with the provisions of this clause.
- 14.2 Separate accounts of all costs and payments must be kept by the resource manager in respect of clause 13.
- 14.3 Accounts required to be kept under this clause must be made available for inspection by the Authority upon request.
- 14.4 The resource manager must, by 31 March in any year, provide the Authority with an estimate of the amounts payable in sub-clause 13.1, in the ensuing year.

15. BILLING ARRANGEMENTS

Any amount payable by the Authority under clause 13 must be paid annually in arrears, within 28 days of the Authority receiving an invoice, unless the Authority and the resource manager agree otherwise.

Dated 29 September 2005

JOHN THWAITES
Minister for Water

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

SCHEDULE 1. WATER SUPPLY WORKS

| Storages | Storage capacity (ML) | Full supply level to Australian Height Datum (metres) |
|--|------------------------------|---|
| Mt Cole Reservoir | 801 | 667.55 |
| Langhi Ghiran Reservoir | 45 | 498.80 |
| Copes Hill service basin | 9 | 383.50 |
| Olivers Gully service basin | 340 | 345.80 |
| Panrock Reservoir | 57 | 335.28 |
| Dairy Creek Reservoir | 58 | 305.41 |
| Weirs | | |
| Fyans Creek diversion weirs (2x weirs) | NA | NA |
| Halls Gap diversion weir | NA | NA |

Notes:

1. NA means 'not applicable'

Water Act 1989**BULK ENTITLEMENT (ARARAT, STAWELL, GREAT WESTERN, & HALLS GAP)
CONVERSION ORDER 2005*****Explanatory Note to Accompany Order***

This note has been prepared to explain the basis and intent of this bulk entitlement.

General

This Order converts to a bulk entitlement all of the Authority's existing entitlement to water from the local waterways that supply Ararat, Stawell, Great Western, and Halls Gap.

Table 1 The headworks of Ararat, Stawell, Great Western, and Halls Gap water supply systems

| Water supply system | Waterway | Supply works |
|----------------------------|------------------------------------|----------------------------------|
| Ararat | Mt Cole Creek | Mt Cole Reservoir |
| | Unnamed tributary of Hopkins River | Langhi Ghiran Reservoir |
| | (off-stream storage) | Copes Hill service basin |
| | (off-stream storage) | Olivers Gully service basin |
| Stawell | Fyans Creek | Fyans Creek diversion weirs (2x) |
| Great Western | Panrock Creek | Panrock Reservoir |
| Halls Gap | Dairy Creek | Halls Gap diversion weir |
| | (off-stream storage) | Dairy Creek Reservoir |

The headworks are located upstream of the Wimmera–Mallee Stock and Domestic System. The local sources of supply are supplemented from the Wimmera–Mallee Stock and Domestic System via lakes Fyans and Bellfield under the Bulk Entitlement (Wimmera and Glenelg Rivers–Grampians Water) Conversion Order 2004, refer Figure 1.

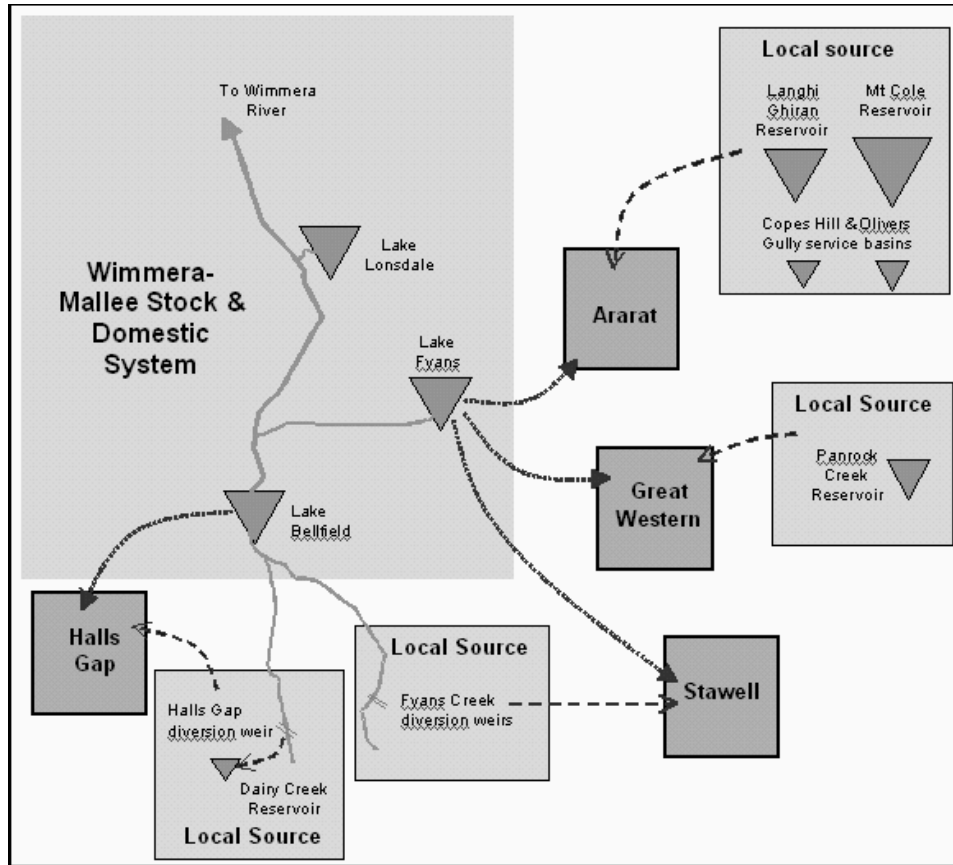


Figure 1 Links between the headworks and the Wimmera-Mallee Stock and Domestic System

The principal obligation on the Authority holding the source entitlement is to release environmental flows where specified, undertake metering, environmental and reporting programs and to contribute to resource management costs.

The Resource Manager is appointed by the Minister and has responsibility to ensure that authorities comply with their bulk entitlement Orders, to mediate disputes and to keep the basin water accounts.

Bulk entitlement (Clause 7.)

The Authority may take up to 3,572 ML in any year from the headworks system to supply Ararat, Stawell, Great Western, and Halls Gap (including Bellfield and Pomonal).

The entitlement is derived from demand estimates based on 1993/94 levels of development, consistent with that used for other systems that lie in the Murray–Darling basin and that must comply with the requirements of the Murray–Darling Basin Commission

The Authority is entitled to store water in the headworks system storages up to the amounts and full supply levels listed in Schedule 1.

The Authority may take up to the existing diversion capacity of its supply works except at the lower Fyans Creek diversion weir and the Halls Gap diversion weir where it is subject to flow sharing rules. The Authority must provide the lesser of 1 ML/d or natural at the lower Fyans Creek diversion weir before it is entitled to any water at this site. At the Halls Gap diversion weir, the Authority is not entitled to any flow during December to May inclusive.

The flow sharing rules were agreed to at a working group meeting made up of representatives from the Authority, Wimmera CMA, Glenelg–Hopkins CMA, and relevant groups within DSE including the Water Sector Group (Water Allocations and Environmental Flows units) and South West Region. The outcomes of the meeting are documented in a DSE report titled, “South West Area Review Group: Bulk Entitlement Assessment Report for Ararat, Stawell, Great Western, and Halls Gap water supply systems, 3 August 2005”.

Environmental obligations (Clause 8.)

This clause requires the Authority to prepare a program for the operation and management of works to take water from the waterway, to protect water quality, the bed and banks in the vicinity of the works and the in-stream environment of the waterway.

Dispute resolution (Clause 9.)

An independent expert may resolve disputes.

Metering program (Clause 10.)

The Authority must undertake sufficient metering to demonstrate that it complies with the Order. This clause provides for the details of a metering plan to be developed outside the Order.

Reporting requirements (Clause 11.)

This clause details the reporting requirements of the Authority to be in compliance with the Order.

Data (Clause 12.)

The second part of the clause ensures that any data collected by the Authority in accordance with the metering program for reporting purposes must be made available to other persons, subject to an access fee being paid to cover the costs of making the data available.

Water resource management costs (Clause 13.)

The Authority must contribute to the costs of the Resource Managers in the Wimmera and Hopkins basins. Costs include the costs of monitoring compliance with bulk entitlements; investigating and mediating disputes between entitlement holders; regulating illegal taking of water; preparing the basin water accounts for the Wimmera and Hopkins basins; and assisting the Minister manage water resources during periods of declared water shortage (not including the cost of managing private diversions). These costs and activities should be kept to a minimum.

Duty to keep accounts and provide estimates (Clause 14.)

This clause requires the Resource Manager to determine the costs to be paid by the Authority towards resource management on a fair and reasonable basis. The Authority cannot be charged for functions that do not relate to the management of the upper urban systems. It is expected that the Resource Manager and the Authority will agree on the basis for apportioning costs, before charges are made.

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