

WATER ACT 1989

¹Bulk Entitlement (Latrobe - Yallourn) Conversion Order 1996

I, Charles Geoffrey Coleman, Minister administering the **Water Act 1989**, make the following Order:-

1. CITATION

This Order may be cited as the ¹Bulk Entitlement (Latrobe - Yallourn) Conversion Order 1996.

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 on which it is published in the Government Gazette.

4. DEFINITIONS

In this Order -

"Act" means the **Water Act 1989**;

"AHD" means the Australian Height Datum

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³**"Blue Rock Entitlement Holder"** means any person holding a bulk entitlement or environmental entitlement in respect of Blue Rock Reservoir;

"capacity share" means a water entitlement which is expressed as a percentage share of all or any of the following depending on the context in which the expression is used -

- (a) storage capacity; and
- (b) inflows to the storage; and
- (c) storage⁴ losses; and

1 Citation amended – Ref No.2

2 Definition of "Authority" revoked – Ref No.2

3 Definition of "Blue Rock Entitlement Holder" inserted – Ref No.2

4 Words revoked – Ref No.2

(d) storage release capacity; and

(e) unregulated flow; and

5* * * * *

⁶**"entitlement holder"** means EnergyAustralia Yallourn Pty Ltd (ABN 47 065 325 224) (a generation company within the meaning of the **Electricity Industry Act 2000**);

"Headworks Storages" means the water supply works of Blue Rock
⁷Reservoir, Lake Narracan and Yallourn Weir;

⁸**"Latrobe Headworks System"** means -

(a) Headworks Storages; and

(b) the System Waterway;

⁹**"internal spill"** means the redistribution of inflow which occurs where a Latrobe Headworks Entitlement Holder's share of inflow is in excess of the volume required to fill its share of storage capacity;

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"Licence" means any licence granted under Part 4 of the Act;

¹¹**"Minister"** means the Minister administering the Act;

12* * * * *

"passing flow" means an amount of flow referred to in the Bulk Entitlement (Latrobe - Southern Rural) Conversion Order 1996 which the ¹³Storage Manager is obliged to pass at nominated points in the System Waterway;

"pumping station" means the works, located adjacent to the Latrobe River approximately 1.5 km upstream of Yallourn Weir at co-ordinates 395540E, 267926N, to take water from the System Waterway.

"regulated release" means any release from Blue Rock Reservoir or Lake Narracan excluding releases made by the ¹³Storage Manager to -

5 Paragraph (f) revoked – Ref No.2

6 Definition of "entitlement holder" substituted – Ref No.2

7 Word substituted – Ref No.2

8 Term substituted – Ref No.2

9 Definition of "internal spill" substituted – Ref No.2

10 Definition of "Latrobe Basin Water Accounts" revoked – Ref No.2

11 Definition of "Minister" inserted – Ref No.2

12 Definition of "other Authority" revoked – Ref No.2

13 Term substituted – Ref No.2

- (a) provide passing flows; or
- (b) pass floodwaters; or
- (c) pass flows which cannot be stored; or
- (d) secure the safety of the Headworks Storages under emergency situations;

¹⁴**“reserve”** means Bulk Entitlement (Latrobe Reserve) Order 2013;

¹⁵* * * * *

¹⁶**“Resource Manager”** means any person appointed by the Minister as resource manager for the Latrobe Basin under section 43A of the Act;

“river regulation costs” means those costs attributed to the accounting and operating arrangements, established under the Bulk Entitlement (Latrobe - Southern Rural) Conversion Order 1996, to manage the sharing of unregulated flow;

¹⁷**“storage management costs”** means the total annual cost to -

- (a) operate, maintain and administer the ⁸Latrobe Headworks System; and
- (b) make releases from the ⁸Latrobe Headworks System (excluding the river regulation costs); and
- ¹⁸(c) undertake any new or enhancement works on Lake Narracan and Yallourn Weir; and
- ¹⁸(d) meet the financial and regulatory depreciation charges on expenditure on any new or enhancement works associated with the Latrobe Headworks System, except Lake Narracan and Yallourn Weir, using the calculation methodology adopted by Gippsland and Southern Rural Water Corporation and approved by the Essential Service Commission; and
- (e) manage the catchment for water supply purposes to protect the quality of water diverted to, and stored in, the ⁸Latrobe Headworks System; and
- (f) manage the stream gauging stations necessary to operate the ⁸Latrobe Headworks System; and

14 Definition of “reserve” inserted – Ref No.2

15 Definition of “reservoir entitlement holders” revoked – Ref No.2

16 Definition of “Resource Manager” substituted – Ref No.2

17 Term substituted – Ref No.2

18 Paragraphs (c) and (d) substituted – Ref No.2

(g) implement the program established under the Bulk Entitlement (Latrobe - Southern Rural) Conversion Order 1996, to manage the environmental effects of the ⁸Latrobe Headworks System;

¹⁹“**Storage Manager**” means any person appointed by the Minister under section 122ZK of the Act to be Storage Manager for the ⁸Latrobe Headworks System to carry out the functions specified in the Act and in respect of bulk entitlements and environmental entitlements in the waterway;

“**System Waterway**” means the Tanjil River between Blue Rock Reservoir and the Latrobe River, and the Latrobe River downstream of its confluence with the Tanjil River to Lake Wellington, including the pools formed by, and immediately upstream of, the Blue Rock and Narracan Dams and Yallourn Weir;

“**unregulated flow**” means any flows in the waterway which cannot be attributed to a regulated release or discharge from the works of an ²⁰industrial company, generation company or water corporation;

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

5. CONVERSION TO BULK ENTITLEMENTS

Only that part of the ²¹Entitlement Holder’s entitlement to water from the System Waterway to supply the electricity generation works of the ²¹Entitlement Holder is converted to a bulk entitlement on the conditions set out in this Order.

6. BULK ENTITLEMENT

6.1 The ²¹Entitlement Holder may take the share of flow from the System Waterway to meet its requirements up to an annual total of 36 500 ML.

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7. SHARE OF CAPACITY

The ²¹Entitlement Holder is entitled to -

(a) a 14.97% share of the total storage capacity of Blue Rock Reservoir, where the total storage capacity is ²³208,188 ML at a full supply level of 140.00 metres AHD; and

19 Definition substituted – Ref No.2

20 Words substituted – Ref No.2

21 Term substituted – Ref No.2

22 Sub-clauses 6.1 to 6.4 revoked – Ref No.2

23 Volume updated – Ref No.2

- (b) a 29.94% share of the total storage capacity of Lake Narracan, where the total storage capacity is ²³7,230 ML at a full supply level of 47.7 metres AHD; and
- (c) all water stored in its share of the storages specified in this sub-clause less a share of losses. Losses are to be assessed as specified in Schedule 1.

8. SHARE OF FLOW

8.1 The ²¹Entitlement Holder may -

- (a) after the passing flows requirements have been met, store 14.97% of all the inflow into Blue Rock Reservoir from the catchment up to that amount required to fill its share of storage capacity;
- (b) after the passing flows requirements have been met, store 22.41% of unregulated inflow into Lake Narracan to fill its share of storage capacity;
- (c) store a greater proportion of the inflow where part of that inflow is assessed by the ¹³Storage Manager, as specified in Schedule 1, as an internal spill;
- (d) take, via the pumping station to the generation works of the ²¹Entitlement Holder, up to a limit of 140 ML/d -
 - (i) any flow released from Lake Narracan as ordered by the ²¹Entitlement Holder for that purpose; and
 - (ii) 22.41% of the unregulated flow passing Lake Narracan, as calculated by the ¹³Storage Manager; or
 - (iii) additional unregulated flow passing Lake Narracan subject to the additional flow in excess of the ²¹Entitlement Holder's flow share -
 - ²⁴(A) not being used by any other bulk entitlement or environmental entitlement holder holding an entitlement to that additional flow; and
 - ²⁴(B) being shared with other bulk entitlement or environmental entitlement holders holding a share of unregulated flow at this point in proportion to each of the holders' shares of unregulated flow;

24 Sub-paragraphs (A) and (B) substituted – Ref No.2

- 8.2 The ²¹Entitlement Holder may take water under this entitlement for the permanent or temporary supply of water to the generation works of the ²¹Entitlement Holder, at the site of any other of the ²¹Entitlement Holder's diversion works, other than the pumping station.
- 8.3 Any accounting of water taken at a location other than the pumping station must make allowance for any losses or gains of water to be incurred between the pumping station and the point where water is to be taken.
- ²⁵8.4 The Entitlement Holder must not take from the System Waterway or store as part of its bulk entitlement any flow –
- (a) which is specified as a passing flow by the Storage Manager; or
 - (b) which is being released or transferred by the holder of any other bulk entitlement or environmental entitlement..

9. RELEASES

- 9.1 Subject to sub-clause 9.2 the capacity of the outlet works of Blue Rock Reservoir is to be shared in proportion to inflow shares between the ²⁶Blue Rock Entitlement Holder's.
- ²⁷9.2 The Entitlement Holder may use more than its share of the capacity of the outlet works specified in sub-clause 9.1 –
- (a) with the agreement of the Storage Manager and all other Blue Rock Entitlement Holders; or
 - (b) with the agreement of only the Storage Manager when there is no competing demand between Blue Rock Entitlement Holders for the available capacity.
- ²⁷9.3 Where all parties cannot agree under paragraph 9.2(a), the Entitlement Holder may refer the matter to an independent expert for determination in accordance with clause 19.

10. SUPPLY OF WATER

- 10.1 The ²¹Entitlement Holder and the ¹³Storage Manager must endeavour to agree on operational arrangements -
- (a) for the supply of water from the storages mentioned in clause 7; and

²⁵ Sub-clause 8.4 substituted – Ref No.2

²⁶ Term substituted – Ref No.2

²⁷ Sub-clauses 9.2 and 9.3 substituted – Ref No.2

- (b) to allow the ¹³Storage Manager to borrow storage capacity and/or volume in Lake Narracan for operational purposes.

10.2 If the ²¹Entitlement Holder and the ¹³Storage Manager have not reached agreement under sub-clause 10.1 within twelve months of the date of this Order either party may give written notice to the other party requiring the matter to be determined in accordance with clause 19.

11. SUPPLY OF WATER FOR EMERGENCY PURPOSES

11.1 The ²¹Entitlement Holder may receive a supply from the works of ²⁸another bulk entitlement holder during emergency situations, subject to there being an Agreement between the ²⁸bulk entitlement holders covering the operating arrangements, metering provisions and cost sharing arrangements covering the emergency supply.

11.2 Any water received by the ²¹Entitlement Holder under sub-clause 11.1 is to be deemed to be part of the ²¹Entitlement Holder's entitlement for the purpose of clause 6.

²⁹12. METERING PROGRAM

12.1 To demonstrate compliance with this Order, the Entitlement Holder must –

- (a) ensure there is adequate metering to determine the amount of water taken under the provisions of this bulk entitlement; and,
- (b) maintain and implement a metering program approved by the Minister.

12.2 Subject to sub-clause 12.3, the Entitlement Holder must, at its cost –

- (a) maintain metering equipment and associated measurement structures in good condition; and
- (b) ensure that metering equipment is periodically re-calibrated; and
- (c) if rating curves are used to calculate flows, ensure that the curves are regularly checked and, if necessary, revised; and
- (d) keep a record of all work undertaken under paragraphs (a), (b) and (c).

12.3 Where data from metering undertaken by another entity can be used to determine the Entitlement Holder's compliance with this bulk entitlement, the Entitlement Holder must endeavour to agree with that entity concerning the provision of metering and arrangements with regard to –

- (a) who will undertake the tasks in sub-clause 12.2; and,
- (b) how the Entitlement Holder will access all relevant data required to

²⁸ Terms substituted – Ref No.2

²⁹ Clause 12 substituted – Ref No.2

demonstrate its compliance with this bulk entitlement.

- 12.4 The Entitlement Holder's metering program must have regard to –
- (a) the meter accuracy, maintenance and calibration requirements in sub-clause 12.2;
 - (b) any arrangements made under sub-clause 12.3; and
 - (c) any guidelines issued by the Minister from time to time.
- 12.5 The Minister may at any time require the Entitlement Holder to –
- (a) review the program if, in the Minister's opinion, it is no longer appropriate; and
 - (b) propose an amended program to the Minister.
- 12.6 Any application by the Entitlement Holder to the Minister for amendment to this entitlement must address any implications of the proposed amendment for the approved metering program.

13. REPORTING REQUIREMENTS

- 13.1 The Minister may require the ²¹Entitlement Holder to report on all or any of the following matters, as provided in this clause:
- (a) the daily amount of water taken by the ²¹Entitlement Holder from the waterway at its pumping station and at any other of the ²¹Entitlement Holder's diversion works;
 - (b) the daily amount of water taken by the ²¹Entitlement Holder from the works of ³⁰another bulk entitlement holder under clause 11;
 - (c) the daily amount of water returned to the System Waterway or tributary streams from the works of the ²¹Entitlement Holder;
 - (d) the annual amount of water taken by the ²¹Entitlement Holder from the waterway at its pumping station and at any other of the ²¹Entitlement Holder's diversion works;
 - (e) the annual amount of water taken by the ²¹Entitlement Holder from the works of ³⁰another bulk entitlement holder under clause 11;
 - (f) the work undertaken as part of the metering program under ³¹clause 12;
 - (g) any³² transfer of all or part of this bulk entitlement ³³or assignment of

30 Terms substituted – Ref No.2

31 Cross-reference substituted – Ref No.2

32 Words revoked – Ref No.2

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- all or part of a water allocation available under this bulk entitlement;
- ³⁴(gA) any transfer of all or part of a bulk entitlement, or assignment of all or part of a water allocation available under a bulk entitlement, to the Entitlement Holder.
- (h) any³⁵ licence in respect of the System Waterway temporarily or permanently transferred to the ²¹Entitlement Holder;
- (i) any amendment to this bulk entitlement;
- (j) any failure by the ²¹Entitlement Holder to comply with any provision of this bulk entitlement; and
- (k) any existing or anticipated difficulties experienced by the ²¹Entitlement Holder in complying with this bulk entitlement and any remedial action taken or proposed by the ²¹Entitlement Holder.
- 13.2 The Minister may require the ²¹Entitlement Holder to report on all or any of the matters set out in sub-clause 13.1 -
- (a) in writing or in such electronic form as may be agreed between the ²¹Entitlement Holder and the Minister; and
- (b) within 14 days of receiving the Minister's written request or such longer period as the Minister may determine.
- 13.3 The ²¹Entitlement Holder must, for the period of the preceding year, report, by 1 August in any year, to the Minister on each of the matters set out in sub-clause 13.1, except paragraphs (a) to (c) of sub-clause 13.1;
- 13.4 The Resource Manager may require the ²¹Entitlement Holder to report from time to time, on all or any of the matters set out in paragraphs (a) to (k) of sub-clause 13.1.
- 13.5 Any report under sub-clause 13.4 must be made -
- (a) in such form as may be agreed between the ²¹Entitlement Holder and the person to whom the report is made; and
- (b) unless the ²¹Entitlement Holder and that person agree otherwise -
- (i) within 24 hours of the ²¹Entitlement Holder receiving a request

33 Words inserted – Ref No.2

34 Paragraph (gA) inserted – Ref No.2

35 Words revoked – Ref No.2

for a report on any matter set out in paragraphs (a) to (c) of sub-clause 13.1; or

- (ii) within 14 days of the ²¹Entitlement Holder receiving a request for a report on any matter set out in paragraphs (d) to (k) of sub-clause 13.1.

14. WATER RESOURCE MANAGEMENT COSTS

³⁶14.1 Subject to sub-clause 16.1, the Entitlement Holder must pay the Resource Manager a fair and reasonable proportion of the costs incurred by the Resource Manager to perform the tasks specified in the relevant instrument of appointment.

14.2 The proportion of the costs referred to in sub-clause 14.1 will be as determined under sub-clause 16.5.

³⁷14.3 Where the Resource Manager provides a regulated service for the purposes of section 4A of the **Water Industry Act 1994**, the charges to be paid by the Entitlement Holder to the Resource Manager are to be proposed by the Resource Manager and approved by the Essential Services Commission in accordance with Part 1A of the **Water Industry Act 1994**.

15. ¹³STORAGE MANAGER COSTS

15.1 Subject to sub-clause 16.1 the ²¹Entitlement Holder must pay the ¹³Storage Manager an annual ³⁸storage management charge which will be determined according to sub-clause 15.2.

³⁹15.2 The amount the Entitlement Holder must pay the Storage Manager under sub-clause 15.1 is to be calculated by the Storage Manager as -

- (a) a percentage of the annual storage management charges and river regulation costs for Lake Narracan and Yallourn Weir as follows -

$$Cs = \$ [0.2994 \times S \times (1+m)] + [0.2241 \times r \times (1+m)]$$

and

- (b) a percentage of the annual storage management charge for Blue Rock Reservoir as follows -

$$Cs = \$ [0.1497 \times S \times (1+m) \times (1+F)]$$

where -

36 Sub-clause 14.1 substituted – Ref No.2

37 Sub-clause 14.3 inserted – Ref No.2

38 Term substituted – Ref No.2

39 Sub-clause 15.2 substituted – Ref No.2

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- Cs** = the annual storage management charge;
- S** = the storage management costs for the year for which charges are prepared;
- r** = the river regulation costs for the year for which charges are prepared;
- m** = a business margin set at no more than 10%. Any variation to the margin is to be mutually agreed between the Storage Manager and the Entitlement Holder; and
- F** = a factor representing the Entitlement Holder's contribution to the cost of the reserve and adjusted to reduce the Entitlement Holder's contribution if there has been a sale of water from the reserve.

and is subject to approval by the Essential Services Commission in accordance with Part 1A of the **Water Industry Act 1994**.

- 15.3 The annual ³⁸storage management charge must be paid by the ²¹Entitlement Holder each year whether or not water has been taken from the storages by the ²¹Entitlement Holder in that year.

16. DUTY TO KEEP ACCOUNTS AND FIX PROPORTIONS

- 16.1 The ²¹Entitlement Holder is not obliged to make any payment to -

- (a) the Resource Manager under clause 14; or
- (b) the ¹³Storage Manager under clause 15 -

unless the person to whom the payment is payable chooses to comply with the provisions of this clause relevant to those payments.

- 16.2 Separate accounts of all costs and payments must be kept -

- (a) by the Resource Manager in respect to clause 14; and
- (b) the ¹³Storage Manager in respect to clause 15.

- 16.3 The ⁴⁰Storage Manager must consult with the ²¹Entitlement Holder on any proposal to undertake new or enhancement works on a Headworks Storage, providing reasonable detail and the need for those works, prior to undertaking those works.

- 16.4 The ²¹Entitlement Holder may object to any proposal referred to in sub-clause

40 Term substituted – Ref No.2

16.3 and may give written notice to the other party requiring the matter to be determined by referral to an independent expert in accordance with clause 19.

⁴¹16.5 In any year, by a date agreed with the Entitlement Holder, the Resource Manager must provide the Entitlement Holder an estimate of a fair and reasonable proportion of the costs referred to in sub-clause 14.1 for the ensuing year.

⁴¹16.6 In any year, by a date agreed with the Entitlement Holder, the Storage Manager must provide the Entitlement Holder an estimate of the annual storage management charge referred to in sub-clause 15.2 for the ensuing year.

16.7 Accounts required to be kept under this clause must be made available for inspection by the ²¹Entitlement Holder upon request.

⁴²17. DUTY TO MAKE PAYMENTS

Any amount payable by the Entitlement Holder under clauses 14 and 15 –

- (a) is to be based on the actual expenditure for the period specified in paragraph 17(b) and include an adjustment from a previous period to reflect the actual cost of the work; and
- (b) must be paid monthly in arrears, within 28 days of the Entitlement Holder receiving an invoice for amounts payable,

unless the Entitlement Holder and the person to whom the amount is payable agree otherwise.

18. DATA

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18.2 The ²¹Entitlement Holder must make available data collected for the purpose of the metering program and reporting under sub-clauses 12.1 and 13.1 to any person, subject to the person paying any fair and reasonable access fee imposed by the ²¹Entitlement Holder, to cover the costs of making the data available.

41 Sub-clauses 16.5 and 16.6 substituted – Ref No.2

42 Clause 17 substituted – Ref No.2

43 Sub-clause 18.1 revoked – Ref No.2

⁴⁴**19. DISPUTE RESOLUTION**

- 19.1 If a difference or dispute arises between the Entitlement Holder and the Storage Manager, or the Resource Manager, or another Latrobe Headworks Entitlement Holder, about the interpretation or application of this Order, the Entitlement Holder may give written notice to another party, or parties, requiring the matter to be determined by the Essential Services Commission or an independent expert.
- 19.2 If a difference or dispute arises between the Entitlement Holder and the Storage Manager, or the Resource Manager, or another Latrobe Headworks Entitlement Holder, about the interpretation or application of this Order, and the Entitlement Holder receives written notice requiring the matter to be determined by the Essential Services Commission or an independent expert, the Entitlement Holder must comply with the notice.
- 19.3 A notice under sub-clause 19.1 may only be given once 14 days have passed after the difference or dispute has arisen.
- 19.4 Where a matter is referred to the Essential Services Commission by the parties to a difference or dispute –
- (a) the Essential Services Commission may determine the process and timing to reach a conclusion on the matter;
 - (b) the Essential Services Commission may determine the apportionment of costs to the parties of, and incidental to, every reference; and
 - (c) any determination by the Essential Services Commission is final and binding on the parties.
- 19.5 Where a matter is referred to an independent expert by the parties to a difference or dispute –
- (a) the independent expert is either:
 - (i) a person agreed on by the parties; or
 - (ii) if the parties cannot agree, a person nominated by the President of the Institute of Arbitrators and Mediators, Australia;
 - (b) the independent expert must:
 - (i) reach a conclusion on the matter within 30 days after it has been referred, but has the power to extend the period for reaching a conclusion on the matter by a further 30 days;
 - (ii) send a copy of the conclusion and its supporting reasons to the

44 Clause 19 substituted – Ref No.2

parties;

- (c) the independent expert may determine the apportionment of costs to the parties of, and incidental to, every reference, including the costs of the independent expert; and
- (d) any determination by the independent expert is final and binding on the parties.

Signed:

Geoff Coleman, Minister administering the **Water Act 1989**

Dated:

⁴⁵Schedule 1

Evaporation Losses and Internal Spills

1. Evaporation Losses

Evaporation losses from -

(a) Lake Narracan are calculated using the formula

$$e = A \times E \times 0.01 \times (s1/s)$$

(b) Blue Rock Reservoir are calculated using the formula

$$e = A \times E \times 0.01 \times (s1/s)$$

where:

e = evaporation loss in ML

s = volume of water in ML in either Lake Narracan or Blue Rock Reservoir as appropriate

A = surface area in hectares corresponding to s

E = pan evaporation in mm

s1 = volume of water in ML in the Entitlement Holder's share of Lake Narracan or Blue Rock Reservoir as appropriate

2. Internal Spills

The amount of internal spill cannot exceed a volume equal to the amount by which the volume held in the other Latrobe Headworks Entitlement Holders' shares of storage are below their full shares. Any internal spill is to be redistributed to those Latrobe Headworks Entitlement Holders whose shares of storage capacity are not full, in the same proportion their share of inflow to the reservoir.

3. Storage Accounts

The storage accounts maintained by the Storage Manager will be adjusted for -

- (i) the share of inflow apportioned to the Entitlement Holder;
- (ii) any internal spill;
- (iii) any release directed by the Entitlement Holder to meet its water supply requirements including any allowances for in-transit losses; and
- (iv) any allowance for the Entitlement Holder's share of rainfall falling directly on the storage and evaporation losses or seepage losses from the storage.

45 Schedule 1 substituted – Ref No.2