

WATER ACT 1989

BULK ENTITLEMENT (LATROBE – LOY YANG A) 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 Bulk Entitlement (Latrobe – Loy Yang A) 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

* * * * *

“**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) storage losses; and
- (d) storage release capacity; and
- (e) unregulated flow; and

(f) * * * * *

“**Entitlement Holder**” means AGL Loy Yang Partnership (a generation company within the meaning of the **Electricity Industry Act 2000**), which comprises –

- (a) AGL LYP 1 Pty Ltd (ABN 36 078 121 187);

- (b) AGL LYP 2 Pty Ltd (ABN 26 078 377 572);
- (c) AGL LYP 3 Pty Ltd (ABN 16 078 377 527); and
- (d) AGL LYP 4 B.V (ABN 55 073 074 530);

“Headworks Storages” means the water supply works of Blue Rock Dam, Lake Narracan and Yallourn Weir;

“Latrobe Headworks System” means -

- (a) Headworks Storages; and
- (b) the System Waterway;

“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;

“Latrobe Headworks Entitlement Holder” means any person holding a bulk entitlement or environmental entitlement in respect of the Headworks Storages;

* * * * *

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

“Minister” means the Minister administering the Act;

* * * * *

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

“pumping station” means the works to supply water from the System Waterway to the electricity generation works at Loy Yang, located adjacent to the Latrobe River approximately 300 m upstream of Yallourn Weir at co-ordinates 396623E, 268355N;

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

- (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;

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

* * * * *

“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;

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

- (a) operate, maintain and administer the Latrobe Headworks System; and
- (b) make releases from the Latrobe Headworks System (excluding the river regulation costs); and
- (c) undertake any new or enhancement works on Lake Narracan and Yallourn Weir; and
- (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 Latrobe Headworks System; and
- (f) manage the stream gauging stations necessary to operate the Latrobe Headworks System; and
- (g) implement the program established under the Bulk Entitlement (Latrobe - Southern Rural) Conversion Order 1996, to manage the environmental effects of the Latrobe Headworks System;
- (h) the storage management costs associated with Bulk Entitlement (Latrobe Reserve – Southern Rural Water) Order 2012;

“Storage Manager” means any person appointed by the Minister under section 122ZK of the Act to be Storage Manager for the Latrobe 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, 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 industrial 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 Entitlement Holder's entitlement to water from the System Waterway to supply the electricity generation works at Loy Yang A is converted to a bulk entitlement on the conditions set out in this Order.

6. BULK ENTITLEMENT

6.1 The Entitlement Holder may take the share of flow from the waterway to meet its requirements up to an annual total of 40 000 ML.

6.2 * * * * *

6.3	*	*	*	*	*
6.4	*	*	*	*	*
6.5	*	*	*	*	*

7. SHARE OF CAPACITY

The Entitlement Holder is entitled to –

- (a) a 16.40% share of the total storage capacity of Blue Rock Reservoir, where the total storage capacity is 208,188 ML at a full supply level of 140.00 metres AHD; and
- (b) a 32.80% share of the total storage capacity of Lake Narracan, where the total storage capacity is 7,230 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 Entitlement Holder may -

- (a) after the passing flows requirements have been met, store 16.40% 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 24.55% 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 Storage Manager, as specified in Schedule 1, as an internal spill;
- (d) take, via the Pumping Station, up to the joint limit (with the holder of Bulk Entitlement (Latrobe – Loy Yang B) Conversion Order 1996) of 226 ML/d -
 - (i) any flow released from Lake Narracan as ordered by the Entitlement Holder specifically for that purpose; and
 - (ii) 24.55% of the unregulated flow passing Lake Narracan; or
 - (iii) additional unregulated flow passing Lake Narracan subject to the additional flow in excess of the Entitlement Holder's flow share -
 - (A) not being used by any other bulk entitlement or environmental entitlement holder holding an entitlement to that additional flow; and
 - (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;

8.2 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 Blue Rock Entitlement Holders.
- 9.2 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.
- 9.3 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 Entitlement Holder and the Storage Manager must endeavour to agree on operational arrangements -
 - (a) for the supply of water from the storages mentioned in clause 7; and
 - (b) to allow the Storage Manager to borrow storage capacity and/or volume in Lake Narracan for operational purposes.
- 10.2 If the Entitlement Holder and the Storage 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 Entitlement Holder may provide a supply to another bulk entitlement holder from its works during emergency situations, subject to there being an Agreement between the parties covering the operating arrangements, metering provisions and cost sharing arrangements covering the emergency supply.
- 11.2 Any water supplied by the Entitlement Holder under sub-clause 11.1 is to be credited back to the Entitlement Holder's entitlement for the purpose of clause 6.

12. 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 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 Entitlement 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 Entitlement Holder from the waterway at its pumping station;
 - (b) the daily amount of water returned to the System Waterway or tributary streams from the works of the Entitlement Holder;
 - (c) the daily amount of water supplied to another bulk entitlement holder from the works of the Entitlement Holder under clause 11;
 - (d) the annual amount of water taken by the Entitlement Holder from the waterway at its pumping station;
 - (e) the annual amount of water supplied to another bulk entitlement holder from the works of the Entitlement Holder under clause 11;
 - (f) the work undertaken as part of the metering program under clause 12;

- (g) any transfer of all or part of this bulk entitlement, or assignment of all or part of a water allocation available under this bulk entitlement;
 - (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) any licence in respect of the waterway temporarily or permanently transferred to the Entitlement Holder;
 - (i) any amendment to this bulk entitlement;
 - (j) any failure by the Entitlement Holder to comply with any provision of this bulk entitlement;
 - (k) any existing or anticipated difficulties experienced by the Entitlement Holder in complying with this bulk entitlement and any remedial action taken or proposed by the Entitlement Holder.
- 13.2 The Minister may require the Entitlement 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 Entitlement 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 Entitlement 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 Entitlement 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 Entitlement Holder and the person to whom the report is made; and
 - (b) unless the Entitlement Holder and that person agree otherwise -
 - (i) within 24 hours of the Entitlement Holder receiving a request 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 Entitlement 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

- 14.1 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.
- 14.3 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. STORAGE MANAGER COSTS**

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

$$Cs = \$ [0.3280 \times S \times (1+m)] + [0.2455 \times r \times (1+m)]$$

and

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

$$Cs = \$ [0.1640 \times S \times (1+m) \times (1+F)]$$

where -

- Cs** = the annual storage management charge;
- S** = the estimated storage management costs for the year for which charges are prepared;
- r** = the estimated 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 storage management charge must be paid by the Entitlement Holder each year whether or not water has been taken from the storages by the Entitlement Holder in that year.

16. DUTY TO KEEP ACCOUNTS AND FIX PROPORTIONS

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

- (a) the Resource Manager under clause 14; or
- (b) the Storage 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 -
- (c) by the Resource Manager in respect to clause 14; and
 - (d) the Storage Manager in respect to clause 15.
- 16.3 The Storage Manager must consult with the Entitlement 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 Entitlement Holder may object to any proposal referred to in sub-clause 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.
- 16.5 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
- 16.6 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 Entitlement Holder upon request.

17. 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

- 18.1 * * * * *
- 18.2 The Entitlement 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 Entitlement Holder, to cover the costs of making the data available.

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 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.

Dated: 25 March 1996

Responsible Minister: Geoff Coleman
Minister administering the **Water Act 1989**

Schedule 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 to their shares of inflow to the storage.

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.

APPENDIX 1

Below is a list of all the amendments made to the **Bulk Entitlement (Latrobe – Loy Yang A) Conversion Order 1996** under Division 1 of Part 4 of the Act to date. A summary of the purpose of each amendment and details about which sections were changed in each case is provided below.

Additional information on Bulk and Environmental Entitlement can be accessed from the Victorian Water Register website at <http://waterregister.vic.gov.au/water-entitlements/bulk-entitlements> or by contacting the Department of Environment and Primary Industries Customer Service Centre on 136 186.

Government Gazette details	Amendment citation and summary of changes
G27 4 July 2013	<p>Bulk Entitlement (Latrobe – Loy Yang A) Amendment Order 2013</p> <p><i>Purpose:</i> To amend the order to implement Action 6.3 of the Gippsland Region Sustainable Water Strategy.</p> <p><i>Amendments:</i> Substituted: 4, 5, 7(a), 7(b), 8.1(d), 8.1(d)(iii)(A), 8.1(d)(iii)(B), 8.2, , 9.1, 9.2, 9.3, 11.1, 12, 13.1(c), 13.1(e), 13.1(f), 13.1(g), 13.1(h), 14.1, 15.2, 16.3, 16.5, 16.6, 17, 19, Schedule 1 Inserted: 13.1(gA), 14.3 Repealed:6.2, 6.3, 6.4, 18.1</p>

Consolidated Version**BULK ENTITLEMENT (LATROBE – YALLOURN) CONVERSION ORDER 1996****Introduction:**

This is a consolidated version of the Bulk Entitlement (Latrobe - Yallourn) Conversion Order 1996. It has been prepared from the original bulk entitlement (gazettal S29 28/03/1996 and all subsequent amendments made under Division 1 of Part 4 of the **Water Act 1989** (the Act) up to 4 July 2013 (for details of amendments included see Appendix 1). Copies of the original bulk entitlement and each subsequent amendment can be found at: <http://waterregister.vic.gov.au/water-entitlements/bulk-entitlements>.

This document has been created as a working record for staff of the Department of Environment and Primary Industries, and may also be a convenient record for members of the public. Unless referenced specifically in Appendix 1, this document does not contain information about temporary qualifications of rights made under section 33AAA of the Act, or any transfer made under Division 1 of Part 4 of the Act.

Wherever five stars (as shown below) appears in the document, this indicates that the relevant clause/sub-clause or schedule has been deleted.

* * * * *

Disclaimer:

The Department of Environment and Primary Industries does not provide any assurance of the correctness or accuracy of this record and any member of the public accessing it is referred to the instruments detailed in Appendix 1 from which it was compiled.

The Department of Environment and Primary Industries disclaims all liability for any loss which may be occasioned by any person relying on this record.