Conversion Rules for Regulated Water Systems in Northern Victoria

I, John Thwaites, the Minister administering the Water Act 1989, determine the following conversion rules:

PART 1 – GENERAL

1. Citation

These rules are called the Conversion Rules for Regulated Water Systems in Northern Victoria.

2. Purpose

The purpose of this determination is to set out rules that are to apply to the conversion of rights in the seven regulated, surface water systems in Northern Victoria that are listed in rule 5.

3. Authorising provisions

This determination is made under clause 33 of Schedule 15 of the Act.

4. Commencement

These rules will come into operation on day on which they are made.

5. Application

(1) These rules apply to the following seven water systems, as defined in the Order Declaring Water Systems in Northern Victoria 2007:
   
   (a) Murray water system,
   (b) Ovens water system,
   (c) Broken water system,
   (d) Goulburn water system,
   (e) Campaspe water system,
   (f) Loddon water system,
   (g) Bullarook water system.

(2) There are three managing Authorities in respect of these water systems:
   
   (a) Goulburn-Murray Rural Water Authority: for the Ovens, Broken, Goulburn, Campaspe, Loddon and Bullarook water systems and the Murray water system upstream of Nyah; these water
systems include the Goulburn-Murray, Tresco, Nyah and Campaspe irrigation districts;

(b) First Mildura Irrigation Trust (FMIT): for First Mildura irrigation district in the Murray water system;

(c) Lower Murray Rural Water Authority: for the Murray water system downstream of Nyah apart from the First Mildura irrigation district; this part of the Murray water system includes the Merbein, Red Cliffs and Robinvale irrigation districts.

The declaration of the water systems by Governor in Council defines the water systems in the way set out below (this appears here as an explanatory note):*

**Murray water system**

(a) Lake Dartmouth and all of the Mitta Mitta River downstream of Lake Dartmouth, and Lake Hume and the River Murray downstream of Lake Hume as far as the South Australian border, including the weir pools, and including Little Murray River and other anabranches receiving water as a consequence of regulation of the water system; and

(b) the Murray Valley, Torrumbarry and Woorinen irrigation areas of the Goulburn-Murray irrigation district, and the Tresco, Nyah, Robinvale, Red Cliffs, Merbein and First Mildura irrigation districts; and

(c) the creeks and lakes used to convey Murray water system water (these include: Broken Creek downstream from the confluence with Boosey Creek to Rice's Weir, Boosey Creek downstream from the effects of the Murray Valley irrigation area number seven/three channel inlet, Nine Mile Creek, Gunbower Creek and associated lagoons upstream of Koondrook Weir, Stoney Creek, Kow Swamp, Pyramid Creek, Kerang Weir pool and the Loddon River downstream from Kerang Weir pool to the River Murray, Lake Charm, Lake Kangaroo, Racecourse Lake, Reedy Lake, Middle Lake and Third Lake).

**Ovens water system**

Lake Buffalo and the Buffalo River downstream from Lake Buffalo; the Ovens River from the confluence with the Buffalo River, downstream to Lake Mulwala; and Lake William Hovell and the King River downstream from Lake William Hovell.

**Broken water system**

Lake Nullacootie and the Broken River downstream from Lake Nullacootie as far as the Goulburn River; the Broken Creek from Casey's Weir to Waggarandall Weir, including Majors Creek from where it leaves Broken Creek to Gall's Weir; and Lake Mokoan including its inlet and outlet channels.

**Goulburn water system**

(a) Lake Eildon and the Goulburn River downstream of Lake Eildon to where it enters the River Murray, including Lake Nagambie and anabranches receiving water as a consequence of regulation of the water system; and

(b) the Shepparton, Central Goulburn, Rochester, and Pyramid-Boort irrigation areas of the Goulburn-Murray irrigation district; and

*Explanatory notes are in italics; they do not form part of the Conversion Rules.*
(c) major holding basins and interconnectors, being East Goulburn Main Channel, Stuart Murray Canal, Cattanach Canal, Waranga Basin, Waranga Western Channel and Loddon Weir pool; and

(d) the creeks and lakes used to convey Goulburn water system water (these include: Bears Lagoon, Serpentine Creek downstream of the channel linking it to Bears Lagoon, and Little Lake Boort).

**Campaspe water system**

(a) Lake Eppalock and the Campaspe River downstream from Lake Eppalock to where it enters the Torrumbarry weir pool; and

(b) the Campaspe irrigation district.

**Loddon water system**

Tullaroop and Cairn Curran Reservoirs and downstream from these along the Tullaroop Creek and Loddon River as far as but not including the Loddon Weir pool, plus the Serpentine Creek upstream of the channel linking it to Bears Lagoon.

**Bullarook water system**

Hepburns Lagoon and Race, and Newlyn Reservoir and downstream of it along Bullarook (also known as Birch) Creek as far as the confluence with Creswick Creek.

Notes: regulated water systems include the portions of anabranches and tributaries affected by operations of the water systems.

In specific parts of two water systems, entitlements may be supplied from another water system. For entitlements that are so supplied, the water shares created will be shares of the water system that supplies them – but with a trading zone corresponding to where the water is taken. The relevant parts of water systems are:

(a) Part of the Goulburn water system where some entitlements are supplied from the Loddon water system: Loddon Weir pool.

(b) Part of the Murray water system where some entitlements are supplied from the Goulburn water system: Broken Creek downstream from the confluence with Boosey Creek to Rice’s Weir, Boosey Creek downstream from the effects of the Murray Valley irrigation area number seven/three channel inlet, and Nine Mile Creek.

6. **Definitions**

In these rules –

A reference to the Act is a reference to the **Water Act 1989**.

A reference to a clause is a reference to a clause in Schedule 15 of the Act.

The definitions in the Act apply.

“**delivery share**” means entitlement to the service of having water delivered at the specified volume during the specified period.

“**DSE**” means the Secretary of the Department of Sustainability and Environment.
"Little Murray River upstream of Little Murray Weir" includes take and use licences for use of water on Pental Island which were supplied from that reach of the Little Murray River before 30 June 2006, but were subsequently relocated to below the Little Murray Weir or to the Big Murray.

"service point" means the location at which water leaves the works of the managing Authority.

"water system" means the water system by that name defined in the declarations referred to in rule 5(1).
PART 2 – WATER SHARES

7. Classes of reliability of water shares

(1) Water shares created under clauses 4(2), 5(2) and 6(2) (water share in relation to a prior joint right, prior water right or prior domestic and stock right) shall have a class of reliability of “high reliability”.

(2) Water shares created under clause 13(2) (water share in relation to a take and use licence) shall have a class of reliability of “high reliability”.

(3) Water shares created under clauses 7(2) and 14(2) (sales water in relation to a prior water right or a take and use licence) shall have a class of reliability of “low reliability”.

Notes: section 51 licences in the Loddon and Broken water systems have had, with respect to the volume for domestic and stock purposes, a floor such that the allocation is not to fall below 50%. However, the legislation provides for just one high-reliability water share to be created for each licence. Instead of a floor, in very severe droughts (e.g. when the water market cannot operate), the power to qualify rights under section 33AAA of the Act could be used to give each water user a basic volume. This avoids the creation of a third product, which could potentially be bought up by irrigators, defeating its purpose. The revised bulk entitlements that will take effect at the same time as water systems become declared are to reflect these arrangements.

The classification of section 51 licences on the lower Campaspe River is being changed from unregulated to regulated, in the lead up to the water system becomes declared. Each licence’s regulated volume, and so the maximum volume of the new high-reliability water share, is to be 90% of the pre-existing irrigation volume plus 100% of the pre-existing non-irrigation volume; there is to be no access to sales water / no creation of low-reliability water shares.

The classifications of section 51 licences on the creeks and lakes used to convey water listed in the table below are being amended as shown; there will be no change to the licensed volumes, and still no access to sales water / no creation of low-reliability water shares, except for on the Serpentine Creek below Bears Lagoon where sales is currently available. See conversion rule 8(2) for how these licences will be converted.

<table>
<thead>
<tr>
<th>Creek or lake</th>
<th>Existing status of s.51 licences</th>
<th>Amended status of s.51 licences</th>
<th>Sales / low-reliability water share</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bears Lagoon and Little Lake Boort</td>
<td>Loddon unregulated</td>
<td>Goulburn regulated</td>
<td>None</td>
</tr>
<tr>
<td>Serpentine Creek downstream from the channel coming from Bears Lagoon</td>
<td>Loddon regulated</td>
<td>Goulburn regulated</td>
<td>Yes, using Goulburn-Murray irrigation district multiplier</td>
</tr>
<tr>
<td>Broken Creek downstream from Boosey Creek to Rice’s Weir, Boosey Creek downstream from the effects of the Murray Valley irrigation area number seven/three channel inlet, and Nine Mile Creek</td>
<td>Murray unregulated</td>
<td>Murray regulated</td>
<td>None</td>
</tr>
<tr>
<td>Gunbower Creek and associated lagoons upstream of Koondrook Weir, Stoney Creek, Lake Charm, Lake Kangaroo</td>
<td>Murray unregulated</td>
<td>Murray regulated</td>
<td>None</td>
</tr>
<tr>
<td>-----------------------------------------------</td>
<td>--------------------</td>
<td>------------------</td>
<td>------</td>
</tr>
<tr>
<td>Lodden River from the Kerang Weir pool downstream to the River Murray</td>
<td>Lodden unregulated</td>
<td>Murray regulated</td>
<td>None</td>
</tr>
</tbody>
</table>

8. **Maximum volume of low-reliability water shares**

The share of water available from the water system under the water share, expressed as the maximum volume of water over the year commencing on 1 July each year, shall be calculated as follows:

(1) For a water share created pursuant to clause 7(2) (sales water in relation to a water right) in the irrigation districts listed in column A below –

multiply the volume of the prior water right in the irrigation district listed in column A below, by the multiplier in column C below.

(This is equivalent to multiplying by the rescaling factor in column B, and then subtracting 20%.)

<table>
<thead>
<tr>
<th>A - Irrigation district</th>
<th>B - Rescaling factor</th>
<th>C - Multiplier</th>
</tr>
</thead>
<tbody>
<tr>
<td>Goulburn-Murray</td>
<td>0.6</td>
<td>0.48</td>
</tr>
<tr>
<td>Campaspe</td>
<td>0.7</td>
<td>0.56</td>
</tr>
</tbody>
</table>

*Example for clause 5(2) and 7(2) (sales water in relation to a water right):*

*Water right in the Goulburn-Murray irrigation district 100 ML, & sales allocated as % water right*

*High-reliability water share 100 ML*

*Low-reliability water share 48 ML (100 x 0.48) [equivalent to (100 x 0.6) - 20% of that]*

*Note: in Tresco, Nyah, Robinvale, Red Cliffs, Merbein, and First Mildura irrigation districts, there have been no prior section 222(1)(c) sales agreements, so no low-reliability water shares will be created under clause 7(2) on the appointed day. Accordingly, these districts are not shown in sub-rule (1) above.*

(2) For a water share created under clause 14(2) (sales water in relation to a take and use licence) –

for take and use licences in the water systems or parts of water systems listed in column A below, multiply the volume specified on the licence for the purpose of irrigation immediately before the appointed day, by the multiplier in column D.
(This is equivalent to multiplying by the private diversion factor in column B, and then by the rescaling factor in column C, then –

(i) subtracting 20%, except in the cases specified in (ii);

(ii) for licences in the Ovens and Broken water systems, not subtracting 20%.)

<table>
<thead>
<tr>
<th>A – Water system or part water system</th>
<th>B – Private diversion factor</th>
<th>C – Rescaling factor</th>
<th>D – Multiplier</th>
</tr>
</thead>
<tbody>
<tr>
<td>Part of Murray: upstream of Nyah pumps, excluding: (a) the Mitta Mitta River, and (b) Little Murray River upstream of Little Murray Weir, and (c) creeks and lakes used to convey water</td>
<td>0.48</td>
<td>0.6</td>
<td>0.2304</td>
</tr>
<tr>
<td>Part of Murray: the Mitta Mitta River, and Little Murray River upstream of Little Murray Weir</td>
<td>1.0</td>
<td>0.6</td>
<td>0.48</td>
</tr>
<tr>
<td>Ovens</td>
<td>0.5</td>
<td>1.0</td>
<td>0.5</td>
</tr>
<tr>
<td>Broken</td>
<td>0.7</td>
<td>0.3</td>
<td>0.21</td>
</tr>
<tr>
<td>Goulburn except for Serpentine Creek part and Bears Lagoon and Little Lake Boort</td>
<td>0.51</td>
<td>0.6</td>
<td>0.2448</td>
</tr>
<tr>
<td>Part of Goulburn: Serpentine Creek downstream from channel from Bears Lagoon</td>
<td>1.0</td>
<td>0.6</td>
<td>0.48</td>
</tr>
<tr>
<td>Campaspe upstream of Waranga West Channel</td>
<td>1.0</td>
<td>0.7</td>
<td>0.56</td>
</tr>
<tr>
<td>Loddon</td>
<td>0.82</td>
<td>0.6</td>
<td>0.3936</td>
</tr>
<tr>
<td>Bullarook</td>
<td>0.9</td>
<td>0.72</td>
<td>0.5184</td>
</tr>
</tbody>
</table>

(3) In applying the multipliers under this rule, the resulting volumes are to be rounded up to the nearest 0.1 of a megalitre.

Notes: take and use licences that do not refer to irrigation as a purpose have no prior section 222(1)(d) sales agreement and therefore no low-reliability water share will be created on the appointed day.

In addition, take and use licences along the River Murray downstream of the Nyah pumps are not accompanied by any prior section 222(1)(d) sales agreement, so no low-reliability water share will be created. The same applies to licences along the Campaspe downstream of Waranga West Channel once they become regulated, and other licences which are being changed to regulated on creeks and lakes used to convey water as shown in the table on page 5.

Example for clauses 13(1) and 14(2) (sales water in relation to a take and use licence):

- Take and use licence on Murray upstream of Nyah pumps
  - 100 ML licensed volume for irrigation
  - sales allocated as % licensed vol.

- High-reliability water share
  - 100 ML

- Low-reliability water share
  - 23.1 ML (100 x 0.2304) [equivalent to (100 x 0.48 x 0.6) - 20% of that]
Note: for all water systems except the Ovens and Broken, once any private diversion factor is applied and the rescaling factor is applied, 20% is subtracted from the resulting entitlement volume. This amount of resource is set aside to cover an application from the Minister for Environment, as part of implementing the 80:20 sales water package.

9. Responsibilities for managing information relating to water shares

Clause 33(2)(a) and (b) enable the conversion rules to provide for any procedures an Authority or the Minister is required to carry out “to identify, verify, apportion and calculate information” relating to the new rights. Clause 34 requires the Registrar of Titles (of land) to disclose information necessary for conversion to an Authority or the Minister, and an Authority or the Minister to disclose information necessary for conversion to the Registrar of Titles.

With the assistance of DSE, each managing Authority is responsible for applying the principles and calculations set out in Schedule 15 of the Act and in these rules in order to determine the maximum volume and reliability of each water share to be created from water rights and domestic and stock allowances in its prior holdings register, and from the take and use licences which it manages as the Minister’s delegate.

(1) The total volume of new water shares to be created must correspond to the total volume as determined by the Minister in conjunction with the managing Authority for the purposes of updating and amending the bulk entitlements, and if there is any discrepancy the Minister may institute a review to determine the cause of the discrepancy and what steps are required to redress the problem.

(2) The managing Authority will provide any information from its records that is required for the conversion process including:

(a) information identifying or describing the parcels of land in each holding, and the land to which each take and use licence applies;

(b) the names of the holders of each take and use licence, and if it is held by an unincorporated association, the names of the association’s members;

(c) the addresses used by the authority for billing purposes.

(3) DSE in collaboration with the managing Authority will match the information about land in each holding as provided by the managing Authority with land register information in order to determine the ownership of the associated water share and any mortgage that is to extend to the water share – and also to identify the land that relates to water-use licences, water-use registrations, works licences and delivery shares.

(4) While First Mildura Irrigation Trust has recorded water rights in megalitres to two decimal places, the resulting water shares (like all water shares) are to be recorded to one decimal place. Standard rounding is to be used (thus, 0.11 to 0.14 is rounded down to 0.1, while 0.15 to 0.19 is rounded up to 0.2).
PART 3—WATER-USE LICENCES AND REGISTRATIONS

10. Meaning of “contiguous”

In irrigation districts a separate water-use licence is to be created, under clauses 4(3), 5(3) and 6(3), for each “combined parcel” or other parcel that comprised the holding. (Clause 1 says that a “parcel” means, for land under the Transfer of Land Act 1958, land that makes up an individual folio.)

Note: a parcel may have two or more crown allotments, or an allotment in two pieces or parts. There may not be adjoining. This would be very rare. Under the legislation, the situation within a parcel is not relevant (it is referred to in sub-rules (3) and (4) below only for the purposes of clarity).

Under clause 1, a “combined parcel” means more than one parcel of land, each of which is, in accordance with the conversion rules, contiguous with the others. The conversion rule for whether a parcel of land is contiguous with another parcel of land is as follows:

(1) A parcel of land is contiguous with another parcel of land if a boundary of the first parcel touches (even if only at one point) a boundary of the second parcel.

(2) In a group of more than two parcels, one parcel is contiguous with another parcel despite its boundary not touching the boundary of the second parcel, provided that there is a link between the two parcels via one or more of the other parcels such that all the parcels along the link are contiguous under sub-rule (1).

(3) Parcels of land will not cease to be contiguous only because—

(a) a railway, road, or irrigation or drainage channel exists through a parcel of land or between parcels of land;

(b) a waterway, with or without Crown land frontage, exists through a parcel of land or between parcels of land;

(c) common property within the meaning of the Subdivision Act 1988 exists through a parcel of land or between parcels of land.

(4) For the purposes of the Robinvale, Red Cliffs, Merbein and First Mildura irrigation districts only, a parcel is also contiguous with another parcel if, instead of a boundary of each parcel touching each other, the parcels are linked by a private pipe or channel that carries water from one parcel to which the managing Authority has provided water, to the other parcel.

Example 1: All irrigation districts

Parcels A, B, C and D form a combined parcel because each parcel is contiguous with every other other parcel, either under sub-rule (1) or because they are linked under sub-rule (2).
Example 2: All irrigation districts

Parcels A, B (in two parts), C and D together form a combined parcel because the parcels are contiguous within the meaning of the conversion rule above.

Example 3: only Robinvale, Red Cliffs, Merbein and First Mildura irrigation districts

Parcels A, B, C and D together form a combined parcel because the parcels are contiguous within the meaning of the conversion rule above.

11. Definitions related to determining annual use limits

For the purposes of calculating annual use limits --

"entitlement" means:

(a) for prior joint rights or prior water rights, the volume of each prior water right in an irrigation district listed in column A below, multiplied by the sales water factor expressed in column B below,
plus the volume of any prior domestic and stock right for that holding:

<table>
<thead>
<tr>
<th>A – Irrigation district</th>
<th>B – Sales water factor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tresco, Nyah, Robinvale, Red Cliffs,</td>
<td>1.0</td>
</tr>
<tr>
<td>Merbein and First Mildura</td>
<td></td>
</tr>
<tr>
<td>Goulburn-Murray</td>
<td>1.6</td>
</tr>
<tr>
<td>Campaspe</td>
<td>1.7</td>
</tr>
</tbody>
</table>

(b) for take and use licences in force immediately before the appointed day, the volume specified for the purpose of irrigation in each take and use licence in a water system listed in column A below, multiplied by the sales water factor expressed in column B below, plus the volume specified for any other purpose.

<table>
<thead>
<tr>
<th>A – Water system or part of water system</th>
<th>B – Sales water factor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Part of Murray: upstream of Nyah pumps, excluding Mitta Mitta River, and excluding Little Murray River</td>
<td>1.3</td>
</tr>
<tr>
<td>upstream of Little Murray Weir</td>
<td></td>
</tr>
<tr>
<td>Part of Murray: Mitta Mitta River, and Little Murray River upstream of Little Murray Weir</td>
<td>1.6</td>
</tr>
<tr>
<td>Part of Murray: downstream of Nyah pumps, and creeks and lakes used to convey water</td>
<td>1.0</td>
</tr>
<tr>
<td>Ovens</td>
<td>1.5</td>
</tr>
<tr>
<td>Broken</td>
<td>1.21</td>
</tr>
<tr>
<td>Goulburn except for creeks and lakes used to convey water</td>
<td>1.3</td>
</tr>
<tr>
<td>Part of Goulburn: Serpentine Creek downstream from the channel coming from Bears Lagoon</td>
<td>1.6</td>
</tr>
<tr>
<td>Part of Goulburn: Bears Lagoon and Little Lake Boort</td>
<td>1.0</td>
</tr>
<tr>
<td>Part of Campaspe: upstream of Waranga Western Channel</td>
<td>1.7</td>
</tr>
<tr>
<td>Part of Campaspe: downstream of Waranga Western Channel</td>
<td>1.0</td>
</tr>
<tr>
<td>Loddon</td>
<td>1.5</td>
</tr>
<tr>
<td>Bullarook</td>
<td>1.6</td>
</tr>
</tbody>
</table>

Note: the above sales water factors are based on what is available after applying any private diversion factor and the rescaling factor but before 20% is set aside for the environment. (For the lower Campaspe, entitlement is 1.0 times the new, regulated volume, i.e. 0.9 times the unregulated volume – see note page 6.)

"history of use" means the highest volume of water used on the holding or under the take and use licence (as the case may be) according to the records maintained by the managing Authority, in any 12-month period from 1 July to 30 June between 1 July 1998 and 30 June 2006. The holding for these purposes is the holding in the form in which it existed at 30 June 2006.
Note: First Mildura Irrigation Trust does not have metered use records going back to 1 July 1998 for all the holdings in its district. History of use will be determined from whatever records in the designated period that this managing Authority does have.

Holdings may have been amalgamated or subdivided since 1 July 1998. If they have been amalgamated, they should get maximum water use limits and these will become the annual use limits, i.e. history of use will not be relevant. But if they have not had maximum water use limits recorded, or where holdings have been subdivided, then history of use will be based on the use on the holding as it now exists, for however far back the holding in that form goes (the furthest back being 1 July 1998).

"area-based ceiling" means –

(a) with respect to the Goulburn-Murray and Campaspe irrigation districts, a volume calculated by:

(i) multiplying the land area of the holding (in hectares) according to the prior holdings register, by 0.85, and

(ii) multiplying that answer, for each holding with the drainage division recorded by the managing Authority expressed in column A below, by the corresponding application rate expressed in column B below.

<table>
<thead>
<tr>
<th>A – Drainage division</th>
<th>B – Application rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-4</td>
<td>10 ML per hectare</td>
</tr>
<tr>
<td>5-8</td>
<td>7.2 ML per hectare</td>
</tr>
</tbody>
</table>

(b) with respect to the Tresco and Nyah irrigation districts, a volume calculated by taking the total area of the holding, and multiplying by the application rate of 10 ML per hectare.

"headroom" means the amount of annual use limit that can be recognised in the high-impact zone (HIZ) without increasing the river salinity impact arising from irrigation-induced groundwater movement beyond the level in place before permanent water trade out of the irrigation districts in Sunraysia was introduced in December 1994.

"maximum allocation" with respect to:

(a) the Goulburn-Murray irrigation district, means 2.0 times the volume of the prior water right, plus the volume of the prior domestic and stock right;

(b) the Campaspe irrigation district, means 2.2 times the volume of the prior water right, plus the volume of the prior domestic and stock right;

(c) take and use licences in the water systems or parts of water systems set out in column A in the table below, means the volume specified in the licence for the purpose of irrigation multiplied by the corresponding allocation factor expressed in column B, plus the volume specified for any other purpose.
<table>
<thead>
<tr>
<th>A – Water system or part of water system</th>
<th>B – Allocation factor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Part of Murray: upstream of Nyah pumps, excluding the Mitta Mitta River and excluding Little Murray River upstream of Little Murray Weir</td>
<td>1.7</td>
</tr>
<tr>
<td>Part of Murray: Mitta Mitta River, and Little Murray River upstream of Little Murray Weir</td>
<td>2.0</td>
</tr>
<tr>
<td>Part of Murray: downstream of Nyah pumps, and creeks and lakes used to convey water</td>
<td>1.0</td>
</tr>
<tr>
<td>Ovens</td>
<td>1.5</td>
</tr>
<tr>
<td>Broken</td>
<td>1.7</td>
</tr>
<tr>
<td>Goulburn except for creeks and lakes used to convey water</td>
<td>1.7</td>
</tr>
<tr>
<td>Part of Goulburn: Serpentine Creek downstream from the channel coming from Bears Lagoon</td>
<td>2.0</td>
</tr>
<tr>
<td>Part of Goulburn: Bears Lagoon and Little Lake Boort</td>
<td>1.0</td>
</tr>
<tr>
<td>Part of Campaspe: upstream of Waranga Western Channel</td>
<td>2.2</td>
</tr>
<tr>
<td>Part of Campaspe: downstream of Waranga Western Channel</td>
<td>1.1</td>
</tr>
<tr>
<td>Loddon</td>
<td>1.9</td>
</tr>
<tr>
<td>Bullarook</td>
<td>1.9</td>
</tr>
</tbody>
</table>

Notes: the above allocation factors are based on the current maximum allocation of sales, i.e. prior to either rescaling or 20% being set aside for the environment.

For the lower Campaspe, the allocation factor of 1.1 is multiplied by the new, regulated volume, i.e. 1.0 times the unregulated volume – see the note on page 6.

For the Murray below Nyah and for creeks and lakes used to convey water in the Murray and Goulburn water systems, maximum allocation for take and use licences is the same as entitlement.

12. Annual use limits for the Goulburn-Murray and Campaspe irrigation districts

The annual use limit for a water-use licence that is created under clause 4(3) or 5(3) (from a prior joint right or prior water right) in relation to a holding in the Goulburn-Murray or Campaspe irrigation districts, shall be calculated as follows:

1. If, immediately before the appointed day for the water system, the water use limit to apply to the holding is shown in the records of the managing Authority, then the annual use limit shall be the same as that limit.

2. If sub-rule (1) does not apply, then the annual use limit will be whichever is the greater of –
   (a) entitlement, and
   (b) history of use;
with a maximum volume that is equal to the area-based ceiling for the holding except in the circumstances set out in sub-rule (3).

(3) The annual use limit calculated under sub-rule (2) will exceed the area-based ceiling in the following circumstances:

(a) where entitlement is greater than history of use (and also the area-based ceiling), if history of use is also greater than the area-based ceiling, then the annual use limit will be equal to history of use;

(b) where history of use is greater than entitlement (and also the area-based ceiling), if maximum allocation is greater than the area-based ceiling, then the annual use limit will be history of use up to a maximum volume that is equal to maximum allocation.

13. Annual use limits for Tresco and Nyah irrigation districts

The annual use limit for a water-use licence that is created under clause 4(3) or 5(3) (from a prior joint right or prior water right) in relation to a holding in the Tresco and Nyah irrigation districts shall be calculated as follows:

(1) If, immediately before the appointed day for the water system, the water use limit to apply to the holding is shown in the records of the managing Authority, then the annual use limit shall be the same as that limit.

(2) If sub-rule (1) does not apply, then the annual use limit will be whichever is the greater of

(a) entitlement, and

(b) history of use;

with a maximum volume that is equal to the area-based ceiling for the holding.

14. Annual use limits for irrigation districts and take and use licences in Sunraysia

The annual use limit for a water-use licence that is created under clause 4(3) or 5(3) (from a prior joint right or prior water right) in relation to a holding in the Robinvale, Red Cliffs, Merbein and First Mildura irrigation districts, or under clause 13(3) (from a take and use licence) downstream of the Nyah pumps, shall be calculated as follows:

(1) If—

(a) in the case of a prior joint right or prior water right, immediately before the appointed day for the water system the water use limit to apply to the holding is shown in the records of the managing Authority, or

(b) in the case of a take and use licence in force immediately before the appointed day, the take and use licence included a water use limit to apply to the land that the licence referred to,

then the annual use limit shall be the same as that water use limit.
(2) If neither paragraph (a) nor paragraph (b) in sub-rule (1) applies, then subject to sub-rule (3) the annual use limit shall be equal to entitlement.

(3) Where sub-rule (2) applies and history of use on the holding or under the take and use licence is greater than entitlement, the irrigator may apply to the relevant managing Authority within six months from the appointed day for an annual use limit greater than would be calculated under sub-rule (2). The process for calculating annual use limit when such an application is made will be as follows:

(a) annual use limit may be allocated up to a maximum of the history of use;

(b) the applicant must demonstrate history of use that is greater than entitlement, and for this purpose history of use may be determined on the basis of evidence other than the managing Authority’s records;

(c) the total annual use limit in each case shall be no greater than a volume calculated by taking the area irrigated, and multiplying by the application rate of 12 ML per hectare, unless any higher ceiling is agreed by DSE after consultation with managing Authorities;

(d) the sum of extensions to annual use limit based on history of use in all of the high-impact zone (HIZ) shall be subject to a cap equal to the headroom that is provided by permanent trade out of the HIZ since 1994 and any other relevant factors;

(e) DSE will be responsible for determining, no later than six months from the appointed day, the headroom;

(f) if the sum of eligible extensions to annual use limits based on history of use in all of the HIZ exceeds the cap, the available volume of annual use limit shall be distributed as the same proportion of each eligible extension, unless some other basis is agreed to by DSE after consultation with managing Authorities within 30 days from the closing date for applications;

(g) the detailed procedures and rules – including evidence required to support claims and the arrangements for assessing claims – shall be as agreed by DSE after consultation with managing Authorities;

Notes: it is envisaged that managing Authorities may charge applicants a fee of about $50, refundable if successful.

In the low-impact zone (LIZ) outside but not inside the irrigation districts, to the extent that annual use limit is greater than entitlement it is to be subject to the relevant charge under section 287A of the Act to pay for works or measures to offset salinity impacts, in line with policies for applying such charges determined by the Minister.

(h) in the period from the appointed day up until the allocation of annual use limit under this sub-rule has been made, a managing Authority may allocate provisional annual use limit, for that season only, on the basis of its preliminary assessment of an application.
Note: in all the pumped districts – and for section 51 licences below Nyah – maximum allocation is not a relevant concept, since it would be the same as entitlement. Similarly, the concept of an area-based ceiling does not work for any section 51 licences: the property boundary is often much greater than the irrigated area, and the irrigated area is not kept up to date in authority records.

15. Annual use limits for take and use licences other than in Sunraysia

The annual use limit for a water-use licence created under clause 13(3) (from a take and use licence) in any water system or part of a system covered by these rules other than the Murray system downstream of the Nyah pumps, shall be calculated as follows:

1. If the take and use licence in force immediately before the appointed day included a water use limit to apply to the land that the licence referred to, then the annual use limit shall be the same as that limit.

2. If sub-rule (2) does not apply, then the annual use limit will be the greater of:
   (a) entitlement, and
   (b) history of use up to a maximum volume equal to maximum allocation.

16. Water-use licences created from both a prior water right and a take and use licence

When a water-use licence is created under clauses 4(3) or 5(3) (from a prior joint right or prior water right) and also under clause 13(3) (from a take and use licence) for the same or some of the same land, then the rules for calculating annual use limits set out above are to apply but the total of the two annual use limits must not exceed the area-based ceiling for the holding. This allowance for total annual use will be divided between the two water-use licences in the proportion decided by the managing Authority after consultation with the owner of the land.

Note: this rule is needed for a few properties on the edge of Red Cliffs irrigation district, as well as for a few in Goulburn-Murray and Campaspe irrigation districts. The authority cannot simply cancel one of the two licences. (It may be able to get agreement to cancellation.)

17. Annual use limits in water-use registrations

The annual use limit to be included in a water-use registration created by conversion of a prior domestic and stock right in an irrigation district under clause 6(3), shall be the same as the volume shown for the prior domestic and stock right in the prior holdings register immediately before the appointed day.

Note: there is no provision for creating a water-use registration on conversion of a section 51 licence, even if the section 51 licence is just for domestic and stock purposes, or for a factory or other non-irrigation commercial purpose. This is
because such licences for different purposes were not seen as separate legal entities. The water-use licence will need to include these purposes where appropriate – see rule 18(1)(c).

18. Responsibilities for managing information relating to water-use licences

With the assistance and supervision of DSE, each managing Authority is responsible for assembling the records and applying the computations that are required under Schedule 15 and these rules in order to create water-use licences and registrations from water rights and domestic and stock allowances in its prior holdings register, and from the take and use licences which it manages as the Minister’s delegate.

(1) The information to be produced by the managing Authority will include:

(a) information that describes the land to which each water-use licence or registration will apply (in producing which the managing Authority must apply the requirement that in irrigation districts there has to be a separate water-use licence for each combined parcel, i.e. group of contiguous parcels);

(b) the annual use limit to apply in each case – including the basis for arriving at each annual use limit; that is, information on entitlement, history of use, area-based ceiling and maximum allocation, as required in each case;

(c) any take and use licences that are for non-irrigation commercial purposes, to ensure these purposes are recorded on the water-use licences;

(d) any land which will on the appointed day be subject to more than one water-use licence, and in such a case what annual use limits will apply, under rule 16;

(e) within the boundaries of the Mallee Catchment Management Authority, the salinity impact zone in which the land is situated.

(2) Under clauses 4(3)(b) and 5(3)(b), water-use licences created from water rights are also “subject to the same conditions as those that applied to the use of water immediately before the appointed day”; and, similarly, under clause 13(3)(b) water-use licences created from take and use licences are “subject to the same conditions as those that applied to the use or drainage of water under the take and use licence”. The managing Authority must produce information on pre-existing conditions as follows –

(a) in a minority of cases there are specific conditions that were applied at the time of approving a development and/or a purchase of water entitlement after 1994, and all such cases must be identified and labelled by the managing Authority, so that a reference back to the conditions set on approval of the development or purchase, or in the take and use licence, can be recorded in the register as part of the water-use licence;
(b) in the rest of the cases, the pre-existing conditions are more basic and general, and standard conditions set under section 64Y of the Act will ensure certainty about the conditions that apply.

(3) In consultation with water authorities the Minister may develop checks that are to be made to ensure that the rules relating to creation of water-use licences are being correctly applied, and the water authorities must carry out these checks and report on the results.

Note: The more generalised pre-existing conditions may be expressed as requirements:

(a) to take water through a meter approved by a water authority, unless the water authority has granted an exemption in writing; and

(b) where irrigation results in drainage from the land, not to dispose of it in a way that does not meet with standards adopted by the relevant water authority.

Paragraphs (a) and (b) are summations of the conditions that currently exist. So there is no uncertainty about the wording, it is proposed that the Minister set standard conditions under section 64Y of the Act to come into effect immediately after conversion. These standard conditions will be along the lines of (a) and (b). Under section 64AE of the Act, they will take precedence if there is any inconsistency with the old conditions.
PART 4 – DELIVERY ENTITLEMENTS

19. Volume of water and period for delivery

Water delivered by the managing Authority, under the services to which holders of prior joint rights, prior water rights and prior domestic and stock rights will be entitled as a result of clauses 4(4), 5(4) and 6(4), will be at the volumes and during the periods (expressed in ML per day) determined as follows:

(1) For the Goulburn-Murray irrigation district excluding the Woorinen irrigation area, and for the Campaspe irrigation district —

The volumes of water during the periods that are recorded as “interim delivery shares” in the prior holdings register at 30 June 2007, being derived from 1 ML per day for each 100 ML of the sum of the volumes of the prior water right and prior domestic and stock right, with the volume of each of these rights being:

(i) the volume recorded in the prior holdings register as at 30 June 2006, plus

(ii) that volume of water right permanently transferred to the holding between 1 July 2006 and 30 June 2007 and recorded in the prior holdings register, for which the purchaser has exercised the option to increase the interim delivery share.

Note: Goulburn-Murray Water is accepting early applications to take up additional delivery share, and are modifying 2006/07 fees on the basis of these applications, so as to reduce the burden of casual use charges. These applications for delivery share will be assessed after the appointed day in conjunction with those received under rule 21.

(2) For the Woorinen irrigation area and the Tresco and Nyah irrigation districts —

The volumes of water during the periods that have been calculated with reference to water rights and domestic and stock allowances prior to the appointed day and are recorded as “distribution capacity shares” in the prior holdings register at 30 June 2007.

(3) For the Robinvale, Red Cliffs, and Merbein irrigation districts —

One fourteenth of the volumes of water during the periods that are recorded as “interim delivery shares” in the prior holdings register at 30 June 2007, being derived from 12% of the sum of the volumes of water right and domestic and stock allowance and being allowed every 14 days.  (I.e. the interim delivery share is multiplied by 0.07143.)

(4) For the First Mildura irrigation district —

(a) Subject to (b) below, the volumes of water during the periods that are calculated from the total water righted area within a holding, in hectares (that is, the total area of the holding that could be irrigated — including maintenance land — as recorded in the prior holdings
register) multiplied 9.144 ML per hectare; taking 12% of this figure (giving the volume that the land should have access to every fortnight), and then dividing by 14. *(I.e. the relevant area of the holding multiplied by 0.07838.)*

(b) If, within six months of the appointed day, an irrigator can demonstrate that they have been delivered more than 9.144 ML per hectare of their total water righted area in any irrigation season between 1998/99 and 2006/07, the irrigator will be entitled to a delivery share determined as in (a) above but using the demonstrated figure higher than 9.144 ML per hectare.

(c) For garden supplies, delivery of up to 0.1 ML per fortnight will be assumed, giving a delivery share of 0.007 ML a day.

20. **Place or places to which water is to be delivered**

   (1) Water delivered by the managing Authority, under the services to which holders of prior joint rights, prior water rights and prior domestic and stock rights will be entitled as a result of clauses 4(4), 5(4) and 6(4), will be to the place or places determined as follows:

   For all irrigation districts, to all the parcels or combined parcels of land that constituted the relevant holding as recorded in the prior holdings register.

   Note: all the owners of the land in the prior holding will share in the entitlement to have water delivered and in the associated obligations.

   (2) Without affecting sub-rule (1) *(i.e. without breaking up the single delivery share)*, a delivery share may be apportioned for operational purposes between specific service points that may be on particular parcels of land within the whole group of parcels to which the delivery share is tied. In this case the delivery share will be apportioned:

   To the service points determined and recorded by the managing Authority prior to the appointed day.

   Note: the managing Authority may subsequently vary this apportionment upon application of the owners of the land.

21. **Applications by owners of holdings where water right previously transferred away**

Under clause 8, the owner of a serviced holding that had no prior water right or prior joint right may apply to the managing Authority within six months (or other time fixed in the conversion rules) for a delivery share, and the managing Authority must provide a delivery share at the volume of water during the period determined by the conversion rules.

(1) The period of time within which applications may be made shall be 12 months for owners of holdings in the Robinvale, Red Cliffs and Merbein irrigation districts.
(2) The conversion rule for determining the volume of water and the period of the delivery share that is to be provided is as follows, for all irrigation districts:

(a) Where water right has been permanently transferred from a holding (at any time since 1991 when this became possible), then subject to paragraph (b), the owner of the holding will be provided with additional delivery share so the total delivery share for that holding, including the additional delivery share, is, in the managing Authority’s opinion, the same as if no water right had been permanently transferred from the holding.

(b) Additional delivery share will only be provided by the managing Authority under paragraph (a) —

(i) to the extent that, in the managing Authority’s opinion, there is spare capacity in the delivery system, so that the additional delivery share can be provided without undue adverse effect on landholders who were already entitled to delivery services; and

(ii) after taking into account all the claims to spare capacity, including the claims of owners of those holdings from which some but not all water rights have been permanently transferred away, with the managing Authority responsible for deciding on the distribution between claimants.
PART 5 – WORKS LICENCES

22. Extraction shares

On the appointed day the holder of a take and use licence that had authorised works is deemed by clause 13(4) to be the holder of a works licence. This works licence will include conditions as to the maximum amounts of water which may be taken in particular periods or circumstances, being the greater of the conditions in the take and use licence, and those determined in accordance with the conversion rules. Under clause 27, if a works licences already exists, the above conditions will be added to it.

The key condition as to the maximum amounts of water which may be taken in particular periods or circumstances will be the “extraction share”. This is the entitlement to a share of the flow in a waterway at a certain point. It will be the basis for rationing when this becomes necessary. The conversion rule for determining extraction shares (in ML per day) is as follows:

(1) For the Murray water system above the Nyah pumps and the Ovens, Broken, Goulburn, Campaspe, Loddon and Bullarook water systems –

The total volume of the take and use licence (for all purposes), multiplied by 0.01.

(This follows the standard used by Goulburn-Murray Water for delivery within districts, i.e. 100% of entitlement every 100 days.)

(2) For the Murray water system below the Nyah pumps, subject to sub-rule (3) –

The total volume of the take and use licence (for all purposes), multiplied by 0.00857.

(This follows the standard used by Lower Murray Water for delivery within districts, i.e. 12% of entitlement every 14 days.)

Notes: ideally, one set of works should not be subject to more than one works licence. This is being implemented below Nyah by recognising that combined licences headed sections 51 & 67 have been issued as a matter of practice, but when several are issued relating to water taken from one set of works, there is only a single works licence that authorises the operation of the works.

This single licence is held, in different cases, by the owner of the works, or the syndicate (whether incorporated or not) that controls the works, or the individuals who share the works. The additional combined licences do not entitle the licence holder to operate the works.

Goulburn-Murray Water will move to having one works licence per set of works over time. After the appointed day in the Murray system above Nyah and in the Ovens, Broken, Goulburn, Campaspe, Loddon and Bullarook water systems, initially the existence of a works licence will continue to be recognised for every combined sections 51 & 67 licence.
(3) For the Murray water system below the Nyah pumps where holders of several take and use licences share the same set of works, then—

(a) the works licence in respect of this set of works will be taken to include an extraction share that is calculated, using the multiplier in sub-rule (2), from the combined volume of all the take and use licences that rely on that set of works;

(b) the works licence will include a notation to the effect that the extraction share will be available to each of the previous take and use licences in proportion to its licensed volume.

Notes: take and use licences practically never include a condition that could be construed as an “extraction share”. Therefore the extraction share will always be defined by the conversion rule above.

As well as the “extraction share” that is derived from the licensed volume and will be used for rationing, there may be two other, detailed constraints on operating the works:

- the maximum pumping rate (usually the pump capacity), and
- the maximum daily volume.

These other constraints may be included in the section 51 licence (in which case they will come across to the works licence) or they may be already in the works licence.

(Since works licences and take and use licences have regularly been issued as a joint licence, it is not always clear which one contains various conditions.)

Under clause 27, if there is an existing works licence, it will be deemed to include any new conditions relating to extraction shares, and also any conditions that were in the take and use licence relating to meters and operation of the works / prevention of pollution (e.g. by bunding).

The remaining conditions in the existing works licence will remain the same.
PART 6 – OWNERSHIP OF WATER SHARES

Note: where the owners of a water share have been identified, as have any mortgages that extend to the water share, but the parcels of land are owned by different persons or in a different manner (the situation described in clause 17(1)(a)), or different mortgages apply to different parcels in the holding (the situation described in clause 17(1)(b)), then under clauses 17 and 19 the manner of ownership and the application of the mortgages will be decided by agreement between the parties, or by arbitration if one of the parties seeks this, with a default of equal portions for the owner(s) of each parcel.

The following rule, on the other hand, applies to the more problematic situation where it is still unclear as to who all the owners are (for example, because there is no straightforward match between the land recorded in the prior holdings register and in the land titles register, or the land is not in the land titles register because it is not under the Transfer of Land Act 1958, which is the case with Crown land.)

23. Determining water share ownership where this is unclear

Where, in the opinion of the Minister, the ownership of the whole or a part of a water share created from a prior joint right, prior water right, or prior domestic and stock right cannot be clearly established (the situation described in clause 17(1)(c)), then clause 17(4) provides that the ownership will be determined in accordance with conversion rules. These rules are as follows –

(1) At the appointed day a water share will be created with details that are the same as the information in the prior holdings register, and it will be shown as an unconfirmed water share referring to clause 17(1)(c). No mortgages will be shown but the record of the water share must show that mortgages may affect the water share.

(2) The relevant managing Authority in conjunction with DSE will research the issues related to the reason that ownership is unclear, and then:

(a) recommend to the Registrar the details of the land making up the holding (where appropriate) and who should be recognised as the owners of the water share, who holds a mortgage over the water share and who holds a limited term transfer over the water share – in doing so adhering to the extent possible to the principle expressed in clause 17 (the ownership of the water share is deemed to be the same as the ownership of the land that comprised the holding); or

(b) make no recommendation.

(3) Prior to making a recommendation under sub-rule (2)(a) the managing Authority must, except in the cases referred to in sub-rule (4):

(a) notify the proposed owners and the identified mortgagees and limited term transfer holders, of the details of the proposed recommendation to the Registrar, and publish a notice to the same effect in a newspaper circulating in the area where the holding is located, allowing a period of four weeks for submissions; and
(b) consider any submission made in relation to the proposed recommendation, amend the recommendation if the managing Authority considers that is appropriate, and notify those who made a submission of its decision and the reasons for it.

(4) Where a water share has been created under clause 4(2), 5(2) or 6(2) (water share in relation to a prior joint right, prior water right or prior domestic and stock right) or under clause 7(2) (sales water in relation to a prior water right), and the managing Authority in conjunction with DSE identifies the relevant right to have been linked to a holding that is entirely made up of Crown land, sub-rule (3) will not apply. The managing Authority’s recommendation under sub-rule (2)(a) must include which Minister is responsible for administering the land.

(5) The provisions of section 84ZH of the Act in relation to the service of notices apply to notifications under this Part made by a managing Authority or the Registrar.

(6) On receiving a recommendation under sub-rule (2)(a), the Registrar may amend the water share record to record who owns the water share and, where relevant, the details of other entitled persons relating to the land comprising the holding, and—

(a) in amending the water share record, will remove the “unconfirmed — clause 17(1)(c)” notation and—

(i) where the water share has been created in connection to a holding made up of Crown land, record the Minister responsible for administering the land as owner of the water share;

(ii) where ownership of the water share and any other entitled persons are fully resolved (for example, where all the parcels in a holding were owned by the same people in the same manner), record the water share as owned accordingly;

(iii) in other cases, where appropriate, record the water share as “unconfirmed — clause 17(1)(a) or (b)”;

(b) will forward a copy of the amended water share record to the owners of the water share and any other person recorded as an entitled person.

(7) Where a water share record is amended from “unconfirmed — clause 17(1)(c)” to “unconfirmed — clause 17(1)(a) or (b)”, then the provisions in clauses 17 and 19 will apply and the 18-month and 6-month time limits set out in those clauses will be apply from the date of the amendment of the record instead of from the appointed day.

(8) Each managing Authority in conjunction with DSE must report two years after the appointed day, and subsequently at yearly intervals, on water shares covered by clause 17 that remain unconfirmed, and if such a water share remains unconfirmed five years after the appointed day, the Minister may, after appropriate consultation, either—
(a) determine who owns the water share and, where relevant, the details of other entitled persons relating to the land comprising the holding; or, where some amount of the fees imposed by an Authority under section 33AJ of the Act remain unpaid——

(b) request that the Authority exercise its power of sale under section 287B of the Act.

Example

The land in the prior holdings register in respect of a water right is no longer a current land description in the register maintained under the Transfer of Land Act 1958. Investigation by the managing Authority in conjunction with DSE shows that it is a land description that once was current but is no longer because of a series of subsequent subdivisions and consolidations.

The managing Authority in conjunction with DSE will investigate the land description by tracing the original description through the subdivisions and consolidations, using mapping and survey information as well as registered and other plans as necessary to determine the set of current Volumes and Folios that describe the land in the holding referred to in the prior holdings register. The managing Authority will compare the owners of all of those Volumes and Folios with the owners in the prior holdings register and further investigate any discrepancies. For example, where the initial list of potential owners is greater than the number of owners in the prior holdings register the managing Authority may consider whether some of the Volume Folios have been transferred e.g. to adjoining owners and are now showing in the prior holdings register in respect of another holding. As all of the potential owners will be notified of the managing Authority’s conclusion once that is reached, they will have the opportunity to further inform the managing Authority.

Once the Registrar has amended the water share record, the water share owners will be the persons as recorded in the register, but where there are several parcels in the up-to-date holding description, the water share still will show as unconfirmed (but the reference to 17(1)(c) will be removed) and the proportions of ownership will be determined by agreement between all entitled parties as required under clause 17(2) and failing that, through the default in 17(3), with the opportunity for arbitration being on the same basis as set out in clause 19.

Notes: on the appointed day some water shares will be unconfirmed in the meaning of clause 17(1)(c) only because the normal data checks have not yet been undertaken. If these checks are completed satisfactorily the Minister will not be able to form the opinion that ownership cannot be clearly established, and the water shares will be categorised accordingly.

Where a water share is identified as being owned by a Minister responsible for administering Crown land, it will normally be the case that a limited term transfer will be then offered to the club or other body that occupies the land, in order to replicate the situation prior to conversion.
24. The same name on different parcels in a holding

Where there are two or more parcels in a holding, and the same name appears as a registered owner of more than one of the parcels –

(1) If the parcels are owned by different persons or in a different manner, or different mortgages apply to different parcels (that is, the water share is classified as being "unconfirmed – clause 17(1)(a) or (b)"), then confirmation of ownership including whether the name refers to the same person or to different persons will be determined by agreement under clause 17(2) or by arbitration under clause 19.

(2) In those cases in which the water share would, if it were known that the name referred to the same person, be classified as confirmed, the following will apply to ascertain whether the name refers to the same person or to different persons:

(a) where, after any investigation as agreed by DSE, the managing Authority and the Registrar, these entities are satisfied that the name refers to the same person, and where the owner(s) of the water share have been advised in writing that it will be assumed that the name refers to the same person unless evidence to the contrary is produced within a certain number of weeks and no such evidence has been produced, ownership of the water share may be recorded on the basis of the name referring to the same person;

(b) in other instances, where the investigation in paragraph (a) does not confirm that the name refers to the same person, the Registrar may require the relevant person(s) to produce evidence by way of statutory declaration or by other means as the Registrar considers necessary, and, if such evidence is satisfactory, the Registrar may record ownership of the water share on the basis of the name referring to the same person.

(3) The methods in sub-rule (2) to determine whether the same name refers to the same person may, if appropriate, be used either before or after the appointed day to determine the ownership of a water share to be recorded.

25. Ownership on conversion of take and use licences

Under clause 14(2), the owner of the low-reliability water share that is created in connection with a take and use licence is "the owner or occupier of the land with whom the [prior 222(1)(d) sales water] agreement was entered into". This will be whoever held the take and use licence that related to that land.

Clause 14(3) says that if the prior 222(1)(d) right is held by more than one person, the proportions of ownership of the water share is to be determined in the manner set out in clause 17. However, clause 17 will not generally be applicable, since it relates to conversion of prior water rights etc in irrigation districts.

Where the prior 222(1)(d) right is held by more than one person, then to the extent that clause 17 does not apply, the holders of the prior 222(1)(d) right will own the water share as tenants in common in equal portions.
26. Take and use licences held by unincorporated associations

Note: where a take and use licence is held by an unincorporated association, then under clause 18(2) the ownership of the share is to be determined by agreement of all the members of the association; or, under clause 19(2), if agreement has not been reached within six months and a member seeks arbitration, by arbitration.

(1) Each managing Authority is responsible for identifying and labelling any take and use licence that it manages as the Minister's delegate which is held by an unincorporated association. This will enable a water share that is created to be shown as unconfirmed, referring to clause 18(2).

(2) DSE in conjunction with managing Authorities may develop guidelines on how the identification in sub-rule (1) is to be carried out.

(3) The Registrar may develop guidelines setting out what is required in a submission to the Registrar from the members of the association on an agreement the members have reached about ownership of a water share. The guidelines may cover evidence or assurances about who are the members, and justification for a particular manner of ownership.

(4) The Registrar must report two years after the appointed day, and subsequently at yearly intervals, on water shares covered by clause 18 that remain unconfirmed, and if such a water share remains unconfirmed five years after the appointed day, the Minister may, after appropriate consultation with the managing Authority and other parties, either —

(a) determine who owns the water share;

or, where some amount of the fees imposed by an Authority under section 33AJ of the Act remain unpaid —

(b) request that the Authority exercise its power of sale under section 287B of the Act.

27. Transfer of unconfirmed water shares

An unconfirmed water share may only be transferred if the conditions set out in clause 32 are met and relevant rules made by the Minister under section 33AZ of the Act are followed. If an unconfirmed water share is transferred in this way, when the Registrar records the changed ownership of the water share, the Register shall no longer record the water share as being “unconfirmed”.

Note: where a water share is unconfirmed in accordance with clause 17(1)(a) or (b) or 18(2) and the ownership is resolved either by agreement or by arbitration, the resolution may involve splitting the water share into two or more water shares.
PART 7 – MORTGAGES

28. Form and manner of notification

(1) Where a mortgage over the whole or any part of a parcel of land in a holding is to apply under clause 26 to a water share created from a prior joint right, prior water right or prior domestic and stock right relating to that holding, the notification to be made by the Authority in accordance with clause 25 shall be by way of a letter as set out in sub-rule (2).

(2) The letter referred to in sub-rule (1) must —
(a) be addressed to all the owners of the parcels of land that comprise the holding; and
(b) be sent to the billing address in the records of the managing Authority for the holding; and
(c) to the extent practicable, be sent more than four weeks prior to the appointed day; and
(d) contain the date of the appointed day; and
(e) contain the following information valid immediately prior to the date of forwarding the letter so far as this information can be reasonably ascertained —

for each parcel of land in the holding:
A. the volume and folio references, and
B. the identifying numbers of any mortgages that are recorded against the parcel in the register held under the Transfer of Land Act 1958, and
C. the name of the existing mortgagees.

Note: the letter is required to be addressed to the owners of all the parcels in the holding, including ones without mortgages, and to list all the parcels. The owners of parcels without mortgages may be affected because the mortgage could extend to water shares of which they will be some of the owners.
PART 8 – DISPUTE RESOLUTION

29. Review panels

Clause 33(2)(c) enables the conversion rules to provide for any dispute resolution procedures that an Authority, the Minister or the Registrar is required to carry out in connection with identifying, verifying, apportioning and calculating information relating to the new rights.

(1) The Minister may establish one or more panels to review and recommend a resolution of any matter where a managing Authority and a landowner or other interested party cannot reach agreement, or where there is an other kind of issue or anomaly.

(2) A panel will be made up of three persons, each of whom is independent of the managing Authority and DSE, and who between them have appropriate expertise.

(3) The panels will be required to—
   (a) make their recommendations to the Minister based on the application of the rules;
   (b) follow any additional terms of reference or procedures set down by the Minister.

(4) An application to be heard by a panel must be made within 12 months of the appointed day.

JOHN THWAITES
Minister for Water, Environment and Climate Change

Date: 20/6 2007