Water Act 1989

Conversion Rules for Declared Water Systems in Southern Victoria

I, Tim Holding, 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 Declared Water Systems in Southern Victoria.

2. Purpose

The purpose of this determination is to set out rules that are to apply to the conversion of rights in the two regulated, surface water systems in Southern 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 the day on which they are made.

5. Application

(1) These rules apply to the following two water systems, as defined in the Order Declaring Water Systems in Southern Victoria 2008:

(a) Thomson/Macalister water system,

(b) Werribee water system.

(2) Gippsland and Southern Rural Water Corporation is the managing Authority in respect of these water systems.

*Explanatory notes are in italics; they do not form part of the Conversion Rules.
b) Thomson Reservoir and the Thomson River downstream of Thomson Reservoir to the confluence of the Latrobe River (including the pool formed by, and immediately upstream of Cowwarr Weir); and

c) Rainbow Creek; and

d) Cowwarr Channel; and

e) Macalister irrigation district.

Werribee water system

a) Pykes Creek Reservoir and Pykes Creek downstream of Pykes Creek Reservoir to the confluence of the Werribee River; and

b) Werribee River downstream of the confluence of Pykes Creek to the bluestone ford below Maltby Bypass (including weir pools and Melton Reservoir); and

c) Lake Merrimu; and

d) Bacchus Marsh irrigation district; and

e) Werribee irrigation district.

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

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.

“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:
Irrigators in the Thomson-Macalister water system have had historic access to spill water, when water is available under the bulk entitlement but cannot be stored. This is being recognised in the bulk entitlement held by the managing Authority.

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 B below.

<table>
<thead>
<tr>
<th>A – Irrigation district</th>
<th>B – Multiplier</th>
</tr>
</thead>
<tbody>
<tr>
<td>Macalister</td>
<td>0.50</td>
</tr>
<tr>
<td>Werribee</td>
<td>0.50</td>
</tr>
<tr>
<td>Bacchus Marsh</td>
<td>0.50</td>
</tr>
</tbody>
</table>

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

Water right in the Macalister irrigation district
100 ML, & sales allocated as % water right

High-reliability water share
100 ML

Low-reliability water share
50 ML
(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 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 B.

<table>
<thead>
<tr>
<th>A - Water system</th>
<th>B - Multiplier</th>
</tr>
</thead>
<tbody>
<tr>
<td>Thomson/Macalister</td>
<td>0.50</td>
</tr>
<tr>
<td>Werribee</td>
<td>0.50</td>
</tr>
</tbody>
</table>

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

- Take and use licence on Macalister-Thomson:
  - 100 ML licensed volume for irrigation, sales allocated as % licensed vol.

High-reliability water share
100 ML

Low-reliability water share
50 ML

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

Note: The above conversion rules grant irrigators a firm entitlement to sales water. In return, the environment benefits from the following initiatives –

- for the Thomson/Macalister system, replacement of the existing volumetric limit on water taken for irrigation with a climatically-varying cap set at 2003/04 levels of development, thus protecting the environment from gradual upwards creep in irrigator usage; and
- for the Werribee system, surrender of low-reliability entitlements when and if long-term entitlements to recycled water are viable.

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, the 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 to DSE 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; and

(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.
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. These 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. 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:

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

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:

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

(1) 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 and spill 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 and spill water factor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bacchus Marsh</td>
<td>1.50</td>
</tr>
<tr>
<td>Werribee</td>
<td>1.50</td>
</tr>
<tr>
<td>Macalister</td>
<td>1.68</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</th>
<th>B – Sales and spill water factor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Thomson/Macalister</td>
<td>1.68</td>
</tr>
<tr>
<td>Werribee</td>
<td>1.50</td>
</tr>
</tbody>
</table>

**Notes:**

The above “sales and spill water factors” are based on what irrigators could have used on their land, if they had used 50% sales and (for Thomson/Macalister water system) the average usage of spill water in the most recent year with maximum sales availability (18%).

The term “entitlement”, as defined above, is solely for the purpose of calculating annual use limits. It is not the basis on which prior rights are being converted to unbundled water entitlements, as this is covered by conversion rules 7 and 8. In particular, the use of 18% for the spill contribution to the above Thomson/Macalister factor has no influence on the amount of spill water available to irrigators.

Where initial data indicates that entitlement may exceed 7 ML/HA, the managing authority will review the data and correct it where necessary to ensure that it properly represents entitlement held against the relevant holding.

“**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:

(a) between 1 July 1998 and 30 June 2007 for the Thomson/Macalister water system; and

(b) between 1 July 1998 and 30 June 2007 for the Werribee water system.

The holding for these purposes is the holding in the form in which it existed at 30 June 2007.
Notes:

Holdings may have been amalgamated or subdivided since 1 July 1998. If they have, 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).

Use for 2007/08 has been excluded from the above definition because data cannot be finalised and tested in time for conversion. Inclusion of 2007/08 usage may have resulted in a larger annual use limit for some holdings, and the managing authority will provide a streamlined process for such landholders to apply for an increased annual use limit.

Where initial data indicates that history of use may exceed 7 ML/ha, the managing authority will review the data and correct it where necessary to ensure that it properly represents actual use on the relevant holding.

(2) In determining the parameters under this rule, the resulting volumes are to be rounded up to the nearest 0.1 of a megalitre.

12. Annual use limits

Note: The annual use limit applies to water from a declared water system, and therefore permits usage of water from allocations made to a high- or low-reliability water share or from the spill water in any proportion. It does not include groundwater which is not part of the declared water system. It would need to be reviewed if groundwater became a declared water system.

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) will be whichever is the greater of –

(a) entitlement, and

(b) history of use.

13. Annual use limits for take and use licences

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, 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 (1) does not apply, then the annual use limit will be the greater of –

(a) entitlement, and

(b) history of use.
14. Water-use licences created from multiple prior rights

When more than one water-use licence is created under clauses 4(3) or 5(3) (from a prior joint right or prior water right) or clause 13(3) (from a take and use licence) for the same or predominantly the same land, then the rules for calculating annual use limits set out above are to apply, except that the same 12-month period must be used to determine history of use for each annual use limit. If this same-year requirement leads to a total annual use limit that is less than the sum of the individually calculated limits, the allowance for total annual use will be divided between the 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 some properties on the edge of Macalister and Bacchus Marsh irrigation districts. The authority cannot simply cancel one of the two licences. (It may be able to get agreement to cancellation.)

15. 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 16(1)(c).

16. 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, and history of use, 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 14.

(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, standard conditions, along the lines of (a) and (b), are set under section 64Y of the Act. Under section 64AE of the Act, they will take precedence if there is any inconsistency with the old conditions.
PART 4 – DELIVERY ENTITLEMENTS

17. 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 Macalister irrigation district—
   Multiply 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 the volume recorded in the prior holdings register as at 30 June 2008, by 0.0115.

(2) For the Bacchus Marsh irrigation district—
   Multiply 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 the volume recorded in the prior holdings register as at 30 June 2008, by 0.0185.

(3) For the Werribee irrigation district—
   Multiply 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 the volume recorded in the prior holdings register as at 30 June 2008, by 0.0155.

(4) In applying the multipliers under this rule, the resulting volumes are to be rounded up to the nearest 0.001 of a megalitre per day.

18. 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 delivered 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.*

19. 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 Bacchus Marsh, Macalister and Werribee 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

20. 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.

(1) 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:

(a) For the Thomson/Macalister water system -

Multiply the sum of the volumes of the take and use licence (for all purposes) by 0.0115.

(This follows the standard used by Southern Rural Water for delivery within the Macalister irrigation district)

(b) For the Werribee water system -

Multiply the sum of the volumes of the take and use licence (for all purposes) by 0.0155.

(This follows the standard used by Southern Rural Water for delivery within the Werribee irrigation district.)

(c) In applying the multipliers under this rule, the resulting volumes are to be rounded up to the nearest 0.001 of a megalitre per day.

(2) The following additional condition as to the maximum amounts of water which may be taken in particular periods or circumstances is to be included on each works licence in the Thomson/Macalister and the Werribee water systems:

The amount of water that may be taken through the works referred to in the works licence may be limited by the managing authority to a proportion of the available water allocation, if the managing authority has declared, at the time of making a seasonal determination, that there is insufficient water available for delivery in the relevant part of the water system.
The condition in the above rule is to allow the managing authority to restrict the taking of allocations in rare circumstances where water cannot be delivered to a part of the water system because it is available only in a downstream part.

Notes: ideally, one set of works should not be subject to more than one works licence. Southern Rural Water will move to having one works licence per set of works over time. After the appointed day in the Thomson/Macalister and Werribee water systems, initially the existence of a works licence will continue to be recognised for every combined sections 51 & 67 licence.

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 already be 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.)

21. 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 and mortgages on the water share are deemed to be the same as the ownership and mortgages, as at the appointed day, of and on 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 that is entirely 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)”; and

(b) will forward, or arrange for the managing Authority to forward, a copy of the amended water share record to the owners of the other 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 applied from the date of the notification 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 33A 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 no longer matches 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 land 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 land 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 land 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. In these cases, Rule 21(6) will still be used without the need for the recommendation under sub-rule 21(2)(a).

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.
22. **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.

23. **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.
24. **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.

25. **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

26. 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

27. 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.

TIM HOLDING
Minister for Water

Date: 13/06/2008