

MURRAY-DARLING BASIN AGREEMENT AMENDING AGREEMENT 2006

AGREEMENT made this fourteenth day of July 2006 between

THE COMMONWEALTH OF AUSTRALIA (the "**Commonwealth**"),
THE STATE OF NEW SOUTH WALES ("**New South Wales**"),
THE STATE OF VICTORIA ("**Victoria**"),
THE STATE OF QUEENSLAND ("**Queensland**"),
THE STATE OF SOUTH AUSTRALIA ("**South Australia**"), and
THE AUSTRALIAN CAPITAL TERRITORY ("**Australian Capital Territory**").

WHEREAS on 24 June 1992, the Commonwealth, New South Wales, Victoria and South Australia entered into the Murray-Darling Basin Agreement which:

- (a) was approved by the Parliament of the Commonwealth and the Parliaments of the said States; and
- (b) has subsequently been deemed to be amended from time to time under clause 50 or 134 of that Murray-Darling Basin Agreement; and
- (c) was amended by the Murray-Darling Basin Amending Agreement made on 3 June 2002,

(together called the "**Principal Agreement**");

AND WHEREAS under the provisions of clause 134 of the Principal Agreement, Queensland became a party to the Principal Agreement on the terms set out in Schedule D to the Principal Agreement:

AND WHEREAS under the provisions of clause 134 of the Principal Agreement, that Agreement was amended in May 2006 by the decision of the Murray-Darling Basin Ministerial Council to consent to the Australian Capital Territory becoming a party to the Principal Agreement;

AND WHEREAS the parties wish to further amend the Principal Agreement to facilitate the operation of the Murray-Darling Basin Commission's water business on appropriate commercial principles and for other reasons;

AND WHEREAS the Murray-Darling Basin Ministerial Council has approved the provisions set out below on 23 July 2003 and 30 September 2005:

THE PARTIES AGREE AS FOLLOWS:

1. INTERPRETATION

In this agreement, a reference to a clause, sub-clause, paragraph, sub-paragraph, Schedule or Appendix is a reference to a clause, sub-clause, paragraph, sub-paragraph, Schedule or Appendix of or to the Principal Agreement, respectively.

2. CLAUSE 2

(1) Omit "67(1)(a)" from the definition of "annual estimates." Insert instead "68(1)(a)".

(2) Insert in alphabetical order:

" **Commission's water business**" means those activities of the Commission relating to:

- (a) the construction, operation, maintenance and renewal of works on, adjacent to, or connected to the upper River Murray or the River Murray in South Australia; and
- (b) the execution of the provisions of this Agreement concerning sharing water between State Contracting Governments; and

(c) the provision of other services relating to water, to State Contracting Governments and other persons ;

"financial year" means the twelve months beginning on 1 July ; "

- (3) Omit all the words after "out" in the definition of "Commonwealth auditor". Insert instead "an audit referred to in sub-paragraph 78(1)(a)(i) ".
- (4) After the word "programs" in the definition of "measures" insert "(including any activities for the purpose of conserving or enhancing the environment) but does not include any activities of the Commission's water business".
- (5) Omit all the words after "out" in the definition of "State auditor". Insert instead "an audit referred to in paragraph 78(1)(b)".
- (6) Omit the definition of "supplementary estimates".

3. CLAUSE 49

Omit clause 49. Insert instead:

"49(1) Works or measures from time to time included in a Schedule to this Agreement or authorised pursuant to clause 50 must be constructed, operated, maintained, renewed or implemented (as the case may require):

- (a) in accordance with the provisions of this Agreement and any Acts approving the same; and
 - (b) by the Contracting Government from time to time nominated by the Ministerial Council for the purpose.
- (2) A Contracting Government described as a "Nominated Government" in Schedule A with respect to a work is deemed to have been nominated by the Ministerial Council under paragraph 49(1)(b) to construct, operate, maintain and renew that work, until the Ministerial Council nominates another Contracting Government for one or more of those purposes, with respect to that work."

4. CLAUSE 50

- (1) After "\$2,000,000" in sub-clause (2) insert ", or such other amount determined by the Ministerial Council from time to time".
- (2) After "\$2,000,000" in sub-clause (3) insert ", or such other amount determined by the Ministerial Council from time to time".

5. CLAUSE 51

After "\$1,000,000" in sub-clause (2) insert ", or such other amount determined by the Ministerial Council from time to time,".

6. CLAUSE 52

After "\$2,000,000" in sub-clause (5) insert ", or such other amount determined by the Ministerial Council from time to time".

7. CLAUSE 54

After "\$2,000,000" in sub-clause (1) insert ", or such other amount determined by the Ministerial Council from time to time".

8. CLAUSE 55

- (1) Omit the words "construction or maintenance" from paragraph (3)(a). Insert instead:
":
 - (i) investigations, construction and administration; or
 - (ii) major or cyclic maintenance; or
 - (iii) operation and maintenance,".

(2) After "as" in sub-clause (4) insert "operation and".

9. CLAUSE 59

Omit "this or the former Agreement". Insert instead "paragraph 49(1)(b)".

10. CLAUSE 62

Omit the words "which constructed a work under this or the former Agreement".

Insert instead "nominated to operate a work pursuant to paragraph 49(1)(b)".

11. CLAUSE 65

Omit clause 65. Insert instead:

"Definitions

65. In this Part:

"annuity contribution" has the meaning set out in sub-clause 67(2) ;

"financial accommodation" means a financial benefit or assistance to obtain a financial benefit arising from or as a result of:

- (a) a loan;
- (b) issuing, endorsing or otherwise dealing in promissory notes;
- (c) drawing, accepting, endorsing or otherwise dealing in bills of exchange;
- (d) issuing, purchasing or otherwise dealing in securities;
- (e) granting or taking a lease of any real or personal property for financing but not for operating purposes;
- (f) any other arrangement approved by the Ministerial Council ;

"investigations, construction and administration costs" means the costs of:

- (a) investigating and constructing works set out in Schedule A; and
- (b) investigating and constructing any other works and implementing measures authorised under this Agreement; and
- (c) studies, programs, surveys and investigations carried out pursuant to clause 39; and
- (d) establishing systems referred to in clause 41; and
- (e) systems established pursuant to a request made under paragraph 43(b); and
- (f) special action taken under sub-clause 48(5) which the Ministerial Council has determined to be investigations, construction and administration costs; and
- (g) any payment by the Commission in respect of the construction of works under sub-clause 51(1); and
- (h) complying with the direction given under sub-clause 54(2); and
- (i) dismantling works referred to in sub-clause 64(2); and
- (j) any payment by the Commission under paragraph 131(a); and
- (k) administrative and other expenses of the Commission, the Ministerial Council and the Community Advisory Committee constituted under sub-clause 14(1) ;

"major or cyclic maintenance" has a meaning determined by reference to the guidelines established by the Commission under sub-clause 67(4) ;

"operation and maintenance costs" means the costs of:

- (a) operating and maintaining works set out in Schedule A; and

- (b) operating and maintaining any other works authorised under this Agreement; and
- (c) operating and maintaining systems referred to in clause 41; and
- (d) operating and maintaining systems established pursuant to a request made under paragraph 43(b); and
- (e) special action taken under sub-clause 48(5) which the Ministerial Council has determined to be operation and maintenance costs; and
- (f) any payment made by the Commission in respect of the operation or maintenance of works under sub-clause 51(1); and
- (g) such dredging or snagging carried out under clause 61 which the Commission has resolved to meet; and
- (h) any payment made by the Commission under paragraph 131(b) ;

"**security**" includes inscribed stock and debenture, bond, debenture stock, note or any other document creating, evidencing or acknowledging indebtedness in respect of financial accommodation, whether constituting a charge on property of the Commission or not."

12. CLAUSE 66

Omit clause 66. Insert instead:

"Apportionment of Costs

66. (1) The Ministerial Council, after considering any recommendation of the Commission, must determine:
- (a) what contribution, if any, is to be made by any State or Territory becoming a party pursuant to clause 134; and
 - (b) whether some or all of that contribution is to be made as a lump sum or in a comparable manner to a manner provided for in sub-clause 66(3), (4) or 67(2).
- (2) Subject to sub-clause 66(1), the Ministerial Council:
- (a) may, on the recommendation of the Commission, from time to time determine which proportion of the services provided by the Commission's water business is attributable to each State Contracting Government; and
 - (b) must, at intervals not exceeding five years, reconsider the proportions determined under paragraph 66(2)(a); and
 - (c) may, on the recommendation of the Commission, alter the proportions determined under paragraph 66(2)(a).
- (3) Unless the Ministerial Council decides otherwise and subject to any decision of the Ministerial Council under sub-clause 66(1), a State Contracting Government must contribute to operation and maintenance costs in the relevant proportion determined under sub-clause 66(2).
- (4) Unless the Ministerial Council decides otherwise and subject to any decision by the Ministerial Council under sub-clause 66(1) and the provisions of clause 67:
- (a) the Commonwealth Government must contribute one-quarter of all investigations, construction and administration costs after first deducting any contribution to those costs made by any State or Territory:
 - (i) becoming a party pursuant to clause 134; or
 - (ii) pursuant to any understanding reached between that State or Territory and the Contracting Governments; and
 - (b) the State Contracting Governments must together contribute three-quarters of all investigations, construction and administration costs:

- (i) relating to the Commission's water business, in the relevant proportions determined under sub-clause 66(2); and
 - (ii) relating to measures implemented under this Agreement, in equal shares.
- (5) The Ministerial Council, after considering any recommendation by the Commission, must determine whether the costs of any special action taken under sub-clause 48(5) are investigations, construction and administration costs or operation and maintenance costs."

13. CLAUSE 67

Omit clause 67. Insert instead:

"Borrowings and Annuity Contributions

67. (1) The Commission may, with the prior approval of the Ministerial Council, obtain financial accommodation with respect to any:
- (a) investigations, construction and administration costs; and
 - (b) major or cyclic maintenance costs,
- incurred, or which the Commission proposes to incur, for the purposes of the Commission's water business.
- (2) The Ministerial Council, on the recommendation of the Commission, may from time to time determine that a Contracting Government must make an annual annuity contribution in respect of either or both of:
- (a) investigations, construction and administration costs; and
 - (b) major or cyclic maintenance costs,
- which the Contracting Government might otherwise be required to contribute under sub-clause 66(1), (3), paragraph 66(4)(a) or sub-paragraph 66(4)(b)(i), in any future year.
- (3) In fixing any annuity contribution under sub-clause 67(2), the Ministerial Council must have regard to the Commission's estimate of costs which will be incurred during the next ensuing 30 years (or such other period as the Commission determines) in relation to either or both of:
- (a) the construction or renewal; and
 - (b) major or cyclic maintenance,
- of works constructed, operated, maintained or renewed for the purposes of the Commission's water business (as the case requires) including any interest or other sums receivable or payable in respect of any income received, or any financial accommodation obtained, by the Commission from time to time in relation to those works.
- (4) For the purposes of this Part, the Commission must establish guidelines for determining what is, and what is not, major or cyclic maintenance."

14. CLAUSE 68

Omit clause 68. Insert instead:

"Annual and forward estimates

68. (1) The Commission must prepare:
- (a) detailed annual estimates of its known and anticipated expenditure for the next financial year; and
 - (b) forward estimates of its known and anticipated expenditure for the two successive financial years following the next financial year.
- (2) Annual and forward estimates must:

- (a) be in such form as may from time to time be agreed between the Commission and the Ministerial Council; and
 - (b) show the estimated amount to be contributed by each Contracting Government; and
 - (c) be sent to each Contracting Government before the end of March in each year; and
 - (d) be approved by the Ministerial Council,
- and may be revised from time to time with the approval of the Ministerial Council."

15. CLAUSE 69

Omit clause 69. Insert instead:

"69. Each Contracting Government must pay any amount payable by it under clause 66 or 67 as and when required by the Commission."

16. CLAUSE 72

(1) Omit sub-clause (1). Insert instead:

"(1) Subject to sub-clause 72(3), the Commission must apply money paid by the Contracting Governments in accordance with the relevant estimates referred to in paragraph 68(1)(a)."

(2) In sub-clause (2):

- (a) omit "annual or supplementary" from paragraph (a). Insert after "estimates", "prepared or revised under paragraph 68(1)(a)";
- (b) omit "the annual or supplementary" from paragraph (b). Insert instead "those";
- (c) after "financial year;" in paragraph (b) insert "and".

(3) Omit sub-clause (3). Instead insert:

"(3) The Commission may accumulate:

- (a) any sums received under sub-clause 66(3) or (4) for the purposes of the Commission's water business, but not expended in any year; and
- (b) any annuity contributions received under clause 67,
for use in subsequent years."

(4) Omit sub-clause (4). Instead insert:

"(4) Any sum referred to in paragraph 72(3) and any interest thereon must:

- (a) in the case of sums received under sub-clause 66(3), only be expended on operation and maintenance costs; and
- (b) in the case of sums received under sub-clause 66(4), only be expended on investigations, construction and administration costs; and
- (c) in the case of annuity contributions received under clause 67:
 - (i) from a State Contracting Government, only be expended on either:
 - (A) investigations, construction and administration costs; or
 - (B) major or cyclic maintenance costs,
 of the Commission's water business, as the case requires; or
 - (ii) from the Commonwealth, only be expended on investigations, construction and administration costs of the Commission's water business."

17. CLAUSE 73

In sub-clause (1):

- (a) omit "annual and supplementary"; and
- (b) insert after "estimates", "referred to in paragraph 68(1)(a)".

18. CLAUSE 75

(1) Omit sub-clause (1). Insert instead:

"(1) The unexpended balance of moneys paid to the Commission by Contracting Governments for implementing measures in any financial year:

- (a) shall, with the approval of the Ministerial Council, be available for expenditure in a subsequent financial year upon any item in the annual estimates approved by the Ministerial Council for the relevant year; or
- (b) may be used to reduce the amounts which would otherwise be payable by each Contracting Government under clause 69 in that subsequent financial year."

(2) In sub-clause (2):

- (a) omit "any". Insert instead "the".
- (b) after "balances" insert "of moneys referred to in sub-clause 75(1)".

(3) Omit sub-clause (3). Insert instead:

"(3) Any unexpended balance referred to in sub-clause 75(1) must only be expended on implementing measures under this agreement."

19. CLAUSE 77

Omit sub-clause (2). Insert instead:

"(2) The Commission must determine how proceeds from the disposal of surplus assets are:

- (a) to be paid to the Commission and credited against future capital and renewal contributions by; or
- (b) to be distributed among,

the Contracting Governments, having regard to the contributions made by each Contracting Government to the acquisition of those assets."

20. CLAUSE 78

(1) Omit paragraphs (a) and (b) from sub-clause (1). Insert instead:

"(a) must be audited annually by:

- (i) an auditor appointed by the Ministerial Council; or
- (ii) if no appointment is made under sub-paragraph 78(1)(a)(i), the Commonwealth auditor; and

(b) may be audited at any reasonable time by an auditor appointed by a Contracting Government."

(2) Omit sub-clause (2). Insert instead:

"(2) An auditor referred to in paragraph 78(1)(a) must promptly inform each Contracting Government of any significant irregularity revealed by an audit."

(3) Omit sub-clause (4). Insert instead:

"(3) The Commission must, at all reasonable times, make all its relevant accounts and records available to an auditor acting under sub-clause 78(1) or any person acting on behalf of that auditor."

- (4) Renumber sub-clauses (5) and (6) as (4) and (5), respectively.
- (5) (a) Renumber sub-clause (7) as sub-clause (6).
- (b) Omit "sub-clause 78(1)" from sub-clause (6). Insert instead "paragraph 78(1)(a)".

21. CLAUSE 80

Omit clause 80. Insert instead:

"80. The Commission may invest money received by it:

- (a) in accordance with any guidelines established by the Ministerial Council; or
- (b) in such manner as may be directed by the Ministerial Council,
- but not otherwise."

22. CLAUSE 81

Omit sub-clause (3). Insert instead:

"(3) Money paid to the Commission under this clause must either:

- (a) be expended on investigations, construction and administration costs; or
- (b) applied in accordance with sub-clause 75(1)."

23. CLAUSE 82

Omit sub-clause (4). Insert instead:

"(4) Money paid to the Commission under this clause must either:

- (a) be expended on investigations, construction and administration costs; or
- (b) applied in accordance with sub-clause 75(1)."

24. SCHEDULE C, CLAUSE 22

Omit "7(3)" from sub-clause (2). Insert instead "16(3)".

25. SCHEDULE C, APPENDIX 2

After Appendix 1 to Schedule C insert:

"APPENDIX 2

AUTHORISED JOINT WORKS AND MEASURES

Description of works	Location	Nominated Government	Status
Barr Creek Drainage Diversion Scheme Saline water diversion from Barr Creek with disposal to the Tutchewop Lakes	Northern Victoria approximately 20 km north of the township of Kerang	Victoria	Former Salinity and Drainage Work
Buronga Salt Interception Scheme (part) Groundwater pumping with disposal to Mourquong basin	Southwest New South Wales on the River Murray between Mildura Weir and Mourquong	New South Wales	Former Salinity and Drainage Work
Mallee Cliffs Salt Interception Scheme Groundwater pumping with disposal to evaporation basin	Southwest New South Wales on the River Murray approximately 30 km	New South Wales	Former Salinity and Drainage Work

Description of works	Location	Nominated Government	Status
adjacent to Mallee Cliffs National Park	east of Mildura opposite Lambert Island in Victoria		
Mildura-Merbein Salt Interception Scheme (part) Groundwater pumping with disposal to Wargan evaporation basins	Northwest Victoria on the Southern side of the River Murray between Mildura and Merbein	Victoria	Former Salinity and Drainage Work
Rufus River Groundwater Interception Scheme Groundwater pumping with disposal to evaporation basins on the western side of lake Victoria	On both sides of Rufus River between the outlet from Lake Victoria and the River Murray	South Australia	Former Salinity and Drainage Work
Waikerie Salt Interception Scheme Groundwater pumping with disposal to Stockyard Plain evaporation basin	Southern side of the River Murray from Holder Bend (River distance 392 km) to the Toolunka Reach (River distance 371 km)	South Australia	Former Salinity and Drainage Work
Woolpunda Salt Interception Scheme Groundwater pumping with disposal to Stockyard Plain evaporation basin	Both sides of the River Murray from Overland Corner to Holder Bend in South Australia	South Australia	Former Salinity and Drainage Work
Pyramid Creek Salt Interception Scheme Groundwater pumping with disposal to a salt harvesting pond complex	Along Pyramid Creek for 12 km from Flannery's Bridge to the Box Creek Regulator	Victoria	Basin Salinity Management Strategy Work"

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26. SCHEDULE D, CLAUSE 3

To avoid doubt and to allow the Parties to comply with sub-clause 134(6) of the Principal Agreement:

(1) After sub-clause 3(1) insert:

"(1A) Sub-clauses 38(1) and 38(3) of the Agreement only apply to the State of Queensland in respect of an act, omission or loss incurred, in relation to the bona fide execution of powers—

(a) in or related to the State of Queensland; or

(b) under a provision of the Agreement as it applies to the State of Queensland."

(2) After sub-clause 3(4) insert:

"(5) Nothing in the Agreement requires the State of Queensland—

- (a) to contribute to the costs of, or associated with, remedying any actual or anticipated damage referred to in paragraph 51(1)(c) of the Agreement; or
- (b) to meet any compensation for damage paid under clause 83 of the Agreement,

except where the State of Queensland has contributed to the construction, maintenance or operation expenses of the works to which the costs or compensation relate."

EXECUTED as an agreement

SIGNED by The Honourable John Winston Howard MP
Prime Minister of the Commonwealth of Australia
 in the presence of—

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SIGNED by The Honourable Morris Iemma MP
Premier of New South Wales
 in the presence of—

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SIGNED by The Honourable Steve Bracks MP
Premier of Victoria
 in the presence of—

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SIGNED by The Honourable Peter Beattie MP
Premier of Queensland
 in the presence of—

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SIGNED by The Honourable Mike Rann MP
Premier of South Australia
 in the presence of—

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SIGNED by Jon Stanhope MLA
Chief Minister of the Australian Capital Territory
 in the presence of—

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