



New South Wales

Water Management (General) Amendment (Cane Drains and Replacement Access Licences) Regulation 2010

under the

Water Management Act 2000

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Water Management Act 2000*.

PHILLIP COSTA, MP
Minister for Water

Explanatory note

The objects of this Regulation are:

- (a) to provide that a person who takes water from a water source through an artificial channel (cane drain) used only for the purposes of establishing plantings of sugar cane in certain areas is exempt from the need to have an access licence for taking that water, and
- (b) to make provision with respect to entitlements under the *Water Act 1912* that authorise the taking of water from certain water sources, being entitlements that are to become access licences to which Part 2 of Chapter 3 of the *Water Management Act 2000* applies, and
- (c) to provide for the creation of new access licences that authorise the taking of tidal pool water from those water sources (for which no entitlement has previously been required under the *Water Act 1912*).

This Regulation is made under the *Water Management Act 2000*, including section 400 (1) (the general regulation-making power) and 400 (2) (the power to make exemptions) and clause 1 of Schedule 9 (which empowers the making of regulations of a savings or transitional nature).

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Access Licences) Regulation 2010

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and Replacement Access Licences) Regulation 2010**

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Water Management Act 2000

1 Name of Regulation

This Regulation is the *Water Management (General) Amendment (Cane
Drains and Replacement Access Licences) Regulation 2010*.

2 Commencement

This Regulation commences on 17 December 2010 and is required to be
published on the NSW legislation website.

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[1] Clause 18 Exemption from requirement for access licence

Insert after clause 18 (1) (i):

- (j) any person taking water from an artificial channel where:
 - (i) the water is taken only for the purpose of watering to establish agricultural plantings of sugar cane, and
 - (ii) the volume of water taken does not exceed 0.05ML per hectare of land on which sugar cane is being established in any continuous 12-month period, and
 - (iii) the channel was constructed for the primary purpose of draining water from land on which sugar cane is grown, and
 - (iv) the channel does not have banks that are above ground level, and
 - (v) the channel is located in an area to which one of the following plans applies:
 - (A) the *Water Sharing Plan for the Tweed River Area Unregulated and Alluvial Water Sources 2010*,
 - (B) the *Water Sharing Plan for the Richmond River Area Unregulated, Regulated and Alluvial Water Sources 2010*, and
- (iv) any work used to take the water is not fixed to the land.

[2] Part 3, Division 13

Insert after clause 29ZP:

Division 13 Replacement access licences for entitlements for certain Murrah-Wallaga, Richmond, Towamba and Tweed River Water Sources (17 December 2010)

Subdivision 1 Preliminary

29ZQ Definitions

In this Division:

Bermagui River Water Source means the water source of that name identified in the *Water Sharing Plan for the*

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confirmed history of water usage, in relation to eligible land, means information that indicates the volume of tidal pool water that has been used on the land, and the purposes for which that water has been used, at any time between 17 December 2000 and 17 December 2010, established to the satisfaction of the Minister.

Coraki Area Water Source means the water source of that name identified in the *Water Sharing Plan for the Richmond River Area Unregulated, Regulated and Alluvial Water Sources 2010*.

eligible land means any land on which the landholder of the land has used tidal pool water at any time between 17 December 2000 and 17 December 2010.

Merimbula Lake Tributaries Water Source means the water source of that name identified in the *Water Sharing Plan for the Towamba River Unregulated and Alluvial Water Sources 2010*.

Pambula Lake Tributaries Water Source means the water source of that name identified in the *Water Sharing Plan for the Towamba River Unregulated and Alluvial Water Sources 2010*.

replacement access licence means an access licence that is taken to have arisen under this Subdivision.

tidal pool water means water taken from a tidal pool water source.

tidal pool water source means:

- (a) the Bermagui River Water Source, or
- (b) the Coraki Area Water Source, or
- (c) the Merimbula Lake Tributaries Water Source, or
- (d) the Pambula Lake Tributaries Water Source, or
- (e) the Towamba Estuary Tributaries Water Source, or
- (f) the Tweed Estuary Water Source, or
- (g) the Wapengo Lagoon Tributaries Water Source, or
- (h) the Wyrallah Area Water Source.

Towamba Estuary Tributaries Water Source means the water source of that name identified in the *Water Sharing Plan for the Towamba River Unregulated and Alluvial Water Sources 2010*.

Tweed Estuary Water Source means the water source of that name identified in the *Tweed River Area Unregulated and Alluvial Water Sources 2010*.

Wapengo Lagoon Tributaries Water Source means the water source of that name identified in the *Water Sharing Plan for the*

Murrah-Wallaga Area Unregulated and Alluvial Water Sources 2010.

Wyrallah Area Water Source means the water source of that name identified in the *Water Sharing Plan for the Richmond River Area Unregulated, Regulated and Alluvial Water Sources 2010*.

Subdivision 2 Access licences for tidal pool water sources

29ZR Temporary exemption from requirements for certain access licences and approvals

- (1) All persons are exempt from:
 - (a) sections 60A (1) and (2), 60C (1)–(4) and 60D of the Act in relation to the taking of tidal pool water, and
 - (b) section 91A (1) of the Act in relation to the use of tidal pool water, and
 - (c) section 91B (1) of the Act in relation to:
 - (i) the use of any water supply work by which tidal pool water is taken (being a water supply work constructed before 17 December 2010), and
 - (ii) the maintenance and repair of any such work,for the period between 17 December 2010 and 17 December 2012 (inclusive).
- (2) Subclause (1) ceases to apply to a person in relation to land when the person is given notice under clause 29ZS of the terms and conditions of the person's replacement access licence for the land.
- (3) The Minister may in a particular case by notice in writing to a landholder of eligible land extend the period of the exemption conferred by subclause (1) in its application to the landholder if the Minister is satisfied that the extension is necessary to enable the Minister to establish the landholder's confirmed history of water usage.

29ZS Replacement access licences arising from confirmed history of water usage

- (1) A landholder of eligible land in respect of which there is a confirmed history of water usage is taken to hold an access licence (a *replacement access licence*), and such an access

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licence is taken to have arisen, on the following terms and conditions:

- (a) terms identifying:
 - (i) the category or subcategory of the licence, as determined by clause 29ZT, and
 - (ii) the share component of the licence, as determined by clause 29ZU or 29ZV, as the case requires, and
 - (b) the mandatory conditions referable to an access licence of the category or subcategory referred to in paragraph (a) (i).
- (2) A replacement access licence does not operate (and has no force or effect) until the Minister notifies the licence holder in writing of the terms and conditions of the licence referred to in subclause (1).
- (3) For the purpose of establishing the confirmed history of water usage for any eligible land, the Minister may require the landholder to furnish information relevant to that purpose.
- (4) The Minister is not required to issue a notice under subclause (2) if he or she is not satisfied that a confirmed history of water usage for eligible land has been established, whether because the landholder has failed to comply with a requirement under subclause (3) or otherwise.
- (5) This Subdivision does not operate:
- (a) to create a domestic and stock access licence (or an access licence of a subcategory of a domestic and stock access licence) in relation to land if:
 - (i) the land has frontage to a tidal pool water source, or
 - (ii) the share component of the licence, as determined by clause 29ZU, would be zero or negative, or
 - (b) to create an unregulated river access licence (or an access licence of a subcategory of an unregulated river access licence) if the share component of the licence, as determined by clause 29ZV, would be zero or negative.

Note. Because it is an access licence, a replacement access licence can be suspended, cancelled or compulsorily acquired under Division 6 of Part 2 of Chapter 3 of the Act, and discretionary conditions can be imposed under section 66. The licence holder will need to apply for any necessary water use approvals and water supply work approvals if he or she intends to take or use water under the authority of a replacement access licence.

29ZT Categories of replacement access licence

A replacement access licence is to be:

- (a) to the extent to which the confirmed history of water usage for the land indicates that tidal pool water has been used for domestic consumption or stock watering:
 - (i) if the water has been used for both domestic consumption and stock watering, a domestic and stock access licence, or
 - (ii) if the water has been used for domestic consumption only, a domestic and stock [domestic] access licence, or
 - (iii) if the water has been used for stock watering only, a domestic and stock [stock] access licence, and
- (b) to the extent to which the confirmed history of water usage for the land indicates that tidal pool water has been used otherwise than for domestic consumption or stock watering:
 - (i) an unregulated river access licence, or
 - (ii) an access licence of any subcategory of an unregulated river access licence.

29ZU Share component for domestic and stock access licences

- (1) In relation to an entitlement or access licence in respect of the Tweed Estuary Water Source, the Wyrallah Area Water Source or the Coraki Area Water Source, the share component for a replacement access licence that is a domestic and stock access licence is to be as follows:
 - (a) except as provided by paragraphs (b) and (c), 4 megalitres,
 - (b) in the case of a domestic and stock [domestic] access licence, 1 megalitre,
 - (c) in the case of a domestic and stock [stock] access licence, 3 megalitres,subtracting from each such volume the volume of any entitlement under the former 1912 Act that authorised the taking of tidal pool water for domestic consumption or stock watering (or both).
- (2) In relation to an entitlement or access licence in respect of the Merimbula Lake Tributaries Water Source, Pambula Lake Tributaries Water Source, Towamba Estuary Tributaries Water Source, the Bermagui River Water Source or the Wapengo Lagoon Tributaries Water Source, the share component for a

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replacement access licence that is a domestic and stock access licence is to be as follows:

- (a) except as provided by paragraphs (b) and (c), 5.5 megalitres,
- (b) in the case of a domestic and stock [domestic] access licence, 1 megalitre,
- (c) in the case of a domestic and stock [stock] access licence, 4.5 megalitres,

subtracting from each such volume the volume of any entitlement under the former 1912 Act that authorised the taking of tidal pool water for domestic consumption or stock watering (or both).

29ZV Share component for unregulated river access licences

- (1) The share component for a replacement access licence that is an unregulated river access licence is to be the amount (in megalitres) equivalent to the maximum average volume of tidal pool water taken annually and used on the eligible land concerned, otherwise than for domestic consumption or stock watering, between 2000 and 2010 (inclusive).
- (2) The reference in subclause (1) to the maximum average volume of water is a reference to:
 - (a) if water was taken during only one of the years between 2000 and 2010, the volume of water taken during that year, or
 - (b) if water was taken during only 2 of the years between 2000 and 2010, one half of the sum of the volumes of water taken annually during those years, or
 - (c) if water was taken during 3 or more of the years between 2000 and 2010, one third of the sum of the 3 largest volumes of water taken annually during those years,subtracting from each such volume the volume of any entitlement under the former 1912 Act that authorised the taking of tidal pool water, other than an entitlement that authorised the taking of tidal pool water for domestic consumption or stock watering (or both).
- (3) To the extent to which the confirmed history of water usage for the land indicates that tidal pool water has been used for purposes other than:
 - (a) irrigation, or
 - (b) domestic consumption, or

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- (c) stock watering,
the volume of water taken in any year is to be calculated (in megalitres) on the basis of that history.
- (4) To the extent to which the confirmed history of water usage for the land indicates that tidal pool water has been used for the purposes of irrigation, the volume of water taken in any year for those purposes is to be calculated (in megalitres):
- (a) in the case of water taken from the Tweed Estuary Water Source, the Wyrallah Area Water Source or the Coraki Area Water Source:
- (i) if the confirmed history of water usage for the land indicates which crops specified in Table 1 to this clause were grown under irrigation on which parts of the land during that year, as the sum of the amounts obtained by multiplying the number of hectares of land on which each such crop was grown (as indicated by the confirmed history of water usage) by the factor specified in that Table in relation to that crop, or
- (ii) in any other case, as the amount obtained by multiplying the number of hectares of the land on which crops specified in Table 1 to this clause were grown under irrigation during that year (as indicated by the confirmed history of water usage for the land) by the smallest factor specified in that Table in relation to those crops, and
- (b) in the case of water taken from the Merimbula Lake Tributaries Water Source, the Pambula Lake Tributaries Water Source, the Towamba Estuary Tributaries Water Source, the Bermagui River Water Source or the Wapengo Lagoon Tributaries Water Source:
- (i) if the confirmed history of water usage for the land indicates which crops specified in Table 2 were grown under irrigation on which parts of the land during that year, as the sum of the amounts obtained by multiplying the number of hectares of land on which each such crop was grown (as indicated by the confirmed history of water usage) by the factor specified in that Table in relation to that crop, or
- (ii) in any other case, as the amount obtained by multiplying the number of hectares of the land on which crops specified in Table 2 were grown under irrigation during that year (as indicated by the

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confirmed history of water usage for the land) by the smallest factor specified in that Table in relation to those crops.

- (5) Where more than one crop has been grown on the same land in the same year, the land may not be counted more than once for the purposes of subclause (4), but the higher or highest of the factors relevant to those crops is to be used.
- (6) For the purposes of this clause, a reference to a crop specified in Table 1 or 2 to this clause includes a reference to any other crop that the Minister determines to be an equivalent to that crop.

Table 1 Tweed Estuary Water Source, Wyrallah Area Water Source and Coraki Area Water Source

Crop under irrigation	Factor
Winter cereal	2.5
Summer cereal	2
Citrus	3.5
Vines	1.5
Winter oilseeds	3.5
Summer oilseeds	2
Perennial pasture (dairy)	6.5
Perennial pasture (non-dairy)	4.5
Annual pasture	3
Lucerne	4.5
Vegetables	6
Orchards	5.5
Nuts	5.5
Pulses	4
Olives	4
Sugar cane	8
Coffee	6.5
Tea tree	7
Bananas	6.5
Cut flowers	4.5
Turf	10

Crop under irrigation	Factor
Inactive areas	1.5

Table 2 Merimbula Lake Tributaries Water Source, Pambula Lake Tributaries Water Source, Towamba Estuary Tributaries Water Source, Bermagui River Water Source or Wapengo Lagoon Tributaries Water Source

Crop under irrigation	Factor
Winter cereal	1
Summer cereal	2.5
Citrus	3.5
Vines	1.5
Summer oilseeds	3
Perennial pasture (dairy)	6.5
Perennial pasture (non-dairy)	4.5
Annual pasture	1.5
Lucerne	5
Vegetables	4.5
Orchards	5.5
Nuts	5.5
Pulses	2.5
Olives	3
Turf	8.5
Cut flowers	4.5
Inactive area	1

Example 1. Suppose, in respect of any year, 30 hectares of a landholding were under irrigation, of which 10 hectares were used for growing lucerne, 10 hectares were used for annual pasture and 10 hectares were used for vegetables (as indicated by the confirmed history of water usage for the land). The factors for these crops (using Table 1) are 4.5 (for lucerne), 3 (for annual pasture) and 6 (for vegetables). The volume of water calculated for that year for the land would therefore be 135 megalitres (that is, 10 times 4.5, plus 10 times 3, plus 10 times 6: see subclause (4) (a) (i)).

Example 2. Suppose, in respect of any year, 30 hectares of a landholding were under irrigation, of which some were used for growing lucerne, some were used for annual pasture and some were used for vegetables (the specific areas not indicated by the confirmed history of

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water usage for the land). The factors for these crops (using Table 1) are 4.5 (for lucerne), 3 (for annual pasture) and 6 (for vegetables). The volume of water calculated for that year for the land would therefore be 90 megalitres (that is, 30 times 3: see subclause (4) (a) (ii)).

Example 3. Suppose, in respect of any year, 30 hectares of a landholding were under irrigation, of which all 30 were used for growing summer cereals (in summer) and all 30 were used for growing winter cereals (in winter). The factors for these crops (using Table 1) are 2 (for summer cereals) and 2.5 (for winter cereals). The volume of water calculated for that year for the land would therefore be 75 megalitres (that is, 30 times 2.5: see subclauses (4) (a) (i) and (5)).

29ZW Conversion of share components of access licence

Clause 7 of Schedule 10 to the Act applies to and in respect of a replacement access licence in the same way as it applies to and in respect of an access licence arising under that Schedule.

Note. This clause enables the share component of an access licence under this Subdivision to be converted from a specified quantity of water to any other manner (such as a unit share) in which a share component may be expressed under section 56 of the Act.

Subdivision 3 Security interests

29ZX Application of Subdivision

This Subdivision applies to and in respect of each entitlement with respect to:

- (a) the Bermagui River Water Source, or
- (b) the Coraki Area Water Source, or
- (c) the Merimbula Lake Tributaries Water Source, or
- (d) the Pambula Lake Tributaries Water Source, or
- (e) the Towamba Estuary Tributaries Water Source, or
- (f) the Tweed Estuary Water Source, or
- (g) the Wapengo Lagoon Tributaries Water Source, or
- (h) the Wyrallah Area Water Source,

and to and in respect of each access licence arising from any such entitlement.

29ZY Registration of security interests in replacement access licences

- (1) Pursuant to clause 1 of Schedule 9 to the Act, clause 19 of Schedule 10 to the Act is to be construed as if the reference in clause 19 (5) to the commencement of Part 2 of Schedule 10 to the Act were a reference to 17 December 2010.

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- (2) Pursuant to clause 1 of Schedule 9 to the Act, the following subclauses are taken to be inserted after clause 19 (10) of Schedule 10 to the Act:
- (10A) Subclause (10B) applies only to an access licence arising from an entitlement with respect to land in respect of which an interest was, immediately before 17 December 2010, registered under the *Real Property Act 1900* or under the *Corporations Act 2001* of the Commonwealth.
- (10B) No dealing that requires the consent of the holder of a security interest may be registered in relation to an access licence until the expiry of the prescribed period unless, before the expiry of that period, the holder of the interest:
- (a) has lodged with the Director-General a notice of the kind referred to in subclause (5) (d), or
 - (b) has notified the Director-General that the holder does not propose to seek registration of the interest in the Access Register.

29ZZ Entitlements held by 2 or more co-holders

Pursuant to clause 1 of Schedule 9 of the Act, clause 23 of Schedule 10 to the Act is taken to have been replaced by the following clause:

23 Entitlements held by 2 or more co-holders

Two or more co-holders of a replacement access licence are taken to hold the access licence:

- (a) if the Minister has a record of the shares in which the former entitlement was held immediately before the appointed day, in the same shares as the former entitlement was so held, or
- (b) if the Minister has no such record, but within 2 months after sending a written request to the co-holders seeking information as to their shareholding the Director-General receives:
 - (i) a notice, signed by or on behalf of each of them, by which they agree as to the shares in which they hold the access licence, or

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- (ii) a notice, signed by any one of them, to the effect that legal proceedings have been commenced for the purpose of obtaining a declaration as to the shares in which they hold the access licence, in the agreed shares referred to in the notice under subparagraph (i), or in the shares determined pursuant to the legal proceedings referred to in the notice under subparagraph (ii), as the case may be, or
- (c) in any other case, as tenants in common with the entitlements conferred by the licence under section 56 apportioned equally between them.