



New South Wales

# Water Sharing Plan for the Coopers Creek Water Source Amendment Order 2011

under the

Water Management Act 2000

Pursuant to section 45 (1) (a) of the *Water Management Act 2000*, I, PHILLIP COSTA, MP, Minister for Water, having obtained the concurrence of the Minister for Climate Change and the Environment, being satisfied it is in the public interest to do so, make the following Order to amend the *Water Sharing Plan for the Coopers Creek Water Source 2003*.

Dated this 28th day of February, 2011.

**PHILLIP COSTA**

**Minister for Water**

## **Explanatory note**

Section 45 (1) (a) of the *Water Management Act 2000* provides that the Minister may, at any time, by order published on the NSW legislation website, amend a management plan if satisfied it is in the public interest to do so. The purpose of this Order is to amend the *Water Sharing Plan for the Coopers Creek Water Source 2003*.

## **Water Sharing Plan for the Coopers Creek Water Source Amendment Order 2011**

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### **1. Name of Order**

This Order is the *Water Sharing Plan for the Coopers Creek Water Source Amendment Order 2011*.

### **2. Commencement**

This Order commences on the day it is published on the NSW legislation website.

### **3. Amendment**

The *Water Sharing Plan for the Coopers Creek Water Source 2003* is amended as set out in Schedule 1.

## Schedule 1            Amendments

### [1]    Contents

Omit the following:

Schedule 5 Contribution to relevant targets in the December 2002 State Water Management Outcomes Plan

### [2]    Clause 8 State Water Management Outcomes Plan

Omit the clause.

### [3]    Clause 11 Objectives

Omit the clause. Insert instead.

## 11    Objectives

The objectives of this Plan are to:

- (a) provide opportunities for access to water in this water source for domestic and stock purposes while encouraging and supporting efficient, innovative water use, alternative water sources and drought management strategies,
- (b) ensure Aboriginal cultural needs are considered in flow management decisions for this water source, to enable maintenance and protection of values and places of importance under traditional laws, customs and practices,
- (c) protect the variability of natural flow conditions thereby maintaining and improving the overall health of this water source and related ecosystems, including threatened species,
- (d) preserve and maintain the functions of natural low flows in Coopers Creek and its tributaries, particularly during dry periods,
- (e) protect very low flows for fundamental ecosystem health and pools for drought refuge,
- (f) provide flows that facilitate passage of the Eastern Freshwater Cod,
- (g) recognise and seek to protect existing industry via trading rules and access rules that provide opportunities for continued access,
- (h) provide opportunities for access to water for irrigation and other commercial purposes in this water source,
- (i) enhance the health of the Wilsons River and the Richmond estuary by ensuring adequate downstream flow contributions from this water source, and
- (j) protect and improve water quality in this water source through the management of flows.

**Note.** This objective refers to maintaining water quality. Although there are no specific strategies directly related to this objective in this Plan, the environmental water provisions in this Plan make a positive contribution to maintaining water quality.

**[4] Clause 17 Flow classes**

Omit the clause. Insert instead:

**17 Flow classes**

- (1) This Plan establishes the following flow classes as the basis for sharing of daily flows in the Upper Coopers Creek Management Zone:
  - (a) the Very Low Flow Class is when flows are less than 12.5 megalitres per day (hereafter *ML/day*),
  - (b) A Class is when flows are at or greater than 12.5 ML/day and at or less than 31 ML/day,
  - (c) B Class is when flows are greater than 31 ML/day and at or less than 96 ML/day,
  - (d) C Class is when flows are greater than 96 ML/day and at or less than 264 ML/day, and
  - (e) D Class is when flows are greater than 264 ML/day

**Note.** The flow classes have been determined based on flow information and hydrological modelling that inherently includes seasonal effects as well as evaporation and seepage losses.

- (2) This Plan establishes the following flow classes as the basis for sharing of daily flows in the Lower Coopers Creek Management Zone:
  - (a) the Very Low Flow Class is when flows are less than 12.5 megalitres per day (hereafter *ML/day*),
  - (b) A Class is when flows are at or greater than 12.5 ML/day and at or less than 31 ML/day,
  - (c) B Class is when flows are greater than 31 ML/day and at or less than 96 ML/day,
  - (d) C Class is when flows are greater than 96 ML/day and at or less than 264 ML/day, and
  - (e) D Class is when flows are greater than 264 ML/day
- (3) Notwithstanding subclauses (1) and (2), A Class, B Class and C Class will only be applied if, in the opinion of the Minister, they are required to better manage the sharing of water between water users and the environment in one or both management zones and the Minister has made a determination under clause 19.
- (4) Subclauses (1) and (2) may be amended if the Minister is of the opinion that the Very Low Flow Class is having a significant economic impact on water users subject to the Very Low Flow Class not being reduced to a flow that is less than 8.5 ML/day.

- (5) Subclauses (1) and (2) may be amended if following a review of any new flow information that becomes available, the Minister is of the opinion that the Very Low Flow Class does not provide adequate Planned Environmental Water.
- (6) Before amending subclauses (1) and (2) the Minister should consult with representatives of the Coopers Creek Water Users Group.

**[5] Clause 18 Flow reference point**

Omit the clause. Insert instead:

**18 Flow reference point**

For the purpose of this Plan, all flows referred to relate to Coopers Creek at Ewing Bridge, as shown on the map in Schedule 2.

**[6] Clause 19 Determination of flow class**

Omit the clause. Insert instead:

**19 Determination of flow class**

In accordance with clause 17 (2), the Minister may from time to time, make a determination that A Class, B Class and C Class will be applied in one or both management zones, if, in the opinion of the Minister, they are required to better manage the sharing of water between water users and the environment.

**[7] Clause 21 Planned Environmental Water**

Omit the clause. Insert instead:

**21 Planned Environmental Water**

- (1) Planned environmental water is identified and established in this water source as follows:
  - (a) when flows are less than 12.5 ML/day, then planned environmental water is the flow occurring in this water source minus 0.05 ML/day and minus the Very Low Flow Class access permitted under clause 63 of this Plan,
 

**Note.** 0.05 ML/day is the amount of water estimated at the commencement of this Plan for basic landholder rights in this water source.
  - (b) if A Class has been determined by the Minister in both management zones, then planned environmental water is the flow occurring in this water source minus 18.12 ML/day,
 

**Note.** 18.12 ML/day is the amount of water estimated at the commencement of this Plan for A Class total daily extraction limit and basic landholder rights in this water source.
  - (c) if B Class has been determined by the Minister in both management zones, then planned environmental water is the flow occurring in this water source minus 58.12 ML/day,

**Note.** 58.12 ML/day is the amount of water estimated at the commencement of this Plan for B Class total daily extraction limit and basic landholder rights in this water source.

- (d) if C Class has been determined by the Minister in both management zones, then planned environmental water is the flow occurring in this water source minus 60.12 ML/day,

**Note.** 60.12 ML/day is the amount of water estimated at the commencement of this Plan for C Class total daily extraction limit and basic landholder rights in this water source.

- (e) if A Class, B Class or C Class has not been determined by the Minister in both management zones, then planned environmental water is the flow occurring in this water source minus any water taken pursuant to basic landholder rights and access licences, and
- (f) the flow occurring in this water source in the 48 hour period after flows have risen from the Very Low Flow Class to more than 31 ML/day within a 24 hour period, minus basic landholder rights extractions and minus extractions by licence holders specified in Schedule 4.

- (2) Planned environmental water is maintained as follows:

- (a) in the Very Low Flow Class:
- (i) the holders of access licences, excluding access licences listed in Schedule 4, are not permitted to take water,
  - (ii) access licence holders listed on Schedule 4 may take water in the Very Low Flow Class in accordance with clause 63, and
  - (iii) persons exercising native title and domestic and stock basic landholder rights may take water up to a combined total of 0.05 ML/day,

**Note.** The Minister may, by order made under section 324 of the Act, impose temporary water restrictions to direct that, for a specified period, the taking of water from this water source by persons exercising native title and domestic and stock basic landholder rights is totally prohibited or is restricted as specified in the order, when it is necessary to do so in the public interest (such as to cope with a water shortage or threat to public health or safety).

**Note.** The Minister may, by order made under section 331 of the Act, direct a landholder exercising domestic and stock basic landholder rights to take specified measures to protect the environment, to preserve basic landholder rights or to overcome a threat to public health.

- (b) if A Class, B Class or C Class has been determined by the Minister, then:
- (i) the holders of access licences other than unregulated river (high flow) access licences, may take water subject to the restriction specified in subclause (f) and the total daily extraction limits specified in clause 46,
  - (ii) persons exercising native title and domestic and stock basic landholder rights may take water,

- (iii) if the water taken by persons exercising native title and domestic and stock basic landholder rights is assessed to be exceeding 0.05 ML/day in this flow class, the access to water for access licences will be reduced in accordance with clause 51, to maintain the planned environmental water in this flow class, and
- (iv) the holders of unregulated river (high flow) access licences are not permitted to take water,
- (c) the holders of unregulated river (high flow) access licences may only take water when flows are within D Class,
- (d) notwithstanding all other rights and conditions, extraction of water from a river by an approved water supply work is permitted only if there is visible flow in the river in the vicinity of the work,
- (e) limits are imposed on the availability of water, in accordance with clauses 36 and 38, to protect a proportion of natural river flows for fundamental ecological needs from increases in long-term water extraction,
- (f) if flows have risen from the Very Low Flow Class to more than 31 ML/day within a 24 hour period, water may not be taken under an access licence, excluding those access licences listed in Schedule 4, in the 48 hour period after flows first exceeded 31 ML/day.

**Note.** These rules protect water for the environment by limiting both the water extracted over the long term and the rate of extraction of water in different flow ranges, thereby achieving the objectives of this Plan.

**Note.** This Plan recognises that the planned environmental water provisions provide non-extractive benefits, including traditional Aboriginal spiritual, social and cultural benefits, and a contribution to improved water quality.

- (3) The Minister may amend clauses 21 (1) and (2) to reflect changes made to the Very Low Flow Class and A Class thresholds under clause 17.
- (4) The Minister may amend clause 21 subject to the limitations in subclause (5), to include rules which prohibit the taking of water under an access licence within a specified period of time after flows have fallen below a specified flow threshold, if future research concludes that such rules would be beneficial for Cod movement.
- (5) Amendments made under subclause (4) shall be subject to:
  - (a) the specified period of time being between 48 and 72 hours, and
  - (b) the specified flow threshold being between 60 ML/day and 120 ML/day.
- (6) Prior to an amendment made under subclause (4) consideration should be given to:
  - (a) the latest hydrological information,
  - (b) the affect of in-stream barriers on Cod movement,
  - (c) levels of water extraction and the impacts extraction has on flow heights,
  - (d) geomorphic characteristics of the water source so that flow rules compliment Cod habitat, and

- (e) socio-economic impacts associated with the amendment.

**[8] Clause 22 Extraction by water supply work**

Omit the clause.

**[9] Clause 23 Planned Environmental Water**

Omit the clause.

**[10] Clause 38 (2) (f)**

Omit paragraph (f). Insert instead:

- (f) from 1 July 2004, available water determinations for unregulated river access licences and unregulated river (high flow) access licences, including all subcategories, should be such volume of water as is equivalent to the access licence share component, except as provided in subclauses (g) and (h), and such determinations should be made annually,

**[11] Clause 38 (2) (g)**

Omit paragraph (g). Insert instead:

- (g) if the 3 year average of extraction in this Unit exceeds the long-term average extraction limit established in clause 36 by 5% or greater, then the available water determination for the following water accounting year for unregulated river access licences and unregulated river (high flow) access licences in this water source should be reduced by an amount that is assessed necessary by the Minister to return subsequent total water extraction to the long-term average extraction limit,

**[12] Clause 38 (2) (h)**

Omit paragraph (h). Insert instead:

- (h) if the 3 year average of extraction in this Unit is less than 95% of the long-term average extraction limit established in clause 36, then the available water determination for unregulated river access licenses and unregulated river (high flow) access licenses in this water source shall be increased to such an extent as to allow extraction to increase to that extraction limit, and

**[13] Clause 38 (2) (i)**

Omit paragraph (i). Insert instead:

- (i) notwithstanding subclause (h), and excepting the initial available water determination made under subclause (d), annual available water determinations shall not exceed 100% for all licences with a share component specified in ML per year and 1 ML per unit share for all access licence with a share component specified as a number of unit shares.

**[14] Clause 38 (2) (j)**

Omit paragraph (j).

**[15] Clause 55 Rules relating to constraints within this water source**

Omit the clause. Insert instead:



**55 Rules relating to constraints within this water source**

- (1) This clause applies to any relevant dealings under sections 71Q, 71S and 71W of the Act, and with respect to water allocation assignments within this water source under section 71T of the Act.
- (2) Dealings under sections 71Q, 71S and 71T of the Act are prohibited under this clause if the dealing is from an access licence which nominates a water supply work:
  - (a) outside of the Restricted Trading Zone, to an access licence which nominates a water supply work within the Restricted Trading Zone,
  - (b) in the Upper Coopers Creek Management Zone, to an access licence which nominates a water supply work in the Lower Coopers Creek Management Zone,
  - (c) in the Lower Coopers Creek Management Zone, to an access licence which nominates a water supply work in the Upper Coopers Creek Management Zone, and
  - (d) on a tributary river of Coopers Creek, to an access licence which nominates a water supply work on Coopers Creek.
- (3) Dealings under section 71S of the Act are prohibited under this clause if the dealing involves a change to a management zone specified in the extraction component of an access licence.
- (4) Dealings under section 71W of the Act are prohibited under this clause if the dealing involves an access licence which nominates a water supply work:
  - (a) outside of the Restricted Trading Zone, nominating a water supply work within the Restricted Trading Zone,
  - (b) in the Upper Coopers Creek Management Zone, nominating a water supply work in the Lower Coopers Creek Management Zone,
  - (c) in the Lower Coopers Creek Management Zone, nominating a water supply work in the Upper Coopers Creek Management Zone, and
  - (d) on a tributary river of Coopers Creek, nominating a water supply work on Coopers Creek.

**[16] Clause 58 Rules for conversion of access licence category**

Omit the clause. Insert instead:

**58 Rules for conversion of access licence**

- (1) This clause relates to dealing under section 71O of the Act.
- (2) Conversion of an access licence of one category to an access licence of another category are permitted only if the conversion is from an unregulated river access licence to an unregulated river (high flow) access licence.

- (3) For any conversion of an access licence under subclause (2) the access licence being converted shall be cancelled and a new licence issued.
- (4) The share component of the access licence issued under subclauses (2) and (3) is to be equal to 3 times the cancelled access licence share component.
- (5) The total amount of all unregulated river (high flow) access licence share components converted under subclauses (2) and (3) shall be limited to 3000 unit shares.

**[17] Clause 64 Unregulated river access licences**

Omit the clause. Insert instead:

**64 Additional mandatory conditions on unregulated river access licences**

All unregulated river access licences shall have mandatory conditions to give effect to the following:

- (a) water may not be taken when flows are within the Very Low Flow Class, except where subclauses (e) and (f) apply,
- (b) if A Class, B Class or C Class has been determined by the Minister, water may only be taken at a rate not exceeding that specified for the flow class on the access licence extraction component, unless otherwise authorised through a registered group, and except where subclauses (d) and (f) apply,
- (c) if A Class, B Class or C Class has not been determined by the Minister and flows exceed the Very Low Flow Class then water may be taken without any restriction in rate or timing, except where subclause (d) applies,
- (d) if flows have risen from the Very Low Flow Class to more than 31 ML/day within a 24 hour period, water may not be taken in the 48 hour period after flows first exceeded 31 ML/day,
- (e) subclauses (a) and (d) shall not apply to an access licence listed in Schedule 4, and
- (f) subclauses (a) and (b) do not apply to extractions from an in-river dam while the dam is passing all inflows.

**[18] Clause 65 Local water utility access licences**

Omit the clause. Insert instead:

**65 Additional mandatory conditions on local water utility access licences**

All local water utility access licences shall have mandatory conditions to give effect to the following:

- (a) water may not be taken when flows are within the Very Low Flow Class, except where subclause (e) applies,
- (b) if A Class, B Class or C Class has been determined by the Minister, water may only be taken at a rate not exceeding that specified for the flow class on

the access licence extraction component, unless otherwise authorised through a registered group, and except where subclauses (d) and (e) apply,

- (c) if A Class, B Class or C Class has not been determined by the Minister and flows exceed the Very Low Flow Class then water may be taken without any restriction in rate or timing, except where subclause (d) applies,
- (d) if flows have risen from the Very Low Flow Class to more than 31 ML/day within a 24 hour period, water may not be taken in the 48 hour period after flows first exceeded 31 ML/day,
- (e) subclauses (a) and (b) do not apply to extractions from an in-river dam while the dam is passing all inflows.

**[19] Clause 66 Domestic and stock access licences**

Omit the clause. Insert instead:

**66 Additional mandatory conditions on domestic and stock access licences**

All domestic and stock access licences shall have mandatory conditions to give effect to the following:

- (a) water may not be taken when flows are within the Very Low Flow Class, except where subclause (e) applies,
- (b) if A Class, B Class or C Class has been determined by the Minister, water may only be taken at a rate not exceeding that specified for the flow class on the access licence extraction component, unless otherwise authorised through a registered group, and except where subclauses (d) and (e) apply,
- (c) if A Class, B Class or C Class has not been determined by the Minister and flows exceed the Very Low Flow Class then water may be taken without any restriction in rate or timing, except where subclause (d) applies,
- (d) if flows have risen from the Very Low Flow Class to more than 31 ML/day within a 24 hour period, water may not be taken in the 48 hour period after flows first exceeded 31 ML/day,
- (e) subclauses (a) and (b) do not apply to extractions from an in-river dam while the dam is passing all inflows.

**[20] Clause 68 Unregulated river (Aboriginal commercial) access licences**

Omit the clause.

**[21] Clause 69 Unregulated river (Aboriginal cultural) access licences**

Omit the clause.

**[22] Clause 70 Unregulated river (research) access licences**

Omit the clause. Insert instead:

**70 Additional mandatory conditions on unregulated river (high flow) access licences**

All unregulated river (high flow) access licences shall have mandatory conditions to give effect to clauses 21 (2) (b) (iv) and 21 (2) (c).

**[23] Clause 77 Assessment of fish passage requirements**

Omit the clause. Insert instead:

**77 Additional access rules under planned environmental water**

The Minister may amend this Plan in accordance with clauses 21 (3), (4), (5) and (6) in respect to additional access rules for licence holders.

**[24] Clause 78 Review of fish passage assessment**

Omit the clause.

**[25] Clause 79 Other amendment of this Plan**

Omit the clause. Insert instead:

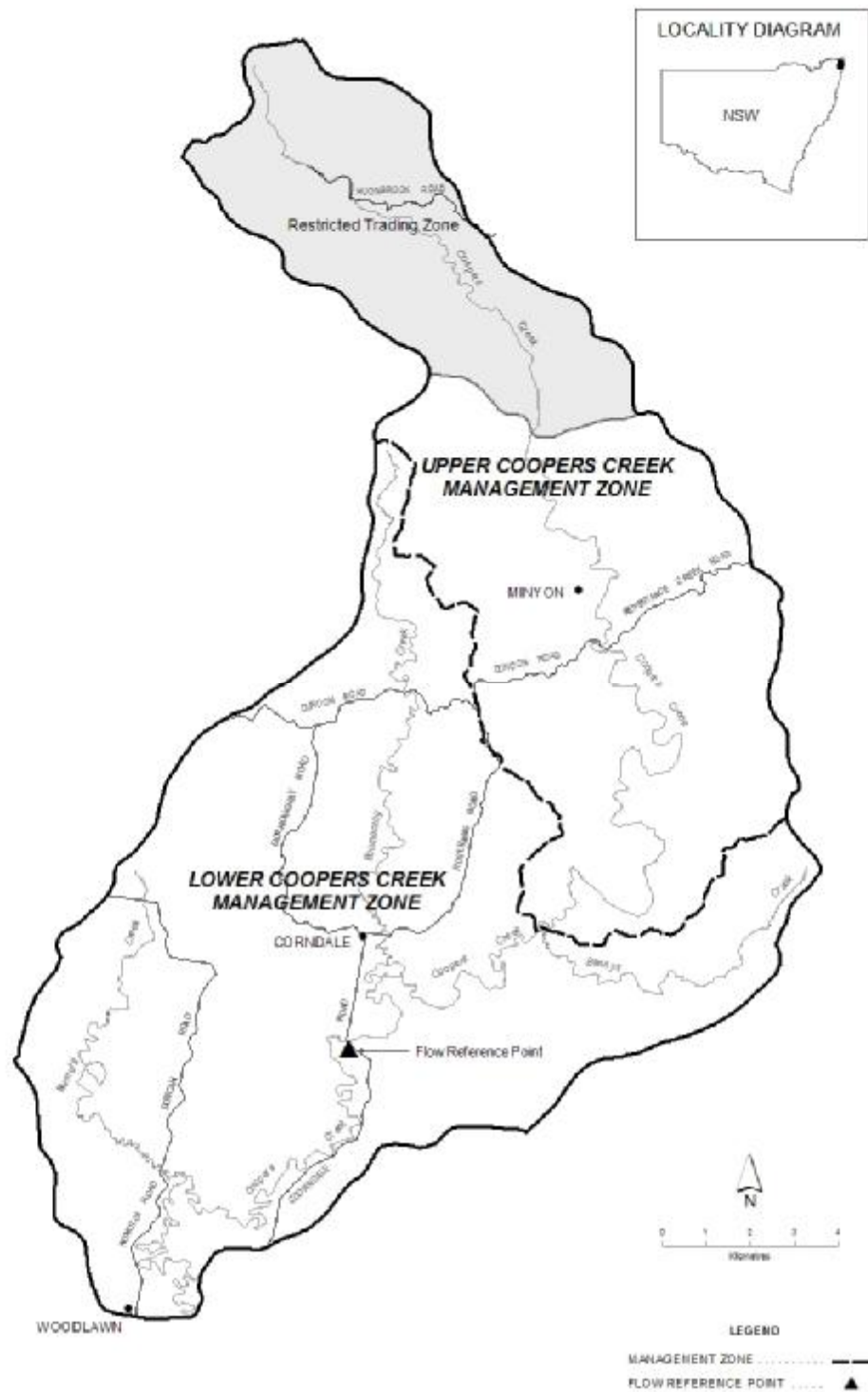
**79 Other amendments of this Plan**

The Minister may amend this Plan in accordance with:

- (a) clause 17 (3) in respect to the Very Low Flow Class and A Class threshold flow rates, and
- (b) clause 51 in respect to adjustments to TDELs and IDELs.

**[26] Schedule 2 Coopers Creek Water Source**

Omit the map from Schedule 2. Insert instead:



**[27] Schedule 5 Contribution to relevant targets in the December 2002 State Water Management Outcomes Plan**

Omit Schedule 5.