



New South Wales

Water Management (General) Amendment (Bega and Brogo Rivers Water Sharing Plan) Regulation 2011

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 require a Ministerial order that makes special provision with respect to supplementary water to be published on the website of the NSW Office of 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 tidal pool water sources (for which no entitlement has previously been required under the *Water Act 1912*), and
- (d) to provide for the reading of certain references in management plans.

This Regulation is made under the *Water Management Act 2000* (as amended by the *Water Management Amendment Act 2008*), including sections 70 and 400 (1) (the general regulation-making power) and clause 1 of Schedule 9.

2011 No 154

Clause 1 Water Management (General) Amendment (Bega and Brogo Rivers Water Sharing Plan) Regulation 2011

Water Management (General) Amendment (Bega and Brogo Rivers Water Sharing Plan) Regulation 2011

under the

Water Management Act 2000

1 Name of Regulation

This Regulation is the *Water Management (General) Amendment (Bega and Brogo Rivers Water Sharing Plan) Regulation 2011*.

2 Commencement

This Regulation commences on 1 April 2011 and is required to be published on the NSW legislation website.

Schedule 1 Amendment of Water Management (General) Regulation 2004

[1] Clause 10A

Insert after clause 10:

10A Publication of orders authorising the taking of water pursuant to supplementary water access licence

For the purposes of section 70 (1) of the Act, an order authorising the taking of water pursuant to a supplementary water access licence is to be published on the internet website of the NSW Office of Water.

Note. The internet website of the NSW Office of Water is www.water.nsw.gov.au.

[2] Part 3, Division 14

Insert after clause 29ZZ:

Division 14 Replacement access licences for entitlements for certain Bega and Brogo Water Sources (1 April 2011)

Subdivision 1 Preliminary

29ZZA Definitions

In this Division:

Bega River Estuary and Tributaries Water Source means the water source of that name identified in the *Water Sharing Plan for the Bega and Brogo Rivers Area Regulated, Unregulated and Alluvial Water Sources 2011*.

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 1 April 2001 and 1 April 2011, established to the satisfaction of the Minister.

eligible land means any land on which the landholder of the land has used tidal pool water at any time between 1 April 2001 and 1 April 2011.

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

2011 No 154

Water Management (General) Amendment (Bega and Brogo Rivers Water Sharing Plan) Regulation 2011

Schedule 1

Amendment of Water Management (General) Regulation 2004

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

tidal pool water source means the Bega River Estuary and Tributaries Water Source.

29ZZB Application of Division

- (1) This Division applies to and in respect of each entitlement with respect to the water sources to which the *Water Sharing Plan for the Bega and Brogo Rivers Area Regulated, Unregulated and Alluvial Water Sources 2011* applies and to and in respect of each access licence arising from any such entitlement.
- (2) A reference in this Division to an entitlement listed in Part 2 of Schedule 4F to this Regulation includes a reference to an entitlement that is issued before 1 April 2011 under section 117J of the former 1912 Act or clause 24 of the *Water (Part 2—General) Regulation 1997* as a result of a transfer of water allocation or water rights and that arises from an entitlement listed in Part 2 of Schedule 4F.

Subdivision 2 Access licences for tidal pool water sources

29ZZC 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 1 April 2011), and
 - (ii) the maintenance and repair of any such work,for the period between 1 April 2011 and 1 April 2013 (inclusive).
- (2) Subclause (1) ceases to apply to a person in relation to land when the person is given notice under clause 29ZZD 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 an 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.

29ZZD 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 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 29ZZE, and
 - (ii) the share component of the licence, as determined by clause 29ZZF or 29ZZG, 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 29ZZF, would be zero or negative, or

2011 No 154

Water Management (General) Amendment (Bega and Brogo Rivers Water Sharing Plan) Regulation 2011

Schedule 1 Amendment of Water Management (General) Regulation 2004

- (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 29ZZG, 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.

29ZZE 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.

29ZZF Share component for domestic and stock access licences

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), 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).

29ZZG 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 2001 and 2011 (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 2001 and 2011, the volume of water taken during that year, or
- (b) if water was taken during only 2 of the years between 2001 and 2011, 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 2001 and 2011, 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
- (c) stock watering,
the volume of water taken in any year is to be calculated (in megalitres) on the basis of that history.

2011 No 154

Water Management (General) Amendment (Bega and Brogo Rivers Water Sharing Plan) Regulation 2011

Schedule 1 Amendment of Water Management (General) Regulation 2004

- (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) if the confirmed history of water usage for the land indicates which crops specified in the Table 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
 - (b) in any other case, as the amount obtained by multiplying the number of hectares of the land on which crops specified in the Table 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.
- (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 the Table to this clause includes a reference to any other crop that the Minister determines to be an equivalent to that crop.

Table

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

Crop under irrigation	Factor
Orchards	5.5
Nuts	5.5
Pulses	2.5
Olives	3
Turf	8.5
Cut flowers	4.5
Inactive areas	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 the Table above) are 5 (for lucerne), 1.5 (for annual pasture) and 4.5 (for vegetables). The volume of water calculated for that year for the land would therefore be 110 megalitres (that is, 10 times 5, plus 10 times 1.5, plus 10 times 4.5: see subclause (4) (a)).

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 water usage for the land). The factors for these crops (using the Table above) are 5 (for lucerne), 1.5 (for annual pasture) and 4.5 (for vegetables). The volume of water calculated for that year for the land would therefore be 45 megalitres (that is, 30 times 1.5: see subclause (4) (b)).

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 the Table above) are 2.5 (for summer cereals) and 1 (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) and (5)).

29ZZH 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.

2011 No 154

Water Management (General) Amendment (Bega and Brogo Rivers Water Sharing Plan) Regulation 2011

Schedule 1 Amendment of Water Management (General) Regulation 2004

Subdivision 3 General

29ZZI Supplementary water access licences

On 1 April 2011, each entitlement with respect to the water sources to which the *Water Sharing Plan for the Bega and Brogo Rivers Area Unregulated, Regulated and Alluvial Water Sources 2011* applies referred to in Column 1 of Part 1 of Schedule 4F is taken to have been replaced not only by the relevant access licence referred to in Schedule 11 to the Act but also by a supplementary water access licence with a share component equivalent to the volume of water (expressed in megalitres) specified in Column 2 of Schedule 4F with respect to that entitlement.

29ZZJ Regulated river (high security) access licences

- (1) Pursuant to clause 1 of Schedule 9 to the Act, the following subclause is taken to be inserted after clause 4 (4) of Schedule 10 to the Act:
 - (5) This clause does not apply to an entitlement listed in Schedule 4E to the *Water Management (General) Regulation 2004*.
- (2) Pursuant to clause 1 of Schedule 9 to the Act, the following clause is taken to be inserted after clause 4 of Schedule 10 to the Act:

4A Regulated river (high security) access licences

A Part 2 or Part 5 entitlement listed in Part 2 of Schedule 4F to the *Water Management (General) Regulation 2004* is taken to have been replaced by a regulated river (high security) access licence.

- (3) Pursuant to clause 1 of Schedule 9 to the Act, the following subclause is taken to be inserted after clause 5 (4) of Schedule 10 to the Act:
 - (5) Subclause (1) does not apply to an entitlement listed in Schedule 4E to the *Water Management (General) Regulation 2004*.

29ZZK 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 1 April 2011.

-
- (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 1 April 2011, 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.

29ZZL 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

2011 No 154

Water Management (General) Amendment (Bega and Brogo Rivers Water Sharing Plan) Regulation 2011

Schedule 1 Amendment of Water Management (General) Regulation 2004

- (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.

[3] Schedule 4F

Insert after Schedule 4E:

Schedule 4F Replacement access licences for Part 2 or Part 5 entitlements for the Bega and Brogo Rivers (1 April 2011)

(Clause 29ZZI)

Part 1

Water Act 1912 Licence	Proposed supp entitlement (ML)
10SL020520	25
10SL036179	44
10SL035213	45
10SL040086	101
10SL043612	62
10SL042616	79
10SL043866	121
10SL043040	9
10SL055527	85
10SL040362	94
10SL041578	58

Water Act 1912 Licence	Proposed supp entitlement (ML)
10SL042178	172
10SL042978	45
10SL047151	40
10SL047190	9
10SL052114	24
10SL055798	247
10SL056749	40

Part 2

Licence No

10BL159574

[4] Schedule 7 Savings and transitional provisions

Insert after clause 25:

Part 6 Provision relating to the Water Management Amendment Act 2010

26 References to “adaptive environmental water”

On and from 4 April 2011, any reference in a management plan to “adaptive environmental water” is taken to be a reference to licensed environmental water (within the meaning of section 8 of the Act) that is committed by an adaptive environmental water condition under section 8B, 8C, 8D or 63B of the Act.