



New South Wales

Water Sharing Plan for the Bega and Brogo Rivers Area Regulated, Unregulated and Alluvial Water Sources Amendment Order 2011

under the

Water Management Act 2000

I, the Minister for Primary Industries, in pursuance of section 45 (1) (a) of the *Water Management Act 2000*, being satisfied it is in the public interest to do so, make the following Order to amend the *Water Sharing Plan for the Bega and Brogo Rivers Area Regulated, Unregulated and Alluvial Water Sources 2011*.

Dated this 5th day of August, 2011.

KATRINA HODGKINSON, MP
Minister for Primary Industries

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 Bega and Brogo Rivers Area Regulated, Unregulated and Alluvial Water Sources 2011*. The concurrence of the Minister for the Environment was obtained prior to the making of this Order.

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1. Name of Order

This Order is the *Water Sharing Plan for the Bega and Brogo Rivers Area Regulated, Unregulated and Alluvial Water Sources Amendment Order 2011*.

2. Commencement

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

3. Amendment

The *Water Sharing Plan for the Bega and Brogo Rivers Area Regulated, Unregulated and Alluvial Water Sources 2011* is amended as set out in Schedule 1.

Schedule 1 Amendment of the Water Sharing Plan for the Bega and Brogo Rivers Area Regulated, Unregulated and Alluvial Water Sources 2011

[1] Clause 4 Application of this Plan

Omit subclause (3) (a). Insert instead:

- (a) occurring between the banks of the Brogo River, from the upper limit of Brogo Dam downstream to its junction with the Bega River; which has been declared by the Minister to be a regulated river,

[2] Clause 13 Bulk access regime

Omit “Division 1” in subclause (2) (e). Insert instead “Division 2”.

[3] Clause 28 Share components of regulated river (high security) access licences

Omit “273” in clause 28. Insert instead “473”.

[4] Clause 33 Operational rules for Brogo Dam

Omit “Schedule 7” in subclause (3). Insert instead “Schedule 8”.

[5] Clause 61 Taking of uncontrolled flows under regulated river (general security) access licences

Omit “Schedule 7” in subclause (3) (a). Insert instead “Schedule 8”.

[6] Clause 62 Taking of water under supplementary water access licences

Omit “Schedule 7” in subclause (2) (a). Insert instead “Schedule 8”.

[7] Clause 65 Access rules for the taking of surface water

Omit “access licences” in subclause (2). Insert instead “access licence”.

[8] Clause 65 (4)

Insert “or an equivalent flow threshold at another flow reference point as determined by the Minister” after “the replaced *Water Act 1912* entitlement” in subclause (4).

[9] Clause 65 (13)

Omit “access licences”. Insert instead “access licence”.

[10] Clause 65 (16)

Omit “(7) and (10) - (15)” in subclause (16). Insert instead “(7), (10) - (15) and (18)”.

[11] Clause 65 (18)

Insert after subclause (17):

- (18) Subject to subclause (16), water must not be taken under an access licence to which Schedule 4 applies when flows in the Upper Bega / Bemboka Rivers Water Source are less than the lower limit of B Class for that water source.

[12] Clause 67 Access rules for the taking of water from alluvial sediments

Omit “Schedule 4” wherever occurring in subclauses (8) and (10).

Insert instead “Schedule 5”.

[13] Clause 72 Granting or amending water supply work approvals

Omit subclause (2). Insert instead:

- (2) The Minister may amend a water supply work approval for a runoff harvesting dam or an in-river dam if the sum of the share components of access licences nominating that water supply work approval is reduced via:

- (a) a dealing;
- (b) the surrender under section 77 of the Act and then the cancellation under section 77A (6) of the Act of an access licence;
- (c) the amendment of the share component of the access licence by the Minister under section 68A; or
- (d) the cancellation of an access licence under section 78 of the Act or via the compulsory acquisition of an access licence under section 79 of the Act;

to require the modification or removal of that dam in accordance with requirements as specified by the Minister by notice in writing to ensure that the capability of the dam to capture runoff is reduced to reflect that reduction in share component.

Note. *Runoff harvesting dam* is defined in the Dictionary.

[14] Clause 77 Rules for water supply works located near contamination sources

Omit “Schedule 5” wherever occurring in subclause (1).

Insert instead “Schedule 6”.

[15] Clause 78 Rules for water supply works located near sensitive environmental areas

Omit “Schedule 6” wherever occurring in subclauses (1) and (2).

Insert instead “Schedule 7”.

[16] Clause 83 Assignment of right dealings (within water sources)

Omit “or” from subclause (2) (c).

[17] Clause 83 (2) (d)

Omit subclause (2) (d). Insert instead:

- (d) an access licence with an extraction component that specifies the Lower Tantawangalo Creek Management Zone in the Tantawangalo Creek Water Source to an access licence with an extraction component that specifies the Upper Tantawangalo Creek Management Zone in the Tantawangalo Creek Water Source; or
- (e) an access licence to which Schedule 4 applies to another access licence to which Schedule 4 does not apply.

[18] Clause 86 Assignment of water allocation dealings

Omit “or” from subclause (2) (e).

[19] Clause 86 Assignment of water allocation dealings

Omit subclause (2) (f). Insert instead:

- (f) from an access licence of another category to a supplementary water access licence; or
- (g) from an access licence to which Schedule 4 applies to an access licence to which Schedule 4 does not apply.

[20] Part 12 Mandatory conditions

Insert immediately after “**Part 12 Mandatory conditions**”:

Division 1 General

88A General

In this Part:

- (a) a requirement to notify the Minister in writing is satisfied by making a notification in writing to one of the addresses listed in Appendix 2 of this Plan or to the email address for the NSW Office of Water Licensing Enquiries Information Centre;

Note. At the commencement of this Plan, the email address for the NSW Office of Water Licensing Enquiries Information Centre is information@water.nsw.gov.au.

- (b) a *metered water supply work with a data logger* means a water supply work with a data logger and a meter that complies with the *ATS 4747 Australian Technical Specification suite: Meters for non-urban water supply* as may be updated and replaced from time to time;

Note. The definition of *metered water supply work with a data logger* does not include all water supply works that are metered or that have a data logger. The water supply work must meet the parameters of this definition for the water supply work to be a *metered water supply work with a data logger*.

- (c) if the holder of a water supply work approval is the same as the holder of the access licence under which water is proposed to be taken, then it is not necessary to maintain two separate Logbooks and all the required information can be kept in one Logbook.

[21] Part 12

Renumber “Division 1 Access licences” and “Division 2 Water supply work approvals” as “Division 2 Access licences” and “Division 3 Water supply work approvals”, respectively.

[22] Clause 89 General

Omit subclause (1). Insert instead:

- (1) Access licences in these water sources must have mandatory conditions where required to give effect to the following:
 - (a) the relevant water allocation account management rules specified in Division 1 of Part 9 of this Plan for the respective category or subcategory of access licence;
 - (b) water must not be taken under an access licence otherwise than in compliance with the conditions applying to the water supply work approval for the water supply work through which water is to be taken;
 - (c) the holder of an access licence must notify the Minister, in writing, immediately upon becoming aware of a breach of any condition of the licence; and
 - (d) any other condition required to implement the provisions of this Plan.
- (1A) Access licences in these water sources, excluding access licences that nominate only metered water supply works with a data logger, must have mandatory conditions where required to give effect to the following:
 - (a) the holder of the access licence must keep a Logbook;
 - (b) the holder of the access licence must record the following in the Logbook:
 - (i) each date and period of time during which water was taken under the access licence;
 - (ii) the volume of water taken on that date;
 - (iii) the water supply work approval number of the water supply work used to take the water on that date;
 - (iv) the purpose or purposes for which the water was taken on that date;
 - (v) for domestic and stock access licences, local water utility access licences, unregulated river access licences, unregulated river (high flow) access licences and aquifer access licences in these water sources, excluding the Bega and Brogo Regulated Rivers Water Source, the volume of water taken in the first three water years in which this Plan has effect, by comparison to the maximum volume of water permitted to be taken in those years under clause 56 (2);
 - (vi) for domestic and stock access licences, local water utility access licences, unregulated river access licences, unregulated river (high flow) access licences and aquifer access licences in these water sources, excluding the Bega and Brogo Regulated Rivers Water Source, the volume of water taken in any three consecutive water years after the first water year in which this Plan has effect, by comparison to the maximum volume of water permitted to be taken in those years under clause 56 (3);

- (vii) for domestic and stock access licences, local water utility access licences, regulated river (high security) access licences, regulated river (general security) access licences and aquifer access licences in the Bega and Brogo Regulated Rivers Water Source only, the volume of water taken in any water year in which this Plan has effect, by comparison to the maximum volume of water permitted to be taken in that water year under clause 57 (2); and
 - (viii) any other information required to be recorded in the Logbook under the rules of this Plan;
 - (c) the holder of the access licence must produce the Logbook to the Minister for inspection, when requested; and
 - (d) the holder of the access licence must retain the information required to be recorded in the Logbook for five years from the date to which that information relates.
- (1B) When directed by the Minister by notice in writing, the holder of an access licence that nominates only a metered water supply work with a data logger must keep a Logbook in accordance with any requirements from subclause (1A) that are specified in the notice.

[23] Clause 89 (5)

Insert “clause 80 and” before “Division 3 of Part 9 of this Plan”.

[24] Clause 90 General

Omit subclause (1). Insert instead:

- (1) Water supply work approvals for water supply works in these water sources must have mandatory conditions where required to give effect to the following:
 - (a) the water supply work must not be used to take water under an access licence unless in compliance with the relevant access rules for the taking of surface water or the taking of water from these alluvial sediments as specified in Division 3 of Part 9 of this Plan;
 - (b) when directed by the Minister by notice in writing, the approval holder must have metering equipment installed that meets the following requirements:
 - (i) the metering equipment must accurately measure and record the flow of all water taken through the water supply work;
 - (ii) the metering equipment must comply with the *ATS 4747 Australian Technical Specification suite: Meters for non-urban water supply* as may be amended or superseded from time to time;
 - (iii) the metering equipment must be operated and maintained in a proper and efficient manner at all times;
 - (iv) the metering equipment must be sited and installed at a place in the pipe, channel or conduit between the water source and the first discharge outlet. There must be no flow of water into or out of the pipe, channel or conduit between the water source and the metering equipment; and
 - (v) any other requirements as to type, standard or other criteria for the metering equipment as specified in the notice;

Note. The Minister may direct a landholder or person to install, replace or to properly maintain metering equipment under section 326 of the Act.

- (c) any other conditions required to implement the provisions of this Plan.
- (1A) Water supply work approvals for water supply works in these water sources, excluding water supply work approvals for metered water supply works with a data logger, must have mandatory conditions where required to give effect to the following:
- (a) the holder of the water supply work approval must keep a Logbook;
 - (b) the holder of the water supply work approval must record the following in the Logbook:
 - (i) each date and period of time during which water was taken using the water supply work;
 - (ii) the volume of water taken on that date;
 - (iii) the access licence number of the access licence under which water was taken on that date or if water was taken under some other authority (such as a basic landholder rights), the authority under which water was taken;
 - (iv) the purpose or purposes for which the water was taken on that date;
 - (v) details of any cropping carried out using the water taken through the water supply work, including the type of crop, area cropped and dates of planting and harvesting;
 - (vi) where metering equipment has been installed for use in connection with the water supply work, the meter reading before water is taken;
 - (vii) where metering equipment has not been installed for use in connection with the water supply work, details of all pumping activities for the water supply work including pump running hours, pump power usage or pump fuel usage, pump start and stop times and pump capacity per unit of time; and
 - (viii) any other information required to be recorded in the Logbook under the rules of this Plan;
 - (c) the holder of the water supply work approval must produce the Logbook to the Minister for inspection, when requested; and
 - (d) the holder of the water supply work approval must retain the information required to be recorded in the Logbook for five years from the date to which that information relates.
- (1B) All water supply work approvals, except those authorising water supply works taking water from these alluvial sediments and any alluvial sediments within the Bega and Brogo Regulated Rivers Water Source, must contain mandatory conditions to require that the water supply work must not be used to take water unless, before water is taken, the holder of the water supply work approval confirms that cease to take conditions do not apply. Where the holder is required to keep a Logbook, the holder must record that confirmation and the means of confirmation (such as visual inspection or internet search), in the Logbook. In this paragraph *cease to take conditions* means any condition on the

water supply work approval or on the access licence under which water is proposed to be taken, that prohibits the taking of water in a particular circumstance.

[25] Clause 90

Omit subclause (3). Insert instead:

- (3) Water supply work approvals for runoff harvesting dams and in-river dams must have a mandatory condition where required to give effect to clause 72 (2).

[26] Clause 91 Water supply works used to take groundwater

Omit subclause (2). Insert instead:

- (2) Water supply work approvals to which this clause applies must have mandatory conditions where required to give effect to the following:
- (a) the rules for limiting the taking of water within the distance restrictions as specified in clause 80;
 - (b) the approval holder must ensure the water supply work is constructed so as to be:
 - (i) screened in the groundwater source nominated by the access licence; and
 - (ii) sealed off from all other water sources;
 - (c) the construction of a new water supply work must:
 - (i) comply with the distance restrictions specified in or specified by the Minister in accordance with clauses 76 - 79;

Note. If the water supply work has been exempted by the Minister from one or more distance restrictions specified in Division 2 of Part 10 of this Plan, then the approval holder must be able to demonstrate the basis for that exemption, for example if the exemption refers to a hydrogeological study which demonstrates that the location of the water supply work will have no more than minimal impact to the satisfaction of the Minister, then evidence must be able to be provided to that effect.
 - (ii) comply with the construction standards prescribed for the relevant type of bore in the *Minimum Construction Requirements for Water Bores in Australia*, 2003, ISBN 1 9209 2009 9, as may be amended from time to time or any standards which supersede those standards; and
 - (iii) be constructed appropriately so as to prevent contamination between aquifers;
 - (d) the approval holder must ensure that if the water supply work is abandoned or replaced it is decommissioned in compliance with the “minimum requirements for decommissioning bores” prescribed in the *Minimum Construction Requirements for Water Bores in Australia*, 2003, ISBN 1 9209 2009 9, as amended or replaced from time to time, unless otherwise directed by the Minister in writing;
 - (e) within two months of the decommissioning of the water supply work, the approval holder must notify the Minister in writing that the water supply work has been decommissioned;

- (f) the approval holder must, within two months of completion of the construction of the water supply work or within two months after the issue of the water supply work approval if the water supply work is existing, submit to the NSW Office of Water the approved form completed with all relevant details, including:
 - (i) the name and licence number of the driller who constructed the water supply work;
 - (ii) the details of geology and construction as required by the approved form;
 - (iii) details of the location of the water supply work on a copy of the lot and deposited plan of the land, its geographical reference accurate to ± 5 metres and the respective distance(s) of the work from the property boundaries; and
 - (iv) if the Minister has requested any water analysis and/or pumping tests to be carried out, details of the water analysis and/or pumping tests required by the Minister;
- (g) if, during the construction of the water supply work, saline or contaminated water is encountered above the production aquifer, the approval holder must:
 - (i) notify the Minister within 48 hours of becoming aware of the contaminated water;
 - (ii) take all reasonable steps to minimise contamination and environmental harm;
 - (iii) ensure that such water is sealed off by inserting casing to a depth sufficient to exclude the saline or contaminated water from the water supply work and if specified by the Minister, place an impermeable seal between the casing(s) and the walls of the water supply work from the bottom of the casing to ground level as specified by the Minister; and
 - (iv) if the Minister has specified any other requirements, comply with any requirements specified by the Minister in writing;
- (h) when directed by the Minister by notice in writing, the approval holder must provide a report in the form specified in the notice detailing the quality of any water obtained using the water supply work;
- (i) the water supply work approval lapses if the construction of the water supply work is not completed within three years of the issue of the water supply work approval; and
- (j) any other conditions required to implement the provisions of this Plan.

[27] Clause 97 Part 12

Omit the clause. Insert instead:

Part 11 may be amended to do any of the following:

- (a) amend the rules in relation to record-keeping, including amendments in relation to the requirements for Logbooks; or

- (b) amend clause 91 to specify different standards for decommissioning water supply works or different construction requirements for water supply works.

[28] Clause 98 Schedules

Omit “Schedule 4” wherever occurring in subclauses (5) and (6).

Insert instead “Schedule 5”.

[29] Clause 98 (7)

Omit “Schedule 5” from subclause (7). Insert instead “Schedule 6”.

[30] Clause 98 (8)

Omit “Schedule 6” from subclause (8). Insert instead “Schedule 7”.

[31] Clause 98 (9)

Omit “Schedule 7” from subclause (9). Insert instead “Schedule 8”.

[32] Schedule 1 Dictionary

Omit “Schedule 7” from the definition of *river reach*. Insert instead “Schedule 8”.

[33] Schedule 1

Omit definition of *runoff harvesting dam*. Insert instead

runoff harvesting dam is a dam on a hillside or minor stream which collects and stores rainfall runoff. Minor streams are as defined in an order made under section 53 of the Act. For the purposes of this Plan, references to runoff harvesting dams as water supply works include any associated pumps or other works which take water from the dam. For the purpose of clarity, this definition includes dams that are also used to store water diverted into the dam from a river or other source of water.

[34] Schedule 4

Insert immediately after Schedule 3:

Schedule 4 Access licences in the Upper Bega / Bemboka Rivers Water Source that cannot take water when flows are less than the lower limit of B Class

This Schedule applies to each access licence which replaces a *Water Act 1912* entitlement listed in the table below.

<i>Water Act 1912</i> entitlements that will be replaced by access licences on commencement of this Plan
10SL055045
10SL052117
10SL055682

<i>Water Act 1912 entitlements that will be replaced by access licences on commencement of this Plan</i>

10SL055026

10SL055795

10SL056785

10SL051883

[35] Schedules 5 to 8

Renumber existing Schedules 4 - 7 as Schedules 5 to 8, respectively.

[36] Appendix 3 Access licences with cease to pump thresholds that are higher than the upper limit of the relevant Very Low Flow Class

Omit "50ML/day" from the Access rules in Column 3. Insert instead "45ML/day".