



New South Wales
Government

Access Licence Dealing Principles Order (No 1) 2013 – Murray Darling Basin

under the

Water Management Act 2000

I, the Minister for Primary Industries, in pursuance of section 71Z(1) of the *Water Management Act 2000* (**'the Act'**) do, by this Order, establish the access licence dealing principles in Schedule 1 to this Order to prohibit the kinds of dealings that may be effected under Division 4 of Part 2 of Chapter 3 of the Act in the Murray Darling Basin.

Dated this 20th day of December, 2012.

KATRINA HODGKINSON, MP
Minister for Primary Industries

Explanatory note

This Order is made under section 71Z(1) of the *Water Management Act 2000*. The object of this Order is to prohibit certain dealings that may be effected under Division 4 of Part 2 of Chapter 3 of the Act in the Murray Darling Basin in NSW.

Access Licence Dealings Principles Order (No 1) 2013 – Murray Darling Basin

under the

Water Management Act 2000

1 Name of Order

This Order is the *Access Licence Dealings Principles Order (No 1) 2013*.

2 Commencement

This Order commences on 15 January 2013 and will remain in force until repealed or modified by order.

3 Prohibition on dealings

Dealings in a New South Wales Murray Darling Basin valley specified in Schedule 2 are prohibited as specified in Schedule 1.

Schedule 1 Prohibition on dealings

- (1) Subject to paragraph 3, for each NSW Murray Darling Basin valley specified in Schedule 2, dealings under section 71M, 71N and 71Q of Division 4 of Part 2 of Chapter 3 of the Act are prohibited for the period from 15 January 2013 to 15 January 2023 unless the quantity of water traded in that valley is less than 3% of the baseline diversion limit for that valley.
- (2) The quantity of water traded in a NSW Murray Darling Basin valley is taken to be the sum of the share component the subject of dealings pursuant to section 71M, 71N and 71Q in that valley.

Note. For the purpose of determining when the 3% limit has been reached, long-term diversion limit equivalent factors will be used to convert the share component of water access licences into a common unit. This is consistent with clause 6.05(6) of the Basin Plan.

- (3) This order does not apply to:
 - (a) dealings where the transferee will use any water obtained as a result of a dealing:
 - (i) in accordance with a water use approval under the Act which authorises the use of water for the purpose of irrigation, industry, town water supply or recreation; or
 - (ii) for any of the purposes and circumstances in clause 31 or 32 of the *Water Management (General) Regulation 2011*, or
 - (iii) for a transitional Part 3A project approved under Part 3A of the *Environmental Planning and Assessment Act 1979*, or for State significant development for which consent has been granted under Part 4 of the *Environmental Planning and Assessment Act 1979*, or for State significant infrastructure for which approval has been granted under Part 5 of the *Environmental Planning and Assessment Act 1979*;
 - (b) dealings where the transferee has certified in writing, if the water is not to be used in the State of NSW, that:
 - (i) the water will be used for irrigation, industry, town water supply or recreation purposes; or
 - (ii) the water will be used for a purpose and in circumstances which, if undertaken in NSW would be exempt from the requirement of a use approval by clauses 31 or 32 of the *Water Management (General) Regulation 2011*; or
 - (iii) the water is required for an activity that has been approved under interstate legislation equivalent to a provision of Part 3A of the *Environmental Planning and Assessment Act 1979* or State significant development under Part 4 of the *Environmental Planning and Assessment Act 1979* or for State significant infrastructure for which approval has been granted under Part 5 of the *Environmental Planning and Assessment Act 1979*;
 - (c) dealings where the transferee is:

- (i) a statutory person, body or entity which has the function of supplying water to other persons for consumptive or economic purposes (including domestic, industrial, commercial, and agricultural purposes) and the dealing is otherwise allowed by or under the Act; or
 - (ii) a statutory person, body or entity which has the function of bulk water supply or electricity generation and the dealing is otherwise allowed by or under the Act;
- (d) dealings where the Minister for Primary Industries is satisfied that works completed after 15 January 2013 to improve the transferor's conveyance, storage or use of water taken pursuant to the access licence have reduced or will reduce losses from that conveyance, storage or use equal to or greater than the entitlement or allocation the subject of the dealing;
- (e) dealings to give effect to contracts executed by both parties to the dealing on or before 15 January 2013 where the Minister for Primary Industries:
 - (i) is notified in writing of the contract on or before 26 February 2013; or
 - (ii) is notified in writing of the contract after this date but is satisfied that there are exceptional circumstances for the failure to notify by the required date;
- (f) dealings to transfer to a member of a water supply scheme that member's entitlement under the operator's access licence where:
 - (i) the transferee was a member of the water supply scheme on or before 15 January 2013; or
 - (ii) the transferee was not a member on 15 January 2013 but on that date had a contract executed by both parties to either purchase a member's entitlement or otherwise become a member of the water supply scheme; and
 - (iii) for the purposes of subclause 3(f)(ii) the Minister for Primary Industries is either notified in writing of the contract on or before 26 February 2013; or is notified in writing of the contract after this date but is satisfied that there are exceptional circumstances for the failure to notify by the required date;
- (g) dealings by a private irrigation board for the purpose of wholly or partly transforming a landholder's water entitlement into an access licence under Division 10A of Part 2 of Chapter 4 of the Act;
- (h) dealings which in the reasonable opinion of the Minister for Primary Industries are necessary to meet the New South Wales Government's existing commitments under:
 - (i) the Water Management Partnership Agreement with the Commonwealth dated 11 January 2010; or
 - (ii) any agreements entered into for the purposes of creating measures under Chapter 7 of the Basin Plan; or

- (i) dealings for which consent had been granted on or before 15 January 2013 but had not yet taken effect under section 71B.
- (4) Except in so far as the contrary intention appears in this Order, words and expressions in this Order have the same meaning as they have in the Act.
- (5) For the purpose of this order:
 - (a) “baseline diversion limit” means the baseline limit of take from an SDL resource unit as defined in cl 1.07 of the Basin Plan;
 - (b) “member of a water supply scheme” means:
 - (i) in relation to an irrigation corporation a shareholder in the irrigation corporation;
 - (ii) in relation to a private irrigation board the holder of an irrigated holding;
 - (iii) in relation to private water trust a ratepayer of the Trust;
 - (c) “operator” means an irrigation corporation, private irrigation board or private water trust;
 - (d) “SDL resource unit” means the water resources, or particular parts of the water resources, of a water resource plan area that is either a surface water SDL resource unit or groundwater SDL resource unit as defined in cl 1.07 of the Basin Plan;
 - (e) “transferee” means a transferee or an assignee;
 - (f) “water supply scheme” means a scheme for delivery of water by an irrigation corporation, private irrigation board or private water trust to members of the water supply scheme.
- (6) For the purposes of clause (3)(b)(ii) references in clauses 31 or 32 to:
 - (a) NSW legislation are to be construed as references to the equivalent interstate legislation; or
 - (b) persons, bodies or entities established under NSW legislation are to be construed as references to persons, bodies or entities established under the equivalent interstate legislation.

Schedule 2 Specified NSW Murray Darling Basin valleys

This order applies to the following NSW Murray Darling Basin valleys:

- (i) Intersecting Streams
- (ii) Barwon-Darling Watercourse
- (iii) New South Wales Border Rivers
- (iv) Gwydir
- (v) Namoi
- (vi) Macquarie-Castlereagh
- (vii) Lachlan

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- (viii) Murrumbidgee
- (ix) New South Wales Murray
- (x) Lower Darling

Note. The NSW Murray Darling Basin valleys listed in Schedule 2 are identified as water resource plan areas for surface water SDL resource units in the Basin Plan.