EXPLANATORY STATEMENT

Select Legislative Instrument 2011 No. 117

(Issued by the Authority of the Minister for Sustainability, Environment, Water, Population and Communities)

Subject: Water Act 2007

Water Amendment Regulations 2011 (No. 1)

Subsection 256(1) of the Water Act 2007 (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Amendments to the text of the Murray-Darling Basin Agreement (the Agreement), set out in Schedule 1 to the Act, may be made by regulation under section 18C of that Act if the amendments have been agreed to by the Murray-Darling Basin Ministerial Council (Ministerial Council). Subclause 5(3) of the Agreement provides that the Commonwealth may only register under subclause 5(2) of the Agreement an amendment agreed by the Ministerial Council.

The purpose of the Regulations is to amend the Agreement in accordance with the Ministerial Council decisions of 18 June 2010, 17 December 2010 and out of session.

These decisions would revise the Agreement by:

- giving effect to clause 8(3) of Schedule B of the Agreement by including an end-of-valley target for salinity for the Australian Capital Territory in Appendix 1 of Schedule B;
- amending Schedule B to insert an amended joint work reflecting an additional measure to assist in reducing or limiting the rate at which salinity increases within the Basin;
- giving effect to clause 130 of the Agreement for the preparation of a Schedule to account for South Australia’s Storage Right (Schedule G);
- giving effect to clause 135 of the Agreement for the preparation of a Schedule for Water Sharing (Schedule H); and
- making consequential changes to the Agreement to give effect to these two Schedules.

The details of the Regulations are set out in the Attachment.

The conditions under section 18C the Act, and subclause 5(3) of the Agreement which require the agreement of the Ministerial Council to any amendments to the Agreement, have been met.

The Regulations would be a legislative instrument for the purposes of the Legislative Instruments Act 2003 (LIA). They are exempt from the sunsetting provisions in Part 6 of the LIA.
The Murray-Darling Basin Authority, the Basin Officials Committee, the Australian Government Solicitor, and the Office of Legislative Drafting and Publishing were consulted in preparing these Regulations.

There are no significant negative financial implications of these Regulations, with some positive implications, especially for South Australian water entitlement owners who have capacity to store water for carry-over and use in years where water availability would otherwise be less.

The Regulations commenced on the day they are registered on the Federal Register of Legislative Instruments.

**Authority:** Subsection 256(1) of the *Water Act 2007*
The details of the Water Amendment Regulations 2011 (No. 1) are as follows:

**Regulation 1** provides that the name of the Regulations is the Water Amendment Regulations 2011 (No. 1).

**Regulation 2** provides that the Regulations commence on the day they are registered on the Federal Register of Legislative Instruments.

**Regulation 3** provides that Schedule 1 would amend the Water Regulations 2008 (the Principal Regulations)

### Schedule 1 - Amendments

Clauses 130 and 135 were inserted into the Murray-Darling Basin Agreement (the Agreement) in 2008 in accordance with the Inter-governmental Agreement on Murray-Darling Basin Reform of 3 July 2008 and agreed by parties to the Agreement prior to appending of the Agreement to the Water Act 2007. These clauses required the development of Schedules G and H to improve River Murray System operations during extreme drought, and assist with the supply of critical human water needs. Schedule G provides South Australia with additional flexibility to manage the timing of delivery of water to which it is entitled under the Agreement without affecting the water availability of New South Wales and Victoria or access to storage of these States (in regard to private carry-over) by storing water in storages. Schedule H codifies a number of practices and processes established during special water sharing arrangements agreed between the jurisdictions in the recent years of extremely low water availability, including processes for addressing any potential shortfall in conveyance water. These practices and processes are based on underlying principles such as:

- that each State is responsible for meeting critical human needs in its State, and the States are collectively responsible for meeting the conveyance water requirements of the River Murray System;
- that water set aside by States for critical human water needs is the highest priority in the system; and
- that States can acquire any available water (eg. from tributaries) at any time and set it aside for the purposes of critical human water needs.

Schedule H and the changes to the Agreement also introduce a new conveyance reserve to reduce the risk that there will not be enough water to keep the river flowing to deliver water for critical human water needs.

Key interactions between the Schedules are that the Schedule for Water Sharing takes precedence over the Schedule to account for South Australia’s Storage Right when it applies, and that water for critical human water needs is treated similarly under each State.
To enable the provisions of the Schedules G and H to be properly implemented there are a number of amendments to the Agreement. These amendments include several changes to the accounting provisions to ensure that the South Australian deferred water and the reserves do not alter the current water sharing and accounting arrangements as well as new provisions to set aside a reserve of water for conveyance in the next year and for critical human water needs to support the way in which Schedule H is intended to operate.

**Schedule 1A – Amendments to the Murray-Darling Basin Agreement**

**Item 1**

This item inserts several new definitions into the Agreement (items 1 to 4 below) that apply to terms important in the operations of Schedules G and H (item 210), and which are used in the Agreement itself. The definitions of ‘conveyance reserve’ and ‘deferred water’ are particularly significant inclusions as they are central concepts in the Schedules and are referred to in several places in the Agreement.

Items 80 to 94 are consequential amendments to the Agreement resulting from and supporting the inclusion of Schedules G and H to the Agreement.

Items 160 and 165 are amendments to Schedule B (Basin Salinity Management) of the Agreement.

**Item 1**

‘Conveyance reserve’ means water set aside in the River Murray System in each year to provide increased certainty of commencing the following year with sufficient water available to meet the conveyance water requirements. This is primarily intended to provide greater certainty that water for critical human needs can be delivered as far downstream as Wellington in South Australia even during a year of very low inflows.

**Item 2**

‘Current conveyance water’ means the conveyance water needs for the current year. While this water has always been provided for by paragraph 102(b), the use of the term itself has only been required as a result of the development of Schedule H.

(a) ‘Deferred water’ is a key term in Schedule G, and defined in that Schedule as:

(b) any part of South Australia’s entitlement under clause 88 of the Agreement that South Australia stores under clause 91 of the Agreement; and

(c) any allocations South Australia may have acquired for use in South Australia from within an upper State, the delivery of which has been deferred, in accordance with this Schedule.
Item 3

‘Minimum reserve’ is defined in the existing clause 103 of the Agreement, however due to its importance and the way it has been used in both Schedules G and H it has been included as a specifically defined term.

Item 4

‘Private carry-over’ is a key term in relation to Schedule G, being one of the two purposes for which South Australia can defer water, and as such it has required definition in the Agreement having been used in both the Agreement and the Schedule.

Item 80

The amendment inserts a new clause 88A to include an explicit provision for South Australia to use some of its loss and dilution water for other purposes, such as critical human water needs, in years of low water availability.

Item 81

The amendment replaces current clause 90 to remove the potential for confusion between several clauses by specifically identifying the deferral and subsequent delivery of South Australia’s entitlement flow as one of the reasons that the Authority may vary the monthly quantities which South Australia receives.

Item 82

The amendment inserts a new subclause 91(2A) to require that any water that is deferred is still included in the calculation of South Australia’s monthly entitlement under clause 88(a). This amendment ensures that the various references to clause 88(a) used in the Agreement, particularly in regard to special accounting, continue to function as required.

Item 83

The amendment replaces current clause 97 to extend the current limitation on use by New South Wales and Victoria to support the implementation of Schedule G and H by limiting access to the South Australian deferred water and to the conveyance reserve. This limitation remains subject to any decision by the Ministerial Council, and has also been made subject to both States receiving any water set aside for critical human water needs.

Item 84

The amendment replaces current paragraph 102(c) with new paragraphs 102(ba) and (c) and includes two elements. The first is to place the South Australian deferred water within the formula for distribution of water under the control of the Authority. The second is to clearly establish that critical human water needs are met from water distributed to each State.

The insertion of these new provisions will ensure that there is sufficient water distributed across the States to provide for critical human needs before any other water is distributed.
However this volume will be distributed in accordance with normal sharing and as such may result in a State not having sufficient water for critical human water needs. This is a result of the limitations imposed by the Intergovernmental Agreement; were the clause drafted to ensure each State received the volume it requires for critical human water need this would have an impact on State shares and it is also not consistent with States being responsible for critical human water needs. It will therefore be the responsibility of any State with a shortfall to seek to obtain water from those States with a volume of water greater than their needs.

Item 85

The amendment inserts new clauses 102A to D to require the Authority to determine the volume of water required for critical human water needs. Before the Basin Plan comes into effect this will be the historical volume of 351,000 megalitres. After the Basin Plan comes into effect it will be the sum of the volumes determined by the Basin Plan.

While the volume being distributed under this clause has been determined based on the volume required for critical human water needs the clause does not restrict a State from distributing the water for other purposes if it so chooses.

While the new clause 102A will ensure sufficient water is identified to meet critical human water needs, the insertion of clause 102B will give each State the ability to set aside water for critical human water needs and to have this need met when water is distributed to States.

This clause will require States to identify both the volumes and the locations of the water it has set aside for critical human needs, and for this information to be verified by the Authority. The Committee will be required to resolve any disputes between a State and the Authority. This clause does not require that a State must set water aside for critical human water needs.

Clause 102C provides for any adjustments required to ensure a State receives the volume of water it has advised the Authority that it set aside for Critical Human Water Needs (under the new clause 102B).

It is possible that a State could advise the Authority that it has a particular volume of water set aside for critical human water needs, but when water is distributed in accordance with the provisions of the agreement there is not enough water for that State to be entitled to receive that volume. However other States might have enough water to supply that volume.

This new clause will allow, with the approval of the Committee, a redistribution to occur to ensure each State receives the volume it had previously advised. One or more States will “advance” the required water to the State(s) with the shortfall.

This clause will operate in a similar way to the approach agreed for the operation of advances during the recent dry period.

Clause 102D establishes the requirement to set aside a volume of water as a conveyance reserve.
Available water is distributed to States in accordance with normal sharing arrangements. This clause requires a part of that water to be set aside as a reserve, after sufficient water is available for critical human water needs. The clause includes provision for less water to be set aside when less water is available for distribution, operating in a similar way to the minimum reserve.

Prior to the Basin Plan coming into effect the conveyance reserve will be 225,000 megalitres. Once the Basin Plan comes into effect the volume will be that set in the Basin Plan in accordance with paragraph 86D(1)(c) of the Water Act 2007.

Item 86
The amendment replaces current subclause 103(2) to set out the formula for determining the minimum reserve unless the Ministerial Council otherwise determines. The formula excludes South Australia’s contribution to the conveyance reserve from the calculation of the minimum reserve.

Item 87
The amendment replaces subclause 110(1) with new subclauses 110(1) and (1A) to adjust the current loss provisions in the Agreement to include the requirement from clause 130 that South Australia bears incremental evaporative loss incurred as a result of deferred water held in a major storage.

Item 88
The amendment makes a small change to subclause 110(2) to clarify that the calculation done under subclause 110(2) relates to the requirement under subclause 110(1).

Item 89
The amendment replaces current clause 111 to clarify that water supplied by New South Wales or Victoria to South Australia is in equal proportions, whether it is delivered at a time under preceding arrangements, or whether the delivery is deferred under Schedule G. Any adjustments to South Australian entitlement flow relating to water trade are managed under the interstate water trading arrangements.

Item 90
The amendment inserts a new subclause 123(3) to clearly define that water deferred by South Australia and water stored for the conveyance reserve held in a major storage is not included in the assessment of whether New South Wales or Victoria is in special accounting with respect to South Australia.
**Item 91**

The amendment makes a small change to subclause 128(1) to identify that in addition to the entitlements of South Australia during a period of special accounting South Australia is entitled to any advance determined under subclause 102C(3) and provided under subclause 102C(4).

**Item 92**

The amendment replaces current paragraph 128(1)(b) to delineate that South Australia’s contribution to the conveyance reserve is not included within the calculation of the amount of water South Australia is entitled to receive during a period of special accounting.

**Item 93**

The amendment replaces current clause 130 to update the text to move from a clause describing the preparation of a Schedule to account for South Australia’s Storage Rights to one that refers to a completed and approved Schedule G. The clause sets out the process for amendment of Schedule G.

This clause also details the accounting rules the Authority must develop for the operation of Schedule G and a process for developing those rules.

**Item 94**

The amendment replaces current clause 135 to update the text to move from a clause describing the preparation of a Schedule for water sharing to one that refers to a completed and approved Schedule H. The clause sets out the process for amendment of Schedule G.

The existing paragraph 135(6)(b) regarding South Australia’s storage right is not included in the amended clause 135 because it is adequately addressed in amended clause 130.

This clause also details what accounting rules the Authority must develop for the operation of Schedule H and a process for developing those rules.

**Item 160**

The amendment substitutes a new Appendix 1 to Schedule B to the Agreement. The new schedule includes the baseline conditions and end of valley targets for the Australian Capital Territory, which were not previously in the table, and which were required to be included in the table under clause 8 of Schedule B.

**Item 165**

The amendment substitutes a new description for the Waikerie Salt Interception Scheme in Appendix 2 of Schedule B to the Agreement. The new description recognises that the Waikerie 2L Salt Interception Scheme works are completed and are in effect.
Item 2

The note identifies that items 202 to 209 are reserved for future amendments to the regulations.

Item 210

Schedules G and H to the Agreement

Schedule G

The Schedule to Account for South Australia’s Storage Right is a supplement to the existing Agreement required by clause 130 of the Agreement. Arrangements under the existing Agreement continue on except where modified by Schedule G. However, these modifications are quite limited because a condition of clause 91 of the Agreement is that Schedule G cannot impact on the water availability of New South Wales and Victoria.

The Schedule provides South Australia with greater flexibility to fulfil its own water requirements from the River Murray System. The quantity of water available to South Australia is unaffected by the Schedule – however the timing of delivery is. Under the Schedule, South Australia can defer the delivery of, and thereby store, water from its entitlement or allocations acquired through trade as deferred water.

Schedule G has six parts: Part 1 – Preliminary; Part 2 – Storing Deferred Water; Part 3 – Delivering Deferred Water; Part 4 – Accounting for Deferred Water; Part 5 – Amendment of Schedule and Rules; Part 6 – Apportionment of Costs.

PART 1 – PRELIMINARY

Clause 1. Purposes

The clause restates the purposes of Schedule G in subclause 130(6) of the Agreement.

Subclause 2(1). Definitions and Interpretation

The subclause defines, or refers to existing definitions of, key terms within Schedule G that are not defined in the Agreement.

The year is defined to begin on 1 June, as this is consistent with Part XII of the Agreement and with Authority procedures.

Subclause 2(2). Definitions and Interpretation

The subclause specifies that the expressions used in Schedule G which are not defined in the Schedule have the same meanings as in the Water Act 2007 or the Agreement.
Subclause 2(3). Definitions and Interpretation

This subclause provides that that clause 3, the Interpretations clause of the Agreement, also applies to Schedule G.

Subclause 2(4). Definitions and Interpretation

The subclause specifies how the terms ‘effect on water availability’ and ‘effect on storage access’ are to be interpreted in Schedule G, because these terms are required to be defined under paragraph 130(6)(b) of the Agreement.

An effect on water availability is any impact that reduces the volume of water an upper state can allocate or limits an upper state’s ability to store part of its entitlement.

An effect on storage access occurs if delivering South Australia’s deferred water prevents an upper state from delivering any part of its entitlement.

Subclause 2(5). Definitions and Interpretation

The subclause specifies that it is the role of the Authority to determine whether an ‘effect on water availability’ or an ‘effect on storage access’ has occurred.

Subclause 2(6). Definitions and Interpretation

The subclause obliges the Authority to take into account any relevant prevailing professional standards when it is forming opinions for the purposes of this Schedule. The Authority is required to form opinions under seven clauses (clauses 2, 7, 8, 11, 12, 13, 14, and 28).

Clause 3. Commencement

Unless otherwise agreed by the Ministerial Council, Schedule G takes effect on the 1 June after it is approved.

Paragraph 4(a). Application

The paragraph reflects the purposes (critical human water needs and private ‘carry-over’) for which deferred water may be used in subclauses 91(1) and 91(2) of the Agreement. ‘Private carry-over’ is any water allocated to private irrigators (or other water users) which the irrigator then chooses to forgo using this year, on the understanding that an equivalent volume of water will be available for use in a subsequent year. In practice, this means that many specific uses of water would be considered to be ‘private carry-over’.

Paragraph 4(b). Application

The paragraph confirms that South Australia can only store water for use in South Australia. South Australia cannot store water for New South Wales or Victoria that may affect internal spills under clause 116 of the Agreement. ‘Internal spills’ are accounting transfers from New South Wales to Victoria or vice versa, due to one State having used its share of the capacity.
of a storage. These transfers prevent either state from using more than 50% of the total capacity of the storage (see also clause 21).

Allowing South Australia’s deferred water to change internal spills would affect the water availability of New South Wales and Victoria, which is not allowed under the conditions of clause 130.

Paragraph 4(c). Application

The paragraph gives the Schedule for Water Sharing precedence over this Schedule when Tiers 2 and 3 are in effect. This is appropriate because the Schedule for Water Sharing together with the Agreement sets the framework for the low number of extremely dry years per century when Tiers 2 and 3 are triggered. The provisions of the Schedule for Water Sharing aim to ensure the provision and delivery of critical human water needs for all three states during these extremely dry periods.

Paragraph 4(d). Application

The paragraph clarifies that South Australia can continue to use existing powers in the Agreement. An example of an existing power is clause 90 of the Agreement titled ‘Variation of South Australia’s Entitlement’ to vary the timing of entitlement flows.

PART 2 – STORING DEFERRED WATER

Clause 5. Establishing initial volumes

The clause establishes the initial balance in South Australia’s deferred water account as zero.

Clause 6. Permissible volume of deferred water

The clause allows South Australia to store as much deferred water as it likes subject to this water being the first to physically spill from any storage.

Clause 7. Planning for storage and delivery of deferred water

The clause requires South Australia to provide the Authority with a rolling 12 month Plan (the Deferred Water Storage and Delivery Plan) for how it intends to use the storage right in the coming 12 months. Under this clause South Australia will submit this plan each month, giving South Australia the opportunity to vary the plan as circumstances change. This Plan is an important input into the Authority planning for river operations in the upcoming 12 month period.

Subclause 7(2) includes a number of compulsory elements of the Plan, including that the Plan will cover a range of inflow conditions.

Subclause 7(3) requires the Authority to assist South Australia in preparing the plan at South Australia’s request.
The clause also includes a process under which South Australia may amend and resubmit a Plan if the Authority does not approve it the first time that it was submitted.

Clause 8. Resolving disputes about Plans

The clause means that when there is a dispute between the Authority and the Basin Officials Committee member for South Australia regarding the approval of a Plan or a departure from a Plan, the matter can be referred to the Basin Officials Committee by the member for South Australia.

Clause 9. When deferred water is stored

The clause provides that the Basin Officials Committee member for South Australia can request that water which South Australia is entitled to receive at a point in time can be deferred until later, and hence held in a storage of the River Murray System.

This clause also provides for South Australia to make requests that are not in Accordance with a Plan to be approved as a departure from the Plan.

Clause 10. Where deferred water may be stored

The clause allows South Australia to store deferred water in the unused storage capacity of New South Wales and Victoria. The storage in which the deferred water would be stored would be determined based on where water would have been supplied from at the time that delivery was deferred. Any deferred water from a tributary downstream of Hume Dam must be stored in Lake Victoria initially, although it may be subsequently made available in an upstream storage using substitution.

The provisions for where deferred water may be stored apply equally to water which is deferred from South Australia’s entitlement and to water which South Australia purchases from an upper state.

Clause 11. Transferring deferred water downstream

The clause provides the process by which water deferred at South Australia’s request can be released from an upstream storage to flow along the River Murray and be stored in a downstream storage.

Such transfers must be made in accordance with the Deferred Water Storage and Delivery Plan (or any departure from the Plan); may be made at any time following a request from South Australia; and may be made, with the written consent of South Australia, where in the Authority’s opinion a transfer is required for the purpose of delivering water for the remainder of the year. If South Australia does not consent to a transfer of water the Authority must then reduce the volumes available under the Plan by the amount of the proposed transfer.

In all cases the Authority must not transfer deferred water if the transfers would have an effect on either water availability in an Upper State and/or, (in the case of deferred water
stored for the purpose of meeting private carry-over in South Australia) storage access by an Upper State. The Authority may also decide not to transfer deferred water if in the opinion of the Authority prevailing river circumstances for river operations make it impractical - for example when the flow in the river would cause the deferred water to simply spill overbank onto the floodplain. If the Authority decides not to transfer deferred water in accordance with the Plan or following a request by South Australia it must provide reasons in writing.

Subclauses 11(8) and (9) specify the accounting for any downstream transfer (i.e. debiting the upstream storage and crediting the downstream storage).

Clause 12. Substituting deferred water upstream

The clause provides that unless the Plan or approved departure from the Plan otherwise provides the Authority must, in certain circumstance substitute deferred water in a downstream storage for water of New South Wales and Victoria for water held an upstream storage. This would result in the upstream ‘movement’ of deferred water in the water accounts. South Australia would often consider such a substitution to be desirable, because upstream storages (such as Dartmouth Reservoir) physically spill less often than downstream storages (such as Lake Victoria), and hence deferred water would be more ‘secure’ in storages further upstream. Additionally, if an upstream storage spills there may be an opportunity to reregulate the spilled water into a downstream storage.

PART 3 – DELIVERING DEFERRED WATER

Clause 13. Deferred water delivered at South Australia’s request

The clause confirms that, except for deferred water that spills from a major storage, the Authority must only deliver deferred water to South Australia in accordance with the Plan or approved departure from the Plan, or at South Australia’s request. However, the Authority may not deliver deferred water if it is impractical to do so. An example where it would be impractical to do so would be if South Australia sought the delivery of water for private carry-over to the South Australian border immediately, when all of its deferred water was in Dartmouth Reservoir (it takes around a month to deliver water from Dartmouth to the South Australian border).

The Authority must provide its reasons for not delivering the water to South Australia in writing.

Clause 14. Power to cancel delivery

The clause allows South Australia to cancel any delivery of deferred water. However, any water released prior to the cancellation would be either transferred to a downstream storage if there was unused storage capacity, or debited to the relevant account.

An example where this clause may be applied is if deferred water was being transferred from Hume Reservoir to South Australia, and subsequently there was a large rainfall event in the
Darling catchment. South Australia may request that the delivery was cancelled and hence that no further deferred water was released from the upstream storage.

Clause 15. Deferred water not part of South Australia's entitlement

The clause clarifies that any deferred water delivered does not count towards South Australia’s Monthly Entitlement (eg. under clause 88 of the Agreement) during that month. This allows South Australia to have deferred water delivered so as to increase the flow above its entitlement at the time. Whilst this is unlikely to occur often, it could happen for example if South Australia had a water quality concern. This is most likely to occur during a period of special accounting when the volume that South Australia is entitled to receive is less than the volume under clause 88 of the Agreement.

Clause 16. South Australia's exclusive right to use deferred water

The clause confirms that New South Wales and Victoria cannot divert flows of deferred water within the river channel without South Australia’s approval. This includes water which is spilled from storage.

Subclauses 17(1) to (4). Spills and pre-releases

The subclauses provide that when water spills or is pre-released from a storage the water is deemed to be deferred water until the volume of deferred water in that storage is reduced to zero. A pre-release is a release of water from storage in the expectation that water will spill from the storage in the near future.

Deferred water stored for South Australia’s private carry-over will spill before water stored for critical human water needs.

This subclause also requires any spilled deferred water to be re-regulated wherever possible.

Subclause 17(5). Spills and pre-releases

The subclause relates to existing rules for the operation of Hume and Dartmouth reservoirs in harmony. These harmony rules are related to flood operations of the storages. This subclause provides that the first water transferred from Dartmouth Reservoir to Hume Reservoir with the intention of equalising the probability of spill of both reservoirs is deferred water, and that private carry-over is spilled before critical human water needs.

Clause 18. Limitations on channels and storages

The clause relates to subclause 91(2) of the Agreement, whereby South Australia can store private carry-over under Schedule G. The storage access of these States could be affected if the delivery of deferred water would occupy river channel capacity (eg. through the Barmah Choke) at a time when the river channel was full, or deferred water was delivered out of a storage at a time when it was not possible to release all of the water sought from a storage to meet downstream requirements.
In either of these circumstances, subject to any contrary determination by the Committee the release of deferred water for the purpose of meeting private carry-over must be given the lowest priority.

Clause 19. Reallocation of deferred water

The clause allows the Authority to re-distribute water in the accounts of States if necessary to facilitate the delivery of deferred water to South Australia, to operate the River Murray System efficiently or to re-regulate any deferred water which has spilled. It is similar to existing clause 114 of the Agreement, which relates to waters of New South Wales and Victoria.

PART 4 – ACCOUNTING FOR DEFERRED WATER

Clause 20. Establishing and maintaining accounts

The clause requires the Authority to establish and maintain accounts of deferred water and to adjust the accounts as necessary. The Authority must notify the states in writing of any adjustments.

The word ‘continuous’ appears in the existing subclause 130(11) but not in this clause or the clause 130 in the consequential changes to the Agreement. This is because water accounts are usually prepared on a monthly time-step – they are not updated ‘continuously’ if this is interpreted to be every moment of every day. Also, at the start of each water year, adjustments in the water accounts usually occur under the Agreement.

Clause 21. Accounting for internal spills

The clause means that deferred water does not affect calculations of internal spills between New South Wales and Victoria under clause 116 of the Agreement.

Internal spills occur if New South Wales or Victoria would have more water allocated to it in a storage than its 50% share of the storage capacity, and hence the water is transferred to the other State. Particularly during wetter periods, internal spills between New South Wales and Victoria occur frequently. If the presence of deferred water in a storage affected internal spills, there would be an effect on the water availability of New South Wales and Victoria, which is not allowed under subclause 91(1) of the Agreement.

Clause 22. Attribution of evaporative losses

The clause requires the Authority to calculate incremental evaporative losses by subtracting the losses which would have occurred if South Australia had not stored any water as deferred water from the total evaporative losses from all major storages.

Subclauses 23(1) to (4). Accounting for deferred water in Menindee Lakes Storage

The subclauses provide that deferred water in the Menindee Lakes Storage for the purpose of private carry-over is treated the same way as Victorian water in the Menindee Lakes Storage.
with respect to the Agreement (particularly clauses 95, 99 and 121). When the Menindee Lakes Storage falls below 480,000 megalitres, this deferred water for private carry-over would effectively be available to New South Wales rather than South Australia, and subsequently replaced when the volumes rose again above 640,000 megalitres and the water in the Menindee Lakes Storage was shared once again.

Subclauses 23(5) to (6). Accounting for deferred water in Menindee Lakes Storage

The subclauses mean that whenever New South Wales is entitled to use water in the Menindee Lakes exclusively pursuant to subclause 95(1) of the Agreement water in Lake Victoria will be substituted for deferred water stored in the Menindee Lake storage for the purpose of meeting critical human water needs.

Subclause 23(7). Accounting for deferred water in Menindee Lakes Storage

The subclause provides for the current operation of an existing rule in regard to additional dilution flows determined under clause 88(c) of the Agreement.

Clause 24. Adjustments of accounts between major storages other than Menindee Lakes Storage

The clause ensures that deferred water remains in ‘active’ storage, that is, above the minimum operating level of any storage by adjusting in the accounts which storage the deferred water is held in. (‘Minimum operating level’ is defined in clause 2 of the Agreement as…. ‘the water level in a storage, as determined from time to time by the Ministerial Council, below which water must not be released’ and is often referred to as ‘dead storage’). The deferred water would then be available when required (unless the water in a storage downstream was below its minimum operating level).

Clause 25. Accounting for transmission losses during regulated flows

When water flows along a river, some of it is ‘lost’. The clause means that New South Wales and Victoria continue to provide the water associated with deferred water that is lost through seepage and evaporation or other means in the upper River Murray upstream of the South Australian border, pursuant to clause 110 of the Agreement. When South Australia defers delivery of water, implicitly the associated transmission loss is also deferred. This deferred transmission loss is then used when the deferred water is delivered at a later time.

Clause 26. Accounting for transmission losses during other periods

The clause provides that the Authority must estimate and attribute transmission losses resulting from the flow of water not contained within river channels when water spilling from a major storage is taken to be deferred water under clause 17 and when water flows out of the river channel. Detailed accounting rules are required and must be established under subclause 130(12) of the Agreement.
Clause 27. Adjusting accounts for normal river operations

The clause enables standard adjustments to water accounts associated with, for example, errors in measurements of flows that are subsequently corrected. Measurements made on any day can be inaccurate (eg. due to high flows changing the profile of the channel) and water accounts are routinely adjusted to take account of these errors. These adjustments would be allowed under this clause. The Basin Officials Committee must be advised of any adjustments.

Subclause 28(1). Reconciling accounts with Agreement requirements

The subclause requires South Australia to report each year whether the use of the account under Schedule G was for the purposes for which Schedule G was intended (critical human water needs and private carry-over).

Subclause 28(2). Reconciling accounts with Agreement requirements

The subclause requires the Authority to make a determination on whether the storing and delivering of deferred water has had an effect on water availability or storage access of New South Wales and Victoria (in regard to private carry-over).

Subclause 28(3). Reconciling accounts with Agreement requirements

The subclause refers to the means for resolving differences and disputes under the objectives and outcomes document for river operations approved under clause 31 of the Agreement.

Clause 29. Independent review of operation of Schedule

The clause provides for a review by the Independent River Operations Review Group appointed under the Objectives and Outcomes document approved under clause 31 of the Agreement, or if that Group has not been appointed an independent reviewer approved by the Committee. The review is to examine the extent to which South Australia was able to store and receive deliveries of deferred water in accordance with the Plan in the previous year; and whether storing deferred water had an effect on water availability for an Upper State and/or (in the case of deferred water stored for the purpose of meeting private carry-over in South Australia) storage access by un Upper State. The independent review must report its findings to the Basin Officials Committee.

PART 5 –AMENDMENT OF SCHEDULE AND RULES

Clause 30. Basin Officials Committee may request review

The clause allows the Basin Officials Committee to request the Authority to review Schedule G under clause 142 of Agreement.
Clause 31. Amendment of Schedule

The clause allows for the development of amendments to Schedule G if the Authority considers any provision in the Schedule has had an effect on the extent to which South Australia was able to store or receive deliveries of deferred water, or on water available to, or (in regard to private carry-over) storage access an Upper State. The Authority or the Committee (following consultation with the Committee or the Authority) may propose amendments to avoid these effects to the Ministerial Council.

PART 6 – APPORTIONMENT OF COSTS

Clause 32. Costs of administering Schedule

The clause requires that the cost of administering of Schedule G would be taken into account when apportioning costs associated with river operations under paragraph 72(2)(a) of the Agreement. Current arrangements for cost apportionment are not due for adjustment for several years.

Schedule H

Schedule H sets out alternative water sharing arrangements for use during periods of Tier 2 and Tier 3 water sharing. The Schedule has been prepared in accordance with the requirements of clause 135 of the Agreement. These arrangements will come into effect during periods of low water availability in accordance with the triggers to be described in the Basin Plan. Tiers 2 and 3 are intended to provide for periods when it is difficult to supply and deliver water for critical human needs. Such periods are only expected to occur once or twice per century.

The Schedule consolidates a number of the features of recent interim water sharing arrangements negotiated by the Commonwealth, New South Wales, Victoria and South Australia for extreme dry conditions. It includes reference to a conveyance reserve, this is to be established through the inclusion of clause 102D in the Agreement.

The provisions of Tier 2 and Tier 3 are designed to supplement those of Tier 1, as such Tier 1 water sharing arrangements only cease during periods of Tier 2 or Tier 3 water sharing to the extent that they are inconsistent. The majority of provisions in place during periods of Tier 2 and Tier 3 water sharing would be those applied during Tier 1.

The Schedule has five parts: Part 1 – Preliminary; Part 2 – Tier 2 Provisions; Part 3 – Tier 3 Provisions; Part 4 – Accounting for Water under this Schedule; and Part 5 – Review of Schedule.

PART 1 - PRELIMINARY

Clause 1. Purposes
The clause sets out the purposes of this Schedule, this being to set out the way in which State water entitlements will be determined, delivered and accounted for during Tiers 2 and 3, while also providing for South Australia's storage right under subclause 91(1) of the Agreement.

Subclause 2(1). Definitions and Interpretation
The clause defines a number of key terms that are used within the Schedule, but which are not used in the Agreement. There are also a number of key terms defined in the Act and the Agreement that are used in the Schedule, and a link to these definitions is included.

‘Account’ is defined here by reference to the accounts made and kept under Part XII, Division 1, Subdivision D of the Agreement.

‘Current critical human water needs’ is defined here to make the distinction of critical human water needs in the current year, rather than any reserves of critical human water needs set aside for future years.

The ‘worst-case planning inflow sequence’ is referred to in the Schedule and is a key planning tool. It is also important to note that provisions have been included elsewhere to allow further rules to be made about the worst-case planning inflow sequence.

‘Year’ is defined as beginning on 1 June. This is consistent with the date for the start of the year used by the Authority.

Subclause 2(2). Definitions and Interpretation
The subclause specifies that the expressions used in Schedule H which are not defined in the Schedule have the same meanings as in the Water Act 2007 or the Agreement.

Subclause 2(3). Definitions and Interpretation
The subclause provides that that clause 3, the Interpretations clause of the Agreement also apply to Schedule G.

Clause 3. Commencement of Schedule
Through this clause the Schedule come into effect on the first day of the water year after it is approved. The water year for the Murray-Darling Basin commence on 1 June each year. However, the Ministerial Council can agree otherwise.

Clause 4. Application
The Schedule has been prepared such that Parts 1, 4 and 5 apply from the date the Schedule takes effect and Parts 2 and 3 when Tier 2 and Tier 3 distribution of water applies.

Paragraph 4(b) provides for the effect of the Snowy Scheme to also continue unless it is inconsistent with any Tier 2 water sharing arrangements.
PART 2 – TIER 2 PROVISIONS

Clause 5. Application of Tier 1 provisions

The clause clarifies that all Tier 1 water sharing arrangements that are not inconsistent with the Tier 2 water sharing arrangements continue. Where there is an inconsistency between Tier 1 and Tier 2, the Tier 2 provisions would take precedence. This is included so that the Tier 1 water sharing and accounting rules do not need to be repeated in this Schedule.

Clause 6. Inability to contribute to Conveyance Reserve

The first possible change to water sharing that can be applied under Tier 2 is to advance water from one State to another to meet the conveyance reserve if the Authority considers that insufficient water may be distributed to a State in a year for the State to make a contribution to the conveyance reserve under subclause 102D(4). The clause provides the necessary mechanism for the Authority to determine and advise the Basin Officials Committee that such an action is required. In preparing such advice the Authority must take into consideration the matters specified in subclause 6(2).

Clause 7. Advances to meet contributions to Conveyance Reserve

In the case of the Authority advising the Basin Officials Committee that there is sufficient water available to set aside the conveyance reserve the Committee may determine whether an advance is required from one or more States to meet any shortfall identified under clause 6. The clause provides for this decision and the subsequent actions by the Authority to redistribute the water as required.

The hydrological modelling undertaken to determine the volume of water to be held in the conveyance reserve assumed the Authority would be able to automatically advance water between states, without obtaining approval from the Basin Officials Committee. If the Basin Officials Committee does not approve, or delays the approval of an advance, the reliability of the conveyance reserve amount specified in clause 102D of the Agreement could be affected.

Clause 8. Insufficient water to meet Conveyance Reserve

The clause sets out actions to be taken in the case of the Authority advising the Basin Officials Committee that insufficient water may be distributed to the States to meet the conveyance reserve. Under such circumstances the Basin Officials Committee must promptly prepare a plan to ensure the adequate water will be available for meeting critical human water needs.

The clause includes a date limitation; if it is earlier in the water year than 1 September, it is considered prudent to wait for winter inflows which are likely to increase the quantity of water available.

It is possible that there may be a shortfall in the conveyance reserve, but that the current conveyance and critical human water needs can still be met without the need for additional...
remedial or contingency actions. However, it is likely that water availability in this situation will be extremely low and the likelihood of being able to meet and deliver critical human water needs in the following year without additional action is low. In such circumstances it is prudent to begin preparing for the use of the possible contingency actions, some of which may take several months or even longer to plan and implement.

Clause 9. Insufficient current conveyance water

The clause sets out actions to be taken if at any time there is insufficient water to meet the conveyance water requirements for the current year. Under such circumstances the Authority must inform the Basin Officials Committee and the Basin Officials Committee must make a declaration to that effect.

Subclause 10(1). Taking remedial action

The subclause sets out actions to be taken if the Basin Officials Committee has declared under clause 9 that current conveyance requirements cannot be met. Under such circumstances this subclause directs the Basin Officials Committee to decide what remedial action will be taken to increase available water within one month. The Basin Officials Committee must advise the Authority what actions will be taken, who will be responsible for taking action, and when the Basin Officials Committee expects the current conveyance requirements will be met. Such action could include recommending the declaration of Tier 3 in accordance with any provisions of the Basin Plan.

Subclause 10(2). Taking remedial action

The subclause provides for the Authority to assist the Basin Officials Committee in planning or implementing remedial action if the Basin Officials Committee requests. If it became involved, the Authority must examine and take into account environmental effects under clause 50 of the Agreement.

Subclause 10(3). Taking remedial action

The subclause provides for the Basin Officials Committee to adopt policies relating to remedial action.

Subclause 10(4). Taking remedial action

The subclause provides for the Basin Officials Committee may have regard to the Basin Plan, the policies adopted by the Basin Officials Committee and any information given by the Authority.

The Committee must also consider what additional remedial action may be necessary and available while either Part 2 or Part 3 applies.

Subclause 10(5). Taking remedial action

The subclause provides details to be provided with a proposal for remedial action, being:
• How the water will be made available;
• How any environmental or other consequences will be averted or remedied; and
• Circumstances when the remedial action will cease, including how and if the action is
to be reversed (for example, water borrowed from another source may need to be
repaid).

Subclause 10(6) Taking remedial action

The subclause provides for the Basin Officials Committee to determine whether or not a
remedial action requires the approval of the Ministerial Council, the Basin Officials
Committee or the Authority.

Subclause 10(7) Taking remedial action

The subclause states that if a remedial action requires approval under the Agreement, the
action must not be taken until it has been approved and otherwise in accordance with any
conditions attached to the approval.

Subclause 10(8) Taking remedial action

The subclause provides that unless the Basin Officials Committee determines otherwise any
remedial action proposed must not be taken until the Committee determines what volume of
water a proposed remedial action provides having regard to any rules made under subclause
135(14) of the Agreements.

Subclause 10(9) Taking remedial action

The subclause directs the Basin Officials Committee to report to the Ministerial Council
every four months and at each meeting of the Ministerial Council on what remedial action
has been taken so far or is proposed to be taken in the future.

Subclause 10(10) Taking remedial action

The Basin Officials Committee will continue reporting until revokes the declaration about
inadequate current conveyance water.

Subclause 10(11)

The subclause directs the Basin Officials Committee to revoke the declaration about
inadequate conveyance water if it is satisfied that water for current conveyance needs will be
available in the current year. The Basin Officials Committee must then report this at the next
meeting of the Ministerial Council.

Clause 11 Adjusting accounts relating to stored water

The clause provides for the Authority to adjust the water accounts in order to facilitate the
delivery of water for current critical human needs so long as this does not reduce the total
volume of water allocated to a State in major storages or credited to a State’s account. If the
Authority makes any adjustment of the water accounts for this purpose, it must report the
action to the next meeting of the Basin Officials Committee. This clause has similarities to clause 114 of the Agreement, which applies to only water of New South Wales and Victoria, not South Australia. This clause applies to all three states.

The clause is not about ‘advances’ of water from one State to another State for repayment at a later point of time. Rather, it is about the re-distribution of water held by States in storage at one point in time. For example, if South Australia sought some water released from Lake Victoria but did not have any water in that storage, then water could be swapped with another States’ water in Lake Victoria.

PART 3 – TIER 3 PROVISIONS

Clause 12. Application of Tier 1 and Tier 2 provisions

The clause provides that except as otherwise determined by the Ministerial Council any Tier 1 or Tier 2 water sharing arrangements that are not inconsistent with the Tier 3 water sharing arrangements to continue. Where there is an inconsistency between Tier 1 or 2 and Tier 3, the Tier 3 provisions would take precedence.

Paragraph 12(b) provides for the effect of the Snowy Scheme to also continue unless it is inconsistent with any Tier 3 water sharing arrangements.

Clause 13. Obligations of the Committee

The clause directs the Basin Officials Committee to meet at least every two months while Tier 3 applies. This clause provides for the Basin Officials Committee to consider and monitor possible remedial actions which might be taken and to recommend new remedial actions or changes to existing remedial actions to the Ministerial Council as appropriate.

The Authority may also make suggestions to the Basin Officials Committee about possible or current remedial actions and this clause directs the Basin Officials Committee to consider those suggestions.

This clause also directs the Basin Officials Committee and the Authority to consider the Basin Officials Committee’s policies for choosing and implementing remedial actions.

Clause 14. Obligations of the Ministerial Council

The clause directs the Ministerial Council to meet at least every four months while Tier 3 applies and to consider the recommendations and reports of the Basin Officials Committee and to take such consequential actions as it considers appropriate.

PART 4 – ACCOUNTING FOR WATER UNDER THIS SCHEDULE

Clause 15. Establishing and maintaining accounts

The clause requires the Authority to maintain additional accounts and to provide those accounts to the Basin Officials Committee members for the States along with the normal or special accounts under Part XII of the Agreement.
The accounts would be of:
- Water stored and used for each state’s current critical human water needs
- Water set aside for current conveyance
- The storage and use of water for private carry-over
- Water set aside for the conveyance reserve

Clause 16. Reporting

The clause provides for states to report any alterations they believe are required to the accounts. This includes a process for verifying and accepting the alterations.

The clause requires each state to report the alternations to the Authority within 14 days. If the Authority finds it necessary it can request an independent auditor to verify the report. If the independent auditor finds any inconsistencies, the Authority must first seek to resolve the matter in consolation with the State. If the Authority cannot resolve the matter with the State within 14 days it can refer the matter to the Basin Officials Committee to determine the correct adjustment to make to the accounts.

PART 5 – REVIEW OF SCHEDULE

Clause 17. Review of Schedule

The clause allows the Basin Officials Committee to recommend a review of this Schedule to the Ministerial Council in accordance with subclause 135(11).