



Murray-Darling Basin Agreement (Schedule D — Permissible Transfers between Trading Zones) Protocol 2010¹

The MURRAY-DARLING BASIN AUTHORITY, in consultation with the Basin Officials Committee and having considered the advice, if any, given by each person nominated by a Contracting Government under subclause 6 (3) of Schedule D to the Murray-Darling Basin Agreement, makes the following Protocol under clause 6 of Schedule D to that Agreement and section 18E of the *Water Act 2007*.

I, ROB FREEMAN, Chief Executive of the MURRAY-DARLING BASIN AUTHORITY, authenticate that the Authority validly made the following Protocol on 30 August 2010.

ROB FREEMAN

Chief Executive

7 September 2010

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1 Name of Protocol

This Protocol is the *Murray-Darling Basin Agreement (Schedule D — Permissible Transfers between Trading Zones) Protocol 2010*.

Note This Protocol deals with matters referred to in paragraph 6 (1) (e) of Schedule D to the Agreement.

2 Commencement

This Protocol commences on the day after it is registered.

3 Revocation

All previous protocols made under paragraph 6 (1) (e) of Schedule D to the Agreement are revoked.

4 Application

This Protocol applies to transfers between States and between valleys by:

- (a) allocation transfer; or
- (b) exchange rate trade; or
- (c) tagged trade.

5 Definitions

In this Protocol:

Act means the *Water Act 2007*.

allocation account means an allocation account under paragraph 8 (2) (b).

approval authority, in relation to a transfer, means the relevant licensing authority or water authority.

back trade means a transfer from one trading zone to another trading zone, being a transfer that is no greater in volume than the net volume of preceding transfers between the same trading

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zones in the opposite direction and the volume available in the relevant valley account.

Choke means the Barmah Choke.

entitlement record means an entitlement record under paragraph 8 (2) (a).

Snowy Water Enquiry Deed means the *Snowy Water Enquiry Outcome Implementations Deed* made between the Governments of the Commonwealth, New South Wales and Victoria on 3 June 2002.

trading zone means an area described in column 1 of Table 1 in section 6.

Note Several other words and expressions used in this Protocol have the meaning given by the Act (including the Agreement), for example:

- Authority
- Committee
- exchange rate trade
- tagged trade.

6 Restriction on transfers

- (1) A person diverting or using water within a trading zone described in column 1 of an item in Table 1:
 - (a) may transfer an entitlement or allocation only into a trading zone specified in column 2 of that item; and
 - (b) may receive a transfer of an entitlement or allocation only from a trading zone specified in column 3 of that item; and
- (2) If:
 - (a) a trading zone specified in column 2 of an item in Table 1 is identified as “back trade only” — a person may transfer an entitlement (by exchange rate but not by tag trade) or allocation, into the trading zone only from the trading zone described in column 1 of the item by back trade; and
 - (b) a trading zone specified in column 3 of an item in Table 1 is identified as “back trade only” — a person may transfer an entitlement (by exchange rate but not by tag trade) or allocation, only from the trading zone into the trading zone described in column 1 of the item by back trade.

- (3) If:
- (a) a trading zone specified in column 2 of an item in Table 1 is identified as “conditional” — a transfer of an entitlement or allocation into the trading zone from the trading zone described in column 1 of the item is subject to any conditions imposed by the relevant licensing authority; and
 - (b) a trading zone specified in column 3 of an item in Table 1 is identified as “conditional” — a person may only transfer an entitlement or allocation from the trading zone into the trading zone described in column 1 of the item subject to any conditions imposed by the relevant licensing authority.
- (4) Each of subsections (1), (2), and (3) is separate and independent and is not to be read down by reference to any of the others of those subsections.
- (5) A State Contracting Government must ensure that licensing authorities within the State:
- (a) do not approve transfers between trading zones unless the transfers comply with this section; and
 - (b) do not refuse to approve transfers that comply with this section unless the reasons for refusal are outside the scope of this Protocol.
- (6) A number mentioned in column 2 or 3 of Table 1 means the trading zone described in column 1 of Table 1 with that item number.

Table 1

Item	Column 1	Column 2	Column 3
	For this trading zone...	Transfers may be made to these trading zones...	Transfers may be made from these trading zones...
1	Greater Goulburn (includes Lake	3, 6, 6B, 7, 10, 11, 12 back trade only: 4A, 4C,	4A, 4C, 5A back trade only: 3, 6**,

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	Eildon to Goulburn Weir; Goulburn irrigation areas; and Loddon weir pool)	5A, 13, 14*	6B, 7, 10**, 11, 12, 13, 14*
3	Lower Goulburn (includes Goulburn River below Goulburn Weir)	6, 7, 10, 11, 12 back trade only: 1, 4A, 4C, 5A, 6B, 13, 14*	1, 4A, 4C, 5A back trade only: 6**, 6B, 7, 10**, 11, 12, 13, 14*
4A	Campaspe (includes Lake Eppalock to Waranga Western Channel; and Campaspe District)	1, 3, 4C, 6, 6B, 7, 10, 11, 12 back trade only: 5A, 13, 14*	4C back trade only: 1, 3, 5A, 6**, 6B, 7, 10**, 11, 12, 13, 14*
4C	Lower Campaspe (includes lower Campaspe River from Waranga Western Channel to Murray River)	1, 3, 4A, 6, 6B, 7, 10, 11, 12 back trade only: 5A, 13, 14*	1, 4A, 5A back trade only: 3, 6**, 6B, 7, 10**, 11, 12, 13, 14*
5A	Part Loddon (includes Loddon River and Tullaroop Creek; from Cairn Curran and Tullaroop reservoirs to Loddon Weir; and Serpentine Creek system above Bears Lagoon)	(conditional) 1, 3, 6, 6B, 7, 10, 11, 12 back trade only: 13, 14*	back trade only: 1, 3, 6**, 6B, 7, 10**, 11, 12, 13, 14*
6	Vic Murray above Barmah Choke** (includes River	10 back trade only**: 1, 3, 4A, 4C, 5A, 6B, 7, 11,	1, 3, 4A, 4C, 5A, 6B, 7, 10, 11, 12, 13

	Murray from Lake Hume to Barmah Choke; Mitta Mitta River below Lake Dartmouth; and Murray Valley area)	12 13, 14*	
6B	Lower Broken Creek (includes Broken Creek downstream of Katamatite)	6, 7, 10, 11, 12 back trade only: 1, 3, 4A, 4C, 5A, 13, 14*	1, 4A, 4C, 5A back trade only: 3, 6**, 7, 10**, 11, 12, 13, 14*
7	Vic Murray from Barmah Choke to SA Border (includes Torrumbarry area, Tresco, Nyah, Robinvale, Red Cliffs, Merbein and FMIT irrigation districts)	6, 10, 11, 12 back trade only: 1, 3, 4A, 4C, 5A, 6B, 13, 14*	1, 3, 4A, 4C, 5A, 6B, 11, 12, 13 back trade only**: 6, 10
10	NSW Murray above Barmah Choke (includes River Murray from Lake Hume to Barmah Choke; and Murray Irrigation Ltd areas, including Wakool Irrigation District)	6 back trade only**: 1, 3, 4A, 4C, 5A, 6B, 7, 11, 12, 13, 14*	1, 3, 4A, 4C, 5A, 6, 6B, 7, 11, 12, 13
11	NSW Murray below Barmah Choke (includes River Murray from Barmah	6, 7, 10, 12 back trade only: 1, 3, 4A, 4C, 5A, 6B, 13, 14*	1, 3, 4A, 4C, 5A, 6B, 7, 12, 13 back trade only**: 6, 10

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	Choke to SA border (including the Edwards/Wakool system and the Western Murray Irrigation District))		
12	South Australian Murray*** (includes River Murray in SA and Trust districts)	6, 7, 10, 11 back trade only: 1, 3, 4A, 4C, 5A, 6B, 13, 14*	1, 3, 4A, 4C, 5A, 6B, 7, 11, 13 back trade only**: 6, 10
13	Murrumbidgee (including Murrumbidgee Irrigation and Colleambally Irrigation areas; Murrumbidgee and Tumut below Burrinjuck and Blowering reservoirs (including Yanko, Colombo and Billabong Creek systems))	6, 7, 10, 11, 12 back trade only: 1, 3, 4A, 4C, 5A, 6B, 14*	back trade only: 1, 3, 4A, 4C, 5A, 6**, 6B, 7, 10**, 11, 12, 14*
14	Lower Darling* (includes Menindee Lakes and the Darling River downstream of the Menindee Lakes)	back trade only: 1, 3, 4A, 4C, 5A, 6B, 13 : 4A, 4C, 5A, 6, 7, 10, 11, 12	back trade only: 1, 3, 4A, 4C, 5A, 6**, 6B, 7, 10**, 11, 12, 13

*Note ** Trade to and from the Lower Darling is subject to section 11.

*Note *** Trade through the Barmah Choke is subject to sections 7 to 10.

*Note **** South Australia is divided into four 'cap valleys'. The three cap valleys from and to which water entitlements and water allocations may be transferred are:

- (a) SA Country Towns; and
- (b) SA Reclaimed Swamps; and
- (c) SA All Other Purposes.

7 Transfers across the Choke

- (1) Environmental water entitlements derived from water savings made downstream of the Choke before 1 July 2007 for the purposes of the Snowy Water Enquiry Deed must be accounted for in the following manner:
 - (a) the volume of any such water entitlement to be used to improve flows in the Snowy River must not, for the purposes of this Protocol, be used to offset back trade from above to below the Choke; and
 - (a) the volume of any such water entitlement to be used to improve flows in the River Murray must be counted as existing water entitlement below the Choke, and must not, for the purposes of this Protocol, be used to offset back trade from above to below the Choke.
- (2) Except for:
 - (a) water entitlements that were transferred before 1 July 2007 (including the transfers referred to in paragraph (1) (a)); and
 - (b) environmental water entitlements that were derived from water savings made downstream of the Choke after 1 July 2007 pursuant to the Snowy Water Enquiry Deed to be used to improve flows in the River Murray;the volume of any transfer of water entitlements from below to above the Choke may, for the purposes of this Protocol:
 - (c) be counted as entitlement transferred from below to above the Choke; and
 - (d) be used to offset back trade from above to below the Choke.
- (3) A water entitlement may not be transferred from above to below the Choke, except where the entitlement has previously been entered in the entitlement record as having been transferred from below to above the Choke.

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- (4) Without limiting subsection (2), a transfer for the purposes of that subsection includes any transfer pursuant to:
 - (a) an agreement between Governments (other than transfers referred to in paragraph (1) (a)) for the purpose of improving flows in the Snowy River; and
 - (b) trading between the holders of entitlements.

8 Accounting for allocation transfers across the Choke

- (1) The purpose of this section is to ensure that no net transfer of water allocations from above to below the Choke occurs in any year after 1 July 2007.
- (2) The Authority must establish and maintain the following:
 - (a) an entitlement record with respect to each of New South Wales, South Australia and Victoria, which sets out each water entitlement transferred from below the Choke in that State to above the Choke in any State on or after 1 July 2007; and
 - (b) an allocation account setting out the net volume of:
 - (i) water used above the Choke in the current year pursuant to allocations made under any water entitlement entered in an entitlement record; plus
 - (ii) the net transfer of allocations from any State below the Choke to any State above the Choke.
- (3) For paragraph (2) (a), *water entitlement*:
 - (a) includes any environmental water entitlement derived from water savings made downstream of the Choke pursuant to the Snowy Water Enquiry Deed to be used to improve flows in the Snowy River; and
 - (b) does not include any such environmental water entitlements to be used to improve flows in the River Murray.
- (4) The Authority must:
 - (a) add to the entitlement record for each State every water entitlement transferred from below the Choke in that State to above the Choke on or after 1 July 2007; and

- (b) remove from the entitlement record every water entitlement that is subsequently transferred from above to below the Choke in the relevant State.
- (5) The allocation account must:
 - (a) be set at zero on 1 July in each year; and
 - (b) be increased by the volume of water used on or after that date pursuant to any water entitlement entered in an entitlement record; and
 - (c) be increased by the volume of each transfer of an allocation from below to above the Choke on or after that date; and
 - (d) be decreased by the volume of each proposed transfer of an allocation traded down from above to below the Choke on or after that date.
- (6) Subsection 10 (4) applies to any proposed transfer of an allocation referred to in paragraph (5) (d) if the transfer would result in a negative balance in the allocation account.

9 Exceptional circumstances for allocation transfers across the Choke

Despite any other provision of this Protocol, for any year in which the Authority estimates that the level of water allocations made, or to be made, in any or all of New South Wales and Victoria from a source described in Appendix 1 to Schedule D to the Agreement will significantly reduce the usual constraints on channel capacity at the Choke, the Authority, after consulting the Committee, may determine:

- (a) that water allocations may be transferred from above to below the Choke, other than as back trade; and
- (b) the period during which such transfers may occur; and
- (c) the total volume of such transfers;

subject to such conditions as the Authority may determine after consulting the Committee.

10 Co-operation between approval authority and the Authority

- (1) If an approval authority approves the transfer of a water entitlement, or the transfer of an allocation, from below to above the Choke, the approval authority must promptly advise the Authority.
- (2) The relevant water authority for a district in which water is used pursuant to an allocation made under a water entitlement entered in an entitlement record must promptly advise the Authority of the volume of any water used pursuant to that allocation.
- (3) Before an approval authority approves any back trade of an allocation from above to below the Choke, the transferor's authority must advise the Authority of the proposed transfer.
- (4) The Authority, having regard to the relevant entitlement records and the allocation account, must promptly advise the approval authority whether the proposed transfer may be approved.
- (5) If the Authority advises an approval authority under subsection (4) that a transfer may not be approved, the approval authority must refuse to approve the transfer.
- (6) If the Authority advises an approval authority that a transfer may be approved, the Authority must promptly adjust the relevant entitlements record and the allocation account accordingly.
- (7) An approval authority that receives advice from the Authority under subsection (6) must notify the Authority within 7 days after the date of the Authority's advice if the proposed transfer is approved.
- (8) If an approval authority does not notify the Authority in accordance with subsection (7):
 - (a) the Authority must reverse the adjustments referred to in subsection (6) and advise the approval authority of the reversal; and
 - (b) the approval authority must refuse to approve the transfer.

11 Transfers into and out of the Lower Darling

- (1) For the purposes of this Protocol, the Menindee Lakes Storage is:
 - (a) under **Authority control** during any period when, after falling to 480 000 ML, the volume has exceeded 640 000 ML and has not again fallen to 480 000 ML; and
 - (b) under **New South Wales control** at any time after the volume has fallen below 480 000 ML and has not yet exceeded 640 000 ML.
- (2) Until the Ministerial Council resolves otherwise, an entitlement must not be transferred into or out of the Lower Darling Valley.

Note See subclause 13 (3) of Schedule D to the Agreement.
- (3) Allocations may be transferred either into or out of the Lower Darling Valley when the Menindee Lakes Storage is under Authority control if:
 - (a) the Authority considers that there is sufficient volume in the Menindee Lakes Storage to satisfy the volume of:
 - (i) the transfer; and
 - (ii) all transfers into or out of the Lower Darling Valley previously approved in that year or any previous year for which a corresponding amount of water has not yet been released or taken from Menindee Lakes Storage; and
 - (iii) any evaporative losses, that may be determined in consultation with New South Wales, associated with a transfer into the Lower Darling Valley that was approved in a previous year;without the volume falling to 480 000 ML; and
 - (b) the Authority considers that the transfer will be called out of Menindee Lakes Storage before the volume of the Menindee Lakes Storage falls to 480 000 ML.
- (4) Allocations may not be transferred into or out of the Lower Darling Valley when the Menindee Lakes Storage is under New South Wales control unless:

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- (a) in consultation with the Authority and the Committee, New South Wales has determined to allow allocations to be transferred out of the Lower Darling Valley; and
- (b) it has been identified that there would be no significant impact to third parties as a result of allocation transfers being approved; and
- (c) it has been identified that there would be no adverse impacts on State water entitlements under the Agreement

Note When calculating whether Menindee Lakes Storage is under Authority control or New South Wales control, the Authority must factor in the volume attributable to any previously approved transfers for which a corresponding amount of water has not yet been released from or taken from Menindee Lakes Storage.

Notes

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See www.frli.gov.au.