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## **Surplus Water Rules**

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## 1 Introduction

- 1.1 This document contains Rules of the Company that are binding under the Water Entitlements Contract and Water Delivery Contract (the **Contract**). A Customer's Contract binds them to these Rules.
- 1.2 These Rules:
- (1) apply to Surplus Water, and water in Lake Wyangan, Mirrool, and Barren Box Storage;
  - (2) should be read in conjunction with, and are subject to:
    - (a) the Contract;
    - (b) any relevant Rules;
    - (c) the *Water Act 2007* (Cth) and the water market rules, and water charge rules made under it; and
    - (d) all other relevant laws, regulations, orders, and Licences, and
  - (3) may also be affected by rules or processes stipulated by the Minister or Government Agencies.

## 2 Definitions and interpretation

- 2.1 In these Rules, the following words have these meanings unless the contrary intention appears:
- (1) **Barren Box Storage Operational Guidelines** means guidelines published by the Company from time to time on the Company's website;
  - (2) **Barren Box Storage Rules** means the rules set out in Schedule 3;
  - (3) **General Security Surplus Water** means water which is derived from the Company's regulated river (general security) Access Licences and is permitted to be taken, in accordance with rule 3, by Customers who hold General Security Water Entitlements;
  - (4) **General Security Surplus Water User** means a Customer who is eligible to take General Security Surplus Water under rule 3.2;
  - (5) **HOU** means history of use;
  - (6) **Lake Wyangan Rules** means the rules set out in Schedule 1;
  - (7) **Lake Wyangan [Supplementary] Water** means water which is derived from the Company's surplus internal water flows via Lake Wyangan and is permitted to be taken, in accordance with rule 8, by Customers who have a HOU of "*off allocation*" supply which is not derived from water allocation credited to the Company under the share component of the SWAL, as specified in their Rights of Access Certificate;
  - (8) **Lake Wyangan [Supplementary] Water Allocation** means the maximum volume of Lake Wyangan [Supplementary] Water which may be taken by a Customer in aggregate in a Water Year, determined by the Company based on the relevant Customer's HOU, to the extent that it is permitted to be taken in accordance with these Rules;

- (9) **Lake Wyangan [Surplus] Water** means water in Lake Wyangan which is derived from the Company's surplus internal water flows into Lake Wyangan and is permitted to be taken, in accordance with rule 9, by Customers who have a right of access to it specified in their Rights of Access Certificate;
- (10) **Lake Wyangan [Storage] Water** means water which is derived from the Company's surplus internal water flows at Lake Wyangan and is permitted to be taken, in accordance with rule 10, by Customers who have a right of access to it specified in their Rights of Access Certificate;
- (11) **Mirrool Creek [Supplementary] Water** means water which is derived from the Company's surplus internal water flows via Mirrool Creek and is permitted to be taken, in accordance with rule 5, by Customers who have a HOU of "off allocation" supply which is not derived from water allocation credited to the Company under the share component of the SWAL, as specified in their Rights of Access Certificate;
- (12) **Mirrool Creek [Supplementary] Water Allocation** means the maximum volume of Mirrool Creek [Supplementary] Water which may be taken by a Customer in aggregate in a Water Year, determined by the Company based on the relevant Customer's HOU, to the extent that it is permitted to be taken in accordance with these Rules;
- (13) **Mirrool Creek [Surplus] Water** means water in Mirrool Creek, Barren Box Storage or Wah Wah which is derived from the Company's surplus internal water flows via Mirrool Creek and is permitted to be taken, in accordance with rule 6, by Customers who have a right of access to it specified in their Rights of Access Certificate;
- (14) **Mirrool Creek [Storage] Water** means water which is derived from the Company's surplus internal water flows at Barren Box Storage and is permitted to be taken, in accordance with rule 7, by Customers who have a right of access to it specified in their Rights of Access Certificate;
- (15) **Maximum Annual Extraction Volume** means the maximum volume of Mirrool Creek [Surplus] Water and or Lake Wyangan [Surplus] Water which may be taken by a Customer in aggregate in a Water Year, as specified in a Rights of Access Certificate, to the extent that it is permitted to be taken in accordance with these Rules;
- (16) **Minister** means the responsible Minister or his or her delegate under the Act or Water Sharing Plan (as is applicable);
- (17) **Mirrool Creek Rules** means the rules set out in Schedule 2;
- (18) **Surplus Water** means:
- (a) General Security Surplus Water;
  - (b) Supplementary Water Allocation;
  - (c) Mirrool Creek [Supplementary] Water;
  - (d) Mirrool Creek [Surplus] Water;
  - (e) Mirrool Creek [Storage] Water;
  - (f) Lake Wyangan [Supplementary] Water;
  - (g) Lake Wyangan [Surplus] Water; and
  - (h) Lake Wyangan [Storage] Water;

- (19) **Supplementary Water Allocation** means an entitlement to water, determined by the Company based on the relevant Customer's HOU, derived from a HOU of "off allocation" supply of water allocation credited to the Company under the share component of the SWAL, as specified in the relevant Customer's Rights of Access Certificate;
- (20) **SWAL** means the Company's Supplementary Water Access Licence;
- (21) **Wah Wah** means the former Wah Wah Domestic and Stock Water Supply and Irrigation District under the former Part 6 of the *Water Act 1912* (NSW) excluding the former domestic and stock water supply part of the district;
- (22) **Wah Wah Landholding** means a Landholding in Wah Wah; and
- (23) **Water Sharing Plan** means the *Water Sharing Plan for the Murrumbidgee Regulated River Water Source 2016* (NSW).

2.2 In these Rules, unless the contrary intention appears, a word or phrase defined in the Contract has the same meaning in these Rules.

2.3 To the extent that there is an inconsistency between a provision in these Rules and either the Lake Wyangan Rules, the Mirrool Creek Rules or the Barren Box Storage Rules:

- (1) a specific provision takes precedence over a general provision; and
- (2) otherwise, to the extent necessary to resolve the inconsistency, these Rules take precedence over the Lake Wyangan Rules, the Mirrool Creek Rules or the Barren Box Storage Rules (as the case may be).

### 3 General Security Surplus Water

3.1 In this rule 3:

- (1) **Customer Effective Available Water** means, in respect of a General Security Surplus Water User in any Water Year:
  - (a) the volume of Annual Allocation determined under clause 7 of the Water Entitlements Contract in respect of the General Security Surplus Water User's General Security Water Entitlements in the relevant Water Year; plus
  - (b) any volume of Water Allocation carried over in the relevant General Security Surplus Water User's Water Allocation Account from the previous Water Year to the extent that it exceeds the volume represented by a 15% Annual Allocation in respect of the relevant General Security Surplus Water User's General Security Water Entitlements in the relevant Water Year; and
- (2) **Effective Available Water** has the meaning given in the Water Sharing Plan and is calculated as follows:

$$\text{EAW} = \text{AA}\% + (\text{C}\% - 15\%)$$

Where:

**AA** = Annual Allocation for General Security Water Entitlements, as a percentage.

**C** = The Customer's General Security Water Entitlements' carryover from the previous Water Year, as a percentage.

- 3.2 If the Company announces a determination that General Security Surplus Water may be taken under this rule, it will be permitted to be taken by Customers:
- (1) only if the Company has made a determination under rule 4 that Supplementary Water Allocation may be taken, and only for so long as that determination applies;
  - (2) who hold General Security Water Entitlements; and
  - (3) whose Customer Effective Available Water is less than or equal to a 70% Annual Allocation in respect of their General Security Water Entitlements in the relevant Water Year.
- 3.3 General Security Surplus Water permitted to be taken by a Customer under rule 3.2 may be taken only during the period of any and each announced determination, subject to rules 3.5, 3.6 and 3.7.
- 3.4 The total volume of General Security Surplus Water permitted to be taken by a Customer under rule 3.2 in the relevant Water Year is limited to the equivalent of an 85% Annual Allocation in respect of the relevant General Security Surplus Water User's General Security Water Entitlements minus the Customer Effective Available Water for the relevant Water Year.
- 3.5 If at any time during the Water Year:
- (1) the Customer Effective Available Water for a General Security Surplus Water User is less than the volume of Water Allocation represented by an 85% Annual Allocation in respect of the relevant General Security Surplus Water User's General Security Water Entitlements in the relevant Water Year; and
  - (2) the Customer Effective Available Water for the General Security Surplus Water User and the total volume of General Security Surplus Water taken by the relevant General Security Surplus Water User in the relevant Water Year exceeds the volume of Water Allocation represented by an 85% Annual Allocation in respect of the relevant General Security Surplus Water User's General Security Water Entitlements in the relevant Water Year;
- then a volume of Water Allocation equal to the excess less the volume of any previous debits under this rule 3.5 in the relevant Water Year must be debited from the Water Allocation Account of the General Security Surplus Water User.
- 3.6 If at any time during a Water Year, the Customer Effective Available Water for a General Security Surplus Water User increases to greater than the volume of Water Allocation represented by an 85% Annual Allocation in respect of the relevant General Security Surplus Water User's General Security Water Entitlements in the relevant Water Year, then a volume of Water Allocation equal to the volume of General Security Surplus Water taken by the relevant General Security Surplus Water User in the relevant Water Year less the volume of any previous debits made under rules 3.5, 3.6 and 3.7 in the relevant Water Year must be debited from the Water Allocation Account of the relevant General Security Surplus Water User.
- 3.7 If at any time during the Water Year, the Effective Available Water for the Company's regulated river (general security) Access Licences for the relevant Water Year increases to greater than 0.85 Megalitres per unit share, then a volume of Water Allocation equal to the volume of General Security Surplus Water taken by each General Security Surplus Water User less the volume of any previous debits made under rules 3.5, 3.6 and 3.7 in the relevant Water Year may, at the Company's discretion, be debited from the Water Allocation Account of the relevant General Security Surplus Water User.
- 3.8 Any determination by the Company made under rule 3.2 will be at the Company's discretion and may take into consideration:

- (1) whether the Minister makes an available water determination in respect of the SWAL at the commencement of a Water Year under clause 65 of the Water Sharing Plan;
  - (2) whether the Minister makes any subsequent announcement permitting the taking of water in respect of the SWAL under Part 9 of the Water Sharing Plan;
  - (3) whether the Minister makes any subsequent announcement permitting the taking of surplus flow water by general security access licence holders under clause 62 of the Water Sharing Plan;
  - (4) whether the Minister makes any subsequent announcement authorising the taking of water in respect of the SWAL under section 70 of the Act;
  - (5) whether the Company is able to take water from the Murrumbidgee Regulated River, and if so, to what extent;
  - (6) whether the Company is in a position to meet all water orders other than orders for Supplementary Water Allocation and still have access to surplus flows from the Murrumbidgee Regulated River;
  - (7) whether the Company is reasonably able to make water available for Customers to take, in respect of any existing or prospective constraints in the Company's Supply Works; and
  - (8) any other factor determined by the Company from time to time.
- 3.9 The Company may, at its discretion, make, decrease or cancel any determination made under this rule 3.

## **4 Supplementary Water Allocation**

- 4.1 If the Company announces a "*general*" determination that Supplementary Water Allocation may be taken under this rule, Customers who are entitled to Supplementary Water Allocation under their Rights of Access Certificate will be permitted to take a volume of Supplementary Water Allocation determined by the Company.
- 4.2 If the Company announces a "*specific*" determination that Supplementary Water Allocation may be taken under this rule, Customers will be permitted to take a volume of Supplementary Water Allocation determined by the Company, but only by way of Company-approved Supply Works on Lake Wyangan, Mirrool Creek and Barren Box Storage.
- 4.3 Any "*general*" determination by the Company made under rule 4.1 will be at the Company's discretion and may take into consideration:
- (1) whether the Minister makes an available water determination in respect of the SWAL at the commencement of a Water Year under clause 65 of the Water Sharing Plan;
  - (2) whether the Minister makes any subsequent announcement permitting the taking of water in respect of the SWAL under subclause Part 9 of the Water Sharing Plan;
  - (3) whether the Minister makes any subsequent announcement permitting the taking of water in respect of the SWAL under section 70 of the Act;
  - (4) whether the Company is able to take water from the Murrumbidgee Regulated River, and if so, to what extent;
  - (5) whether the Company is reasonably able to make water available for Customers to take, taking into consideration any existing or prospective constraints in the Company's Supply Works; and

- (6) any other factor determined by the Company from time to time.
- 4.4 Any “*specific*” determination by the Company made under rule 4.2 will be at the Company’s discretion and may take into consideration:
- (1) whether the relevant trigger specified in any applicable Operational Guidelines in place at the time, is exceeded;
  - (2) whether the Company is reasonably able to make water available for Customers to take, taking into consideration any existing or prospective constraints in the Company’s Supply Works; and
  - (3) any other factor determined by the Company from time to time.
- 4.5 The Company may, at its discretion, make, decrease or cancel any determination under this rule 4.
- 4.6 The Company may reduce or cancel a Customer’s Supplementary Water Allocation if the SWAL, or any share component of the SWAL, is reduced or cancelled. The reduction of the Customer’s Supplementary Water Allocation must be in proportion to the reduction of the share component of the SWAL.

## **5 Mirrool Creek [Supplementary] Water**

- 5.1 If the Company announces a determination that a volume of Mirrool Creek [Supplementary] Water may be taken under this rule, it may be taken by Customers who are permitted to take Mirrool Creek [Supplementary] Water.
- 5.2 Any determination by the Company made under rule 5.1 will be at the Company’s discretion and may take into consideration:
- (1) whether the relevant trigger specified in the Barren Box Storage Operational Guidelines in place at the time, is exceeded;
  - (2) whether the Company is reasonably able to make water available for Customers to take, taking into consideration any existing or prospective constraints in the Company’s Supply Works or Barren Box Storage;
  - (3) whether the Company is able to take water from the Murrumbidgee Regulated River, and if so, to what extent;
  - (4) whether the Company has made a determination under rule 4.1 permitting Customers to take Supplementary Water Allocation; and
  - (5) any other factor determined by the Company from time to time.
- 5.3 The Company may, at its discretion, make, decrease, or cancel any determination under this rule 5.

## **6 Mirrool Creek [Surplus] Water**

- 6.1 If the Company announces a determination that Mirrool Creek [Surplus] Water may be taken under this rule, it will be permitted to be taken by Customers on Wah Wah Landholdings, Customers using Company-approved Supply Works on Mirrool Creek and Barren Box Storage, and by Customers using specified drainage systems, during the period of any and each announced determination in accordance with rules 6.2 to 6.5.

- 6.2 Any determination by the Company made under rule 6.1 for Customers on Wah Wah Landholdings and Customers using Company-approved Supply Works on Mirrool Creek and Barren Box Storage, will be at the Company's discretion and may take into consideration:
- (1) whether the relevant trigger specified in the Barren Box Storage Operational Guidelines in place at the time, is exceeded by more than 2,000 Megalitres (or any other threshold determined by the Company);
  - (2) volumes of previous deliberate diversions, which may therefore be unavailable to be taken as Surplus Water;
  - (3) whether the Company is reasonably able to make water available to be taken by Customers using Company-approved Supply Works on Mirrool Creek and Barren Box Storage and by Customers on Wah Wah Landholdings, taking into consideration any existing or prospective constraints in the Company's Supply Works, Mirrool Creek or Barren Box Storage; and
  - (4) any other factor determined by the Company from time to time.
- 6.3 Any determination by the Company made under rule 6.1 for Customers using specified drainage systems will be at the Company's discretion and may take into consideration:
- (1) whether the Company is reasonably able to make water available to be taken by Customers using specified drainage systems, taking into consideration any existing or prospective constraints in the Company's Supply Works;
  - (2) volumes of previous deliberate diversions, which may therefore be unavailable to be taken as Surplus Water; and
  - (3) any other factor determined by the Company from time to time.
- 6.4 The volume and flow rate of Mirrool Creek [Surplus] Water permitted to be taken by each Customer on a Wah Wah Landholding, and by Customers using Company-approved Supply Works on Mirrool Creek and Barren Box Storage during the period of a determination by the Company under rule 6.1 will be:
- (1) determined by the Company, and
  - (2) subject to the conditions stated on the Customer's Rights of Access Certificate.
- 6.5 The Company may, at its discretion, make, decrease or cancel any determination made under this rule 6.

## **7 Mirrool Creek [Storage] Water**

- 7.1 If the Company announces a determination that Mirrool Creek [Storage] Water may be taken under this rule, a volume determined by the Company will be made available to be taken by Customers using Company-approved Supply Works on Barren Box Storage during the period of any and each announced determination, in accordance with rule 7.2. The Company may determine the volume which each Customer is permitted to take.
- 7.2 Any determination made by the Company under rule 7.1 will be at the Company's discretion and may take into consideration:
- (1) whether the relevant triggers specified in the Barren Box Storage Operational Guidelines, as the case may be, are exceeded;
  - (2) volumes of previous deliberate diversions, which may therefore be unavailable to be taken as Surplus Water;

(3) whether the Company is reasonably able to make water available for Customers to take, in respect of any existing or prospective constraints in the Company's Supply Works and Barren Box Storage; and

(4) any other factor determined by the Company from time to time.

7.3 The Company may, at its discretion, make, decrease or cancel any determination made under this rule 7.

## **8 Lake Wyangan [Supplementary] Water**

8.1 If the Company announces a determination that a volume of Lake Wyangan [Supplementary] Water may be taken under this rule, it may be taken by Customers who are permitted to take Lake Wyangan [Supplementary] Water.

8.2 Any determination by the Company made under rule 8.1 will be at the Company's discretion and may take into consideration:

(1) whether the Company is reasonably able to make water available for Customers to take, taking into consideration any existing or prospective constraints in the Company's Supply Works or Lake Wyangan;

(2) whether the Company is able to take water from the Murrumbidgee Regulated River, and if so, to what extent;

(3) whether the Company has made a determination under rule 4.1 permitting Customers to take Supplementary Water Allocation; and

(4) any other factor determined by the Company from time to time.

8.3 The Company may, at its discretion, make, decrease or cancel any determination under this rule 8.

## **9 Lake Wyangan [Surplus] Water**

9.1 If the Company announces a determination that Lake Wyangan [Surplus] Water may be taken under this rule, it will be permitted to be taken by Customers using Company-approved Supply Works on Lake Wyangan during the period of any and each announced determination in accordance with rules 9.2 to 9.5.

9.2 Any determination by the Company made under rule 9.1 for Customers using Company-approved Supply Works on Lake Wyangan, will be at the Company's discretion and may take into consideration:

(1) whether the levels in Lake Wyangan are within the appropriate range determined by the Company under the Lake Wyangan Rules;

(2) volumes of previous deliberate diversions, which may therefore be unavailable to be taken as Surplus Water;

(3) whether the Company is reasonably able to make water available for Customers to take, taking into consideration any existing or prospective constraints in the Company's Supply Works or Lake Wyangan; and

(4) any other factor determined by the Company from time to time.

9.3 Any determination by the Company made under rule 9.1 for Customers using specified drainage systems will be at the Company's discretion and may take into consideration:

- (1) whether the Company is reasonably able to make water available to be taken by Customers using specified drainage systems, taking into consideration any existing or prospective constraints in the Company's Supply Works;
  - (2) volumes of previous deliberate diversions, which may therefore be unavailable to be taken as Surplus Water; and,
  - (3) any other factor determined by the Company from time to time.
- 9.4 The volume of Lake Wyangan [Surplus] Water permitted to be taken by Customers using specified drainage systems and by Customers using Company-approved supply works on Lake Wyangan will be determined by the Company based on the Customer's Maximum Annual Extraction Volume and conditions specified on the Customer's Rights of Access Certificate.
- 9.5 The Company may, at its discretion, make, decrease or cancel any determination made under this rule 9.

## **10 Lake Wyangan [Storage] Water**

- 10.1 If the Company announces a determination that Lake Wyangan [Storage] Water may be taken under this rule, a volume determined by the Company will be made available to be taken by Customers using Company-approved Supply Works on Lake Wyangan during the period of any and each announced determination, in accordance with rule 10.2. The Company may determine the volume which each Customer is permitted to take.
- 10.2 Any determination made by the Company under rule 10.1 will be at the Company's discretion and may take into consideration:
- (1) whether the relevant triggers determined under the Lake Wyangan Rules are exceeded;
  - (2) volumes of previous deliberate diversions, which may therefore be unavailable to be taken as Surplus Water;
  - (3) whether the Company is reasonably able to make water available for Customers to take, in respect of any existing or prospective constraints in the Company's Supply Works and Lake Wyangan; and
  - (4) any other factor determined by the Company from time to time.
- 10.3 The Company may, at its discretion, make, decrease, or cancel any determination made under this rule 10.

## **11 Order of debiting**

- 11.1 The Company may determine rules which determine how to account for the volume of Surplus Water taken by a Customer, where the Customer is entitled concurrently to take more than one category of Surplus Water.
- 11.2 If the Company has not determined such rules, or in cases to which the rules do not apply, the Company may make determinations on a case-by-case basis.
- 11.3 If the Company determines that a Customer has taken Surplus Water in breach of these Rules, then to the extent that the water taken would ordinarily be deemed as off-allocation, it will instead be debited from the Customer's Water Allocation Account as on-allocation.

## 12 Delivery

### 12.1 A Customer:

- (1) will have no right to take Surplus Water except under a Water Delivery Contract between the Customer and the Company
- (2) will have no right to take Surplus Water except via an approved water order and via approved Supply Works as per the Access and Ordering Rules; and
- (3) will have no right to take Surplus Water if the Customer is in default of the Water Delivery Contract between the Customer and the Company.

### 12.2 Supply Works in respect of Lake Wyangan, Mirrool Creek and Barren Box Storage may only be used to take Surplus Water if they are approved by the Company. The Company may withhold approval of Supply Works at its discretion, including where:

- (1) there is an increase in the number, size or extraction capacity of the Supply Works compared with previously approved Supply Works; or
- (2) the Company determines that installation may impede the flow of water in the applicable system.

### 12.3 The maximum volume of water which is permitted to be taken in a Water Year by Company-approved Supply Works is the aggregate of:

- (1) any volume of General Security Surplus Water taken in accordance with these Rules;
- (2) any volume of Maximum Annual Extraction Volume taken in accordance with these Rules;
- (3) any volume of Mirrool Creek [Storage] Water and or Lake Wyangan [Storage] Water taken in accordance with these Rules; and
- (4) any Water Allocation taken by the Customer or delivered by the Company in accordance with a Water Entitlements Contract or Water Delivery Contract.

## 13 Dealings generally

### 13.1 Surplus Water cannot be converted or leased.

### 13.2 Surplus Water may only be traded annually or permanently as provided in rules 14 and 15.

## 14 Annual trade

### 14.1 **(Mirrool Creek [Supplementary] Water)** A Customer may temporarily transfer Mirrool Creek [Supplementary] Water within Wah Wah.

### 14.2 **(Supplementary Water Allocation)** A Customer may temporarily transfer Supplementary Water Allocation within the same supplementary water access zone specified on the SWAL, provided that Supplementary Water Allocation may not be used by a transferee on a Wah Wah Landholding. The temporary transfer of Supplementary Water Allocation is effected by the transfer to the transferee of all of the rights derived, in the remaining part of the Water Year, from the volume of Supplementary Water Allocation which is transferred.

### 14.3 **(Lake Wyangan [Surplus] Water)** A Customer may temporarily transfer Lake Wyangan [Surplus] Water only to another Customer who is permitted to take Lake Wyangan [Surplus] Water with respect to the same storage cell in Lake Wyangan. The temporary transfer of

Lake Wyangan [Surplus] Water in respect of Lake Wyangan is effected by the transfer to the transferee of all of the rights derived, in the remaining part of the Water Year, from the volume of Maximum Annual Extraction Volume which is transferred. For the purposes of this rule 14.3, the South Lake and the North Lake (each as defined in the Lake Wyangan Rules) are each a storage cell in Lake Wyangan.

- 14.4 The Transfer Rules apply, with the necessary changes, to dealings under this rule 14. In the event of any inconsistency, this rule 14 prevails to the extent necessary to resolve the inconsistency.

## 15 Permanent trades

- 15.1 **(General Security Surplus Water)** General Security Surplus Water, as it derives from a General Security Water Entitlement and is specified in the Customer's Water Entitlements Contract, cannot be separately transferred on a permanent basis. If a General Security Water Entitlement is permanently transferred, General Security Surplus Water is automatically transferred with the General Security Water Entitlement; that is, the two are bundled together.
- 15.2 **(Supplementary Water Allocation)** Supplementary Water Allocation may be permanently transferred within the same supplementary water access zone specified on the SWAL, provided that it cannot be transferred to Customers for use on Landholdings in Wah Wah. The permanent transfer of Supplementary Water Allocation is effected by decreasing the volume of the transferor's entitlement to Supplementary Water Allocation and increasing the volume of the transferee's entitlement to Supplementary Water Allocation.
- 15.3 **(Mirrool Creek [Supplementary] Water)** Mirrool Creek [Supplementary] Water may be permanently transferred only to Customers for use on Landholdings in Wah Wah.
- 15.4 **(Mirrool Creek Surplus [Storage] Water)** Mirrool Creek [Storage] Water cannot be permanently transferred, unless the Customer's Rights of Access Certificate specifically allows permanent transfer, and then only as specified in the Rights of Access Certificate.
- 15.5 **(Lake Wyangan [Surplus] Water)** A Customer may permanently transfer Lake Wyangan [Surplus] Water with respect to Lake Wyangan only to another Customer whose Rights of Access Certificate specifies Lake Wyangan [Surplus] Water with respect to the same storage cell in Lake Wyangan. The permanent transfer of Lake Wyangan [Surplus] Water in respect of Lake Wyangan is effected by decreasing the volume of the transferor's Maximum Annual Extraction Volume and increasing the volume of the transferee's Maximum Annual Extraction Volume by the volume transferred. For the purposes of this rule 15.4, the South Lake and the North Lake (each as defined in the Lake Wyangan Rules) are each a storage cell in Lake Wyangan.
- 15.6 **(Lake Wyangan Surplus [Storage] Water)** Lake Wyangan [Storage] Water cannot be permanently transferred, unless the Customer's Rights of Access Certificate specifically allows permanent transfer. If a permanent transfer is permitted, then it is permitted on the conditions specified in the Customer's Rights of Access Certificate.
- 15.7 The Transfer Rules apply, with the necessary changes, to dealings under this rule 15. In the event of any inconsistency, this rule 15 prevails to the extent necessary to resolve the inconsistency.

## 16 Carryover water

- 16.1 Surplus Water cannot be carried over from one Water Year to the next Water Year.

## **17 Costs and outlays**

- 17.1 The Customer must pay, and indemnify the Company against, all costs and outlays (including stamp duty and government imposts) connected with the negotiation, preparation, execution, stamping and registration of dealings with Surplus Water.

## **18 Limitation of liability**

- 18.1 If in the reasonable opinion of the Company, the Company believes that it is unsafe or unwise for the Customer to take Surplus Water, the Company may, by notice to the Customer, direct the Customer to restrict the volume of Surplus Water taken or to cease taking Surplus Water during a specified period. Such a notice must include the reason for the direction to restrict or cease taking Surplus Water.
- 18.2 To the maximum extent permitted by law, the Customer releases the Company and its Personnel from all Claims, whether in tort (including negligence), statute, contract, or otherwise, and all Losses, which the Customer has or may have which arise out of the Customer's use of Surplus Water. The Customer agrees that each of the Company's Personnel are entitled to the benefit of the release, which may be enforced by the Company on behalf of any of them. The Company holds on trust for those people, jointly and severally, the benefit conferred by this rule 18.2.
- 18.3 Without limiting rule 18.2:
- (1) the Customer acknowledges that using drainage water for irrigation supply may involve a greater level of risk than the usual level of risk involved in taking water for irrigation supply; and
  - (2) the Customer accepts all risks associated with the use of Surplus Water.
- 18.4 The Customer acknowledges that the infrastructure involved in taking Surplus Water may be their own and may be different from the Company's Works normally used for the supply of Water Allocation by the Company, and, where Surplus Water is delivered otherwise than by the Company's Works, the Company is under no obligation to make Surplus Water available in an equivalent fashion to Water Allocation delivered by the Company's Works.
- 18.5 This rule 18 does not limit anything in a Water Entitlements Contract or Water Delivery Contract.

## **19 Termination**

- 19.1 The Customer may terminate any of the Customer's rights in respect of Surplus Water by giving thirty days' notice to the Company. The Customer is not required to pay a termination fee for the termination of rights to Surplus Water under this rule.

## **20 Notices**

- 20.1 The Company may give a notice regarding any matter contemplated by these Rules (including the availability of Surplus Water) by publishing the notice on the Company's web site or making it available to be viewed in the EasyWater ordering system accessed through the Company's web site.
- 20.2 Rule 20.1 does not limit any provision of a Water Entitlements Contract or Water Delivery Contract in respect of notices.

## Schedule 1 - Lake Wyangan Rules

### 1 Introduction

- 1.1 This Schedule 1 applies to the taking of Water Allocation and Surplus Water, including Supplementary Water Allocation, Lake Wyangan [Surplus] Water and Lake Wyangan [Storage] Water, from Lake Wyangan.

### 2 Definitions and interpretations

#### 2.1 Definitions

In this Schedule 1, the following words have these meanings unless the contrary intention appears:

- (1) **North Lake** means the part of Lake Wyangan designated by the Company as the “North Lake”;
- (2) **South Lake** means the part of Lake Wyangan designated by the Company as the “South Lake”; and
- (3) **Lake Wyangan Account** means an account maintained by the Company which records the crediting, acquiring, debiting and withdrawal of the Maximum Annual Extraction Volume.

#### 2.2 Company’s Works include Lake Wyangan

For the purposes of this Schedule 1, the definition of “*Company’s Works*” in clause 1.1 of the Water Delivery Contract is replaced by the following:

**Company’s Works** means:

- (1) Works owned by the Company; and
- (2) Lake Wyangan.

#### 2.3 Water levels in Lake Wyangan

References to:

- (1) water levels in the South Lake, are references to water levels on the gauge situated in the South Lake alongside Jones Road (or as otherwise specified by the Company), and as recorded by the Company;
- (2) water levels in the North Lake, are references to water levels on the gauge situated in the North Lake alongside Jones Road (or as otherwise specified by the Company), and as recorded by the Company; and
- (3) water levels in Lake Wyangan do not include any increases in the water levels caused by any deliberate diversion of water to Lake Wyangan by the Company.

### 3 Access to surplus water in Lake Wyangan

- 3.1 The Customer’s Maximum Annual Extraction Volume is credited to the Customer on 1 July each Water Year.
- 3.2 Any unused volume of the Customer’s Maximum Annual Extraction Volume on 30 June in any Water Year is forfeited.

#### **4 Extraction of water from Lake Wyangan**

- 4.1 The table in Item 1 of rule 7 of this Schedule 1 specifies the water levels in the South Lake below, at or above which, as the case may be:
- (1) any volume of water extracted by the Customer from the South Lake is debited from the Customer's Water Allocation Account;
  - (2) any volume of water extracted by the Customer from the South Lake is debited from the Customer's Lake Wyangan Account; or
  - (3) any volume of water extracted by the Customer from the South Lake is not debited from the Customer's Water Allocation Account or the Customer's Lake Wyangan Account.
- 4.2 The table in Item 2 of rule 7 of this Schedule 1 specifies the water levels in the North Lake below, at or above which, as the case may be:
- (1) any volume of water extracted by the Customer from the North Lake is debited from the Customer's Water Allocation Account;
  - (2) any volume of water extracted by the Customer from the North Lake is debited from the Customer's Lake Wyangan Account; or
  - (3) any volume of water extracted by the Customer from the North Lake is not debited from the Customer's Water Allocation Account or the Customer's Lake Wyangan Account.
- 4.3 The Company may vary the water levels specified in rule 7 of this Schedule 1 at any time at its discretion.
- 4.4 The Company is not obliged, and has no duty to the Customer, to maintain, or to attempt to maintain, water levels in Lake Wyangan at any particular level. Without limiting this rule, the Company may, at its discretion, divert flows to or from entering Lake Wyangan or remove any volume of water from Lake Wyangan at any time. Where the Company determines to do so, the Company may give notice on its web site that such diversion or removal has or will be made, and such notice has immediate effect.
- 4.5 With respect to water that is made available under this Schedule 1, the Company:
- (1) does not guarantee that water will be available at any particular pump site; and
  - (2) is not required to, and will not, supplement any water flows in any part of the Company's Works in order to make water available to the Customer.

#### **5 Customer's supply works**

- 5.1 The Company approves, for the purposes of the Surplus Water Rules, the Customer's Supply Works specified in the Customer's Rights of Access Certificate.
- 5.2 The Company may determine the volume of water extracted by the Customer's Supply Works, and the basis for the determination, which may include:
- (1) the volume recorded by a Meter measuring the volume of water extracted by the Customer's Supply Works;
  - (2) readings of any electricity meter associated with the Customer's Supply Works;
  - (3) the size of the Customer's Landholding;

- (4) the use of water on the Customer's Landholding (including the types of crops grown on the Landholding); or
  - (5) any other basis determined by the Company.
- 5.3 Each Customer must, upon written request by the Company, at the Customer's Cost, erect warning signs, to the satisfaction of the Company, to show the location of the Customer's Supply Works.
- 5.4 The extraction of water by the Customer's Supply Works must, where required by the Company, be measured by a Meter which must be installed and commissioned in accordance with the Company's design requirements.
- 5.5 Where the Customer's Supply Works do not have a Meter, the Company may install and commission a Meter, at the Company's Cost, on the Customer's Supply Works.
- 5.6 The Company may, at any time, on reasonable notice to the Customer, enter a Landholding to install, commission, operate, repair, replace, maintain or improve a Meter on the Landholding to the reasonable satisfaction of, and complying with the standards specified by, the Company.
- 5.7 The Company may, at such intervals as it determines, take and record readings from the Meter or from any electricity meter associated with the Customer's Supply Works.
- 5.8 The Customer must, within 10 Business Days after the Company makes a request, provide the Company with readings of any electricity meter associated with the Customer's Supply Works with respect to any period specified by the Company.
- 5.9 If the Company credits a volume of Water Allocation to the Customer in addition to any Annual Allocation credited by the Company to the Customer in connection with Availability Announcements, the Customer may use the Customer's Supply Works approved by the Company under this rule to take that additional volume of Water Allocation.

## **6 Termination**

- 6.1 If an Event of Default occurs in respect of a Customer, the Company may, without limiting the Company's rights under the Documents, terminate the Customer's Lake Wyangan [Surplus] Water and Lake Wyangan [Storage] Water in respect of Lake Wyangan.
- 6.2 If the Customer permanently transfers all of the Customer's Maximum Annual Extraction Volume, the Customer's Lake Wyangan [Surplus] Water and Lake Wyangan [Storage] Water in respect of Lake Wyangan are terminated.

## 7 Water access levels\*

### Item 1 South Lake

Water levels in South Lake	Access provisions
Less than 0.50 metres	Any volume of water extracted by the Customer from the South Lake will be debited from the Customer's Water Allocation Account.
Between 0.50 metres and 1.40 metres (inclusive)	<p>The Company may determine that Lake Wyangan [Surplus] Water may be taken under the Surplus Water Rules, and if the Company makes such a determination, any volume of water extracted by the Customer from the South Lake up to a maximum of the Customer's Maximum Annual Extraction Volume will be debited from the Customer's Lake Wyangan Account.</p> <p>Any volume of water extracted by the Customer from the South Lake in excess of the Customer's Maximum Annual Extraction Volume will be debited from the Customer's Water Allocation Account.</p>
Greater than 1.40 metres	The Company may determine that Lake Wyangan [Storage] Water may be taken under the Surplus Water Rules, and if the Company makes such a determination then Lake Wyangan [Storage] Water will not be debited against the Customer's Lake Wyangan Account or the Customer's Water Allocation Account.

### Item 2 North Lake

Water levels in North Lake	Access provisions
Less than 1.35 metres	Any volume of water extracted by the Customer from the North Lake will be debited from the Customer's Water Allocation Account.
Between 1.35 metres and 1.54 metres (inclusive)	<p>The Company may determine that Lake Wyangan [Surplus] Water may be taken under the Surplus Water Rules, and if the Company makes such a determination then any volume of water extracted by the Customer from the North Lake up to a maximum of half of the Customer's Maximum Annual Extraction Volume will be debited from the Customer's Lake Wyangan Account.</p> <p>Any volume of water extracted by the Customer from the North Lake in excess of half of the Customer's Maximum Annual Extraction Volume will be debited from the Customer's Water Allocation Account.</p>
Between 1.55 metres and 1.64 metres (inclusive)	The Company may determine that Lake Wyangan [Surplus] Water may be taken under the Surplus Water Rules, and if the Company makes such a determination then any volume of water extracted by the Customer from the North Lake up to a maximum

Water levels in North Lake	Access provisions
	<p>of the Customer's Maximum Annual Extraction Volume will be debited from the Customer's Lake Wyangan Account.</p> <p>Any volume of water extracted by the Customer from the North Lake in excess the Customer's Maximum Annual Extraction Volume will be debited from the Customer's Water Allocation Account.</p>
Greater than 1.64 metres	<p>The Company may determine that Lake Wyangan [Storage] Water may be extracted by the Customer from the North Lake under the Surplus Water Rules, and if the Company makes such a determination then Lake Wyangan Surplus [Storage] Water will not be debited against the Customer's Lake Wyangan Account or the Customer's Water Allocation Account.</p>

\*Refer to 2.3(3) for consideration of impact of deliberate diversions on water levels

## **Schedule 2 - Mirrool Creek Rules**

### **1 Introduction**

- 1.1 This Schedule 2 applies to the taking of Water Allocation and Surplus Water, including Supplementary Water Allocation and Mirrool Creek [Surplus] Water, from Mirrool Creek.

### **2 Definitions and interpretations**

#### **2.1 Company's Works include Mirrool Creek**

For the purposes of this Schedule 2, the definition of "*Company's Works*" in clause 1.1 of the Water Delivery Contract is replaced by the following:

**Company's Works** means:

- (1) Works owned by the Company; and
- (2) Mirrool Creek.

#### **2.2 Water levels in Barren Box Storage**

References to water levels in Barren Box Storage:

- (1) are references to water levels on the gauge situated in the intermediate cell, and as recorded by the Company; and
- (2) do not include any increases in the water levels caused by the deliberate diversion of water to Barren Box Storage by the Company.

### **3 Right of access to surplus water in Mirrool Creek**

- 3.1 Without limiting the operation of any other rule in the Surplus Water Rules or this Schedule 2, the maximum volume of Supplementary Water Allocation which may be taken by the Customer from Mirrool Creek in a Water Year using the Customer's Company-approved Supply Works is the total volume of Supplementary Water Allocation to which the Customer is entitled, minus any Supplementary Water Allocation taken other than through the Customer's Company-approved Supply Works.

### **4 Extraction of water from Mirrool Creek**

- 4.1 The table in rule 7 of this Schedule 2 specifies the water levels in Barren Box Storage below, at or above which, as the case may be:
- (1) any volume of water extracted by the Customer from Mirrool Creek is debited from the Customer's Water Allocation Account;
  - (2) the Company may determine to permit the Customer to take Supplementary Water Allocation; or
  - (3) the Company may determine to permit the Customer to take Mirrool Creek [Surplus] Water.
- 4.2 The Company may vary the water levels specified in rule 7 of this Schedule 2 at any time at its discretion.
- 4.3 The Company is not obliged, and has no duty to the Customer, to maintain, or to attempt to maintain, water levels in Barren Box Storage or Mirrool Creek at any particular level. Without limiting this rule, the Company may, at its discretion, divert flows to or from entering Barren

Box Storage or Mirrool Creek or remove any volume of water from Barren Box Storage or Mirrool Creek at any time. Where the Company determines to do so, the Company may give notice on its web site that such diversion or removal has or will be made, and such notice has immediate effect.

- 4.4 With respect to water that is permitted to be taken under this Schedule 2, the Company:
- (1) does not guarantee that water will be permitted to be taken at any particular pump site; and
  - (2) is not required to, and will not, supplement any water flows in any part of the Company's Works in order to permit water to be taken by the Customer.

## **5 Supplementary water allocation**

- 5.1 The Company will, to the extent that it is reasonably practicable within the Company's operation of its Works, and in accordance with the Company's order of priority for the extraction of water from different water sources, extract water which the Company is permitted to extract under the SWAL in order for it to be available to be taken, if the Company makes a determination under the Surplus Water Rules, by Customers who are entitled to Supplementary Water Allocation.
- 5.2 Subject to any determinations made by the Company under rule 11 of the Surplus Water Rules, if any water taken from the Murrumbidgee River by the Company under the SWAL has not been used during the Water Year in which it was taken, the Company will credit a volume of Water Allocation equivalent to the unused water to Customers in proportion to their entitlement to Supplementary Water Allocation.

## **6 Customer's supply works**

- 6.1 The Company approves, for the purposes of the Surplus Water Rules, the Customer's Supply Works specified in the Customer's Rights of Access Certificate.
- 6.2 The Company may determine the volume of water extracted by the Customer's Supply Works, and the basis for the determination, which may include:
- (1) the volume recorded by a Meter measuring the volume of water extracted by the Customer's Supply Works;
  - (2) readings of any electricity meter associated with the Customer's Supply Works;
  - (3) the size of the Customer's Landholding;
  - (4) the use of water on the Customer's Landholding (including the types of crops grown on the Landholding); or
  - (5) any other basis determined by the Company.
- 6.3 Each Customer must, upon written request by the Company, at the Customer's Cost, erect warning signs, to the satisfaction of the Company, to show the location of the Customer's Supply Works.
- 6.4 The extraction of water by the Customer's Supply Works must, where required by the Company, be measured by a Meter which must be installed and commissioned in accordance with the Company's design requirements.
- 6.5 Where the Customer's Supply Works do not have a Meter, the Company may install and commission a Meter, at the Company's Cost, on the Customer's Supply Works.

- 6.6 The Company may, at any time, on reasonable notice to the Customer, enter a Landholding to install, commission, operate, repair, replace, maintain or improve a Meter on the Landholding to the reasonable satisfaction of, and complying with the standards specified by, the Company.
- 6.7 The Company may, at such intervals as it determines, take and record readings from the Meter or from any electricity meter associated with the Customer's Supply Works.
- 6.8 The Customer must, within 10 Business Days after the Company makes a request, provide the Company with readings of any electricity meter associated with the Customer's Supply Works with respect to any period specified by the Company.
- 6.9 If the Company credits a volume of Water Allocation to the Customer in addition to any Annual Allocation credited by the Company to the Customer in connection with Availability Announcements, the Customer may use the Customer's Supply Works approved by the Company under this rule to take that additional volume of Water Allocation.

## **7 Termination**

- 7.1 If an Event of Default occurs in respect of a Customer, the Company may, without limiting the Company's rights under the Documents, terminate the Customer's Supplementary Water Allocation and Mirrool Creek [Surplus] Water in respect of Mirrool Creek.
- 7.2 If the Customer permanently transfers all of the Customer's Supplementary Water Allocation, the Customer's Supplementary Water Allocation is terminated.

## 8 Water access levels

In this rule 8 of Schedule 2, references to the “*storage ceiling*” are to the storage level shown in the graph published on the Company’s website or in the Barren Box Storage Operational Guidelines. The Company may vary the graph from time to time at its discretion, and the variation takes effect immediately once it is published on the Company’s web site or in the Barren Box Storage Operational Guidelines.

Water levels in Barren Box Storage	Access provisions
Tier 1: less than the storage ceiling	Any volume of water extracted by the Customer from Mirrool Creek will be debited from the Customer’s Water Allocation Account.
Tier 2: between zero and 2,000 Megalitres above the storage ceiling (inclusive)	<p>The Company may make a “<i>specific</i>” determination that Supplementary Water Allocation may be taken under the Surplus Water Rules, and if the Company makes such a determination, any volume of water extracted by the Customer from Mirrool Creek up to a maximum of the volume of Supplementary Water Allocation with respect to Mirrool Creek specified on the Customer’s Rights of Access Certificate will not be debited from the Customer’s Water Allocation Account.</p> <p>Any volume of water extracted by the Customer from Mirrool Creek in excess the Customer’s Supplementary Water Allocation will be debited from the Customer’s Water Allocation Account.</p>
Tier 3: more than 2,000 Megalitres above the storage ceiling	The Company may determine that Mirrool Creek [Surplus] Water may be taken under the Surplus Water Rules using the Customer’s Works.

## Schedule 3 - Barren Box Storage Rules

### 1 Introduction

- 1.1 This Schedule 3 applies to the taking of Water Allocation and Surplus Water, including Supplementary Water Allocation, Mirrool Creek [Surplus] Water and Mirrool Creek [Storage] Water, from Barren Box Storage.

### 2 Definitions and interpretations

#### 2.1 Definitions

In this Schedule 3, the following words have these meanings unless the contrary intention appears:

- (1) **Barren Box Storage Account** means an account maintained by the Company which records the crediting, acquiring, debiting and withdrawal of Supplementary Water Allocation.

#### 2.2 Company's Works include Barren Box Storage

For the purposes of this Schedule 3, the definition of "*Company's Works*" in clause 1.1 of the Water Delivery Contract is replaced by the following:

**Company's Works** means:

- (1) Works owned by the Company; and  
(2) Barren Box Storage.

#### 2.3 Water levels in Barren Box Storage

References to water levels in Barren Box Storage:

- (1) are references to water levels on the gauge situated in the intermediate cell, and as recorded by the Company; and  
(2) do not include any increases in the water levels caused by the deliberate diversion of water to Barren Box Storage by the Company.

### 3 Supplementary water allocation

- 3.1 The Company will, to the extent that it is reasonably practicable within the Company's operation of its Works, and in accordance with the Company's order of priority for the extraction of water from different water sources, extract water which the Company is permitted to extract under the SWAL in order for it to be available to be taken, if the Company makes a determination under the Surplus Water Rules, by Customers who are entitled to Supplementary Water Allocation.
- 3.2 Subject to any determinations made by the Company under rule 11 of the Surplus Water Rules, if any water taken from the Murrumbidgee River by the Company under the SWAL has not been used during the Water Year in which it was taken, the Company will credit a volume of Water Allocation equivalent to the unused water to Customers in proportion to their entitlement to Supplementary Water Allocation.

### 4 Customer's supply works

- 4.1 The Company approves, for the purposes of the Surplus Water Rules, the Customer's Supply Works specified in the Customer's Rights of Access Certificate.

- 4.2 The Company may determine the volume of water extracted by the Customer's Supply Works, and the basis for the determination, which may include:
- (1) the volume recorded by a Meter measuring the volume of water extracted by the Customer's Supply Works;
  - (2) readings of any electricity meter associated with the Customer's Supply Works;
  - (3) the size of the Customer's Landholding;
  - (4) the use of water on the Customer's Landholding (including the types of crops grown on the Landholding); or
  - (5) any other basis determined by the Company.
- 4.3 Each Customer must, upon written request by the Company, at the Customer's Cost, erect warning signs, to the satisfaction of the Company, to show the location of the Customer's Supply Works.
- 4.4 The extraction of water by the Customer's Supply Works must, where required by the Company, be measured by a Meter which must be installed and commissioned in accordance with the Company's design requirements.
- 4.5 Where the Customer's Supply Works do not have a Meter, the Company may install and commission a Meter, at the Company's Cost, on the Customer's Supply Works.
- 4.6 The Company may, at any time, on reasonable notice to the Customer, enter a Landholding to install, commission, operate, repair, replace, maintain or improve a Meter on the Landholding to the reasonable satisfaction of, and complying with the standards specified by, the Company.
- 4.7 The Company may, at such intervals as it determines, take and record readings from the Meter or from any electricity meter associated with the Customer's Supply Works.
- 4.8 The Customer must, within 10 Business Days after the Company makes a request, provide the Company with readings of any electricity meter associated with the Customer's Supply Works with respect to any period specified by the Company.
- 4.9 If the Company credits a volume of Water Allocation to the Customer in addition to any Annual Allocation credited by the Company to the Customer in connection with Availability Announcements, the Customer may use the Customer's Supply Works approved under this rule to take that additional volume of Water Allocation.

## **5 Termination**

- 5.1 If an Event of Default occurs in respect of a Customer, the Company may, without limiting the Company's rights under the Documents, terminate the Customer's Supplementary Water Allocation, Mirrool Creek [Surplus] Water and Mirrool Creek [Storage] Water in respect of Barren Box Storage.