

South Australia

Upper South East Dryland Salinity and Flood Management Regulations 2002

under the *Upper South East Dryland Salinity and Flood Management Act 2002*

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Legislative history

1—Short title

These regulations may be cited as the *Upper South East Dryland Salinity and Flood Management Regulations 2002*.

3—Interpretation

In these regulations—

Act means the *Upper South East Dryland Salinity and Flood Management Act 2002*.

4—Upper South East

For the purposes of the Act, the Upper South East consists of the area or areas described in Schedule 1 of these regulations.

5—Establishment of Project scheme

- (1) Pursuant to section 4(1) of the Act, the Project scheme referred to in subregulation (2) is established to further the objects of the Act.
- (2) The Project scheme consists of the following:
 - (a) the Upper South East Project lodged as Deposit No. 481 of 2002 in the General Registry Office (except to the extent that the effect of that document is modified by or inconsistent with the document referred to in paragraph (b)); and
 - (b) the Notice of Intention for Stage 3 of Upper South East Dryland Salinity and Flood Management Plan (prepared under the *Environmental Protection (Impact of Proposals) Act 1974*) lodged as Deposit No. 486 of 2002 in the General Registry Office; and
 - (ba) the project scheme as described in the documents lodged as Deposit No. 461 of 2004 and Deposit No. 32 of 2007 in the General Registry Office as at 22 November 2007; and
 - (bb) the project scheme as described in the document lodged as Deposit No. 31 of 2009 in the General Registry Office as at 25 August 2009 (and described as *REFLOWS*); and
 - (c) the Project works scheme described in Schedule 2 of these regulations.

6—Project Area

For the purposes of section 4(3) of the Act, the Project Area consists of the area or areas described in the revised Rack Plan 895 lodged in the Surveyor-General's Office at Adelaide, as at 4 September 2009.

7—Applications for warrants (section 10 of the Act)

- (1) The grounds of an application for a warrant made personally must be verified by affidavit.
- (2) An application for a warrant cannot be made by telephone unless in the opinion of the applicant a warrant is urgently required and there is not enough time to make the application personally.
- (3) If an application for a warrant is made by telephone—
 - (a) the applicant must inform the magistrate of the applicant's name and identify himself or herself as an authorised officer, and the magistrate, on receiving that information, is entitled to assume, without further inquiry, that the applicant is an authorised officer; and
 - (b) the applicant must inform the magistrate of the purpose for which the warrant is required and the grounds on which it is sought; and

- (c) if it appears to the magistrate from the information given by the applicant that there are proper grounds to issue a warrant, the magistrate must inform the applicant of the facts that justify, in the magistrate's opinion, the issue of the warrant, and must not proceed to issue the warrant unless the applicant undertakes to make an affidavit verifying those facts; and
 - (d) if the applicant gives such an undertaking, the magistrate may then make out and sign a warrant, noting on the warrant the facts that justify, in the magistrate's opinion, the issue of the warrant; and
 - (e) the warrant is taken to have been issued, and comes into force, when signed by the magistrate; and
 - (f) the magistrate must inform the applicant of the terms of the warrant; and
 - (g) the applicant must, as soon as practicable after the issue of the warrant, forward to the magistrate an affidavit verifying the facts referred to in paragraph (c).
- (4) A magistrate by whom a warrant is issued must file the warrant, or a copy of the warrant, and the affidavit verifying the grounds on which the application for the warrant was made, in the Magistrates Court.

8—Public authorities and relevant interests (section 12 of the Act)

- (1) The following bodies are brought within the ambit of the definition of *public authority* in section 12 of the Act:
- (a) ANP Sea Gas SPV2 Pty Ltd (ACN 099 332 368);
 - (b) ANP Sea Gas SPV3 Pty Ltd (ACN 099 332 395);
 - (c) Distribution Lessor Corporation;
 - (d) Electranet Pty Ltd;
 - (e) ETSA Corporation;
 - (f) OE Sea Gas SPV2 Pty Ltd (ACN 095 483 453);
 - (g) OE Sea Gas SPV3 Pty Ltd (ACN 095 483 462);
 - (h) South East Australia Gas Pty Ltd (ACN 096 437 900);
 - (i) Transmission Lessor Corporation;
 - (j) TXU Sea Gas SPV1 Pty Ltd (ACN 095 483 444);
 - (k) TXU Sea Gas SPV2 Pty Ltd (ACN 099 332 331).
- (2) A lease, or an underlease, conferring a right in the nature of an easement in favour of a public authority is excluded from the definition of *relevant interest* in section 12 of the Act.

8A—Statutory easements

- (1) The easements set out in Schedules 3 and 4 are prescribed for the purposes of sections 12 to 12C (inclusive) of the Act.

- (2) The following scheme applies for the purposes of matching an easement to the nature of the land and the nature of the works to be undertaken for the purposes of the Project:
- (a) the easement set out in Schedule 3 applies in relation to land within a project works corridor that is private land;
 - (b) the easement set out in Schedule 4 applies in relation to land within a project works corridor that is public land.
- (3) A reference in Schedule 3 or 4 to *relevant land* is a reference to land subject to an easement under this regulation.
- (4) In this regulation—
- private land* means land other than public land;
 - public land* has the same meaning as in section 12(12) of the Act.

8B—Prescribed rate of interest

For the purposes of section 13(11) of the Act, the prescribed rate of interest is 5.26%.

9—Application Fee

For the purposes of section 19(3) of the Act, a fee of \$143.80 is prescribed.

10—Designated bank rate

For the purposes of the definition of *prescribed percentage* in section 23(13) of the Act, the *designated bank rate*, for a particular financial year, is the 1 year fixed (non comparison) rate applied by the Commonwealth Bank of Australia at the commencement of the financial year.

Schedule 1—The Upper South East

That part of the State constituted by the following Hundreds:

Archibald
Beeamma
Binnun
Bowaka
Cannawigara
Colebatch
Coles
Conmurra
Coombe
Duffield
Field
Geegeela
Glen Roy

Glyde
Hynam
Jessie
Joanna
Joyce
Lacepede
Laffer
Landseer
Lochaber
Makin
Marcollat
McCallum
McNamara
Messent
Minecrow
Mount Benson
Murrabinna
Naracoorte
Neville
Parsons
Peacock
Pendleton
Petherick
Richards
Robertson
Ross
Santo
Senior
Shaugh
Spence
Stirling
Tatiara
Townsend
Wells
Willalooka

Wirrega

Woolumbool

Schedule 2—Project works scheme

1 The schedule for the engineering and construction aspects (described in the documents referred to in Part B of Schedule 1 of the Act) of the Project works scheme is as follows:

| Item | Project Works | Date |
|------|---|---------------|
| 1 | Complete construction of Rosemary Downs Drain | May 2007 |
| 2 | Complete construction of Didicoolum Drain | August 2007 |
| 3 | Complete minor works, fencing and modification to Ballater East, Tilley Swamp and Water Valley drains | August 2007 |
| 4 | Complete construction of East Avenue Drain | June 2008 |
| 5 | Complete construction of Bald Hill, Wimpinmerit and Bakers Range drains | December 2009 |

2—Tilley Swamp Risk Management

This part of the Project will commence in December 2002, and be completed in December 2006, and consists of ongoing measures including the following:

- development of risk assessment for use of Tilley Swamp as a buffer to hold excess water for release in conjunction with Morella Basin;
- provision of complementary wetland management to the Upper South East wetland complex and the southern lagoon of the Coorong;
- the utilisation of Tilley Swamp Watercourse as a high quality brackish wetland ecosystem.

3—Upper South East Wetland Types and their ecological requirements

This part of the project, to be commenced in December 2002 and concluded in December 2006, will consist of the gathering of data, testing and monitoring, including in relation to the following:

- the use of indigenous native species for reclamation of salt affected areas;
- the definition of wetland floristic plant communities, and preparation of categories for wetland definition based on character species;
- the optimum wetting and drying frequencies and duration, and salinity levels, for wetlands;
- the flooding and drought tolerances of the most sensitive plant and invertebrate species.

4—Watercourse Renovation

This part of the Project, known as the watercourse restoration project, will provide wetland habitat for aquatic species, refuge for waterbirds and assist in the protection and regeneration of riparian vegetation through measures including:

- the protection of representative wetland types; and

- the undertaking of rehabilitation works; and
- the carrying-out of wetland inventories and monitoring.

The watercourse restoration project will commence in December 2002.

5—Regional Revegetation Targets

This part of the Project promotes recharge control methods, and provide technical and planning support to landholders. Preliminary investigations suggest that a further 70 000 hectares of deep-rooted perennial pasture will be required to be planted.

This part of the Project will commence in December 2002, and conclude in December 2006, and consist of gathering baseline data at strategic sites within the Project Area.

Schedule 3—Statutory easement—private land

1—Statutory easement—private land

- (1) The terms of a statutory easement for private land are set out as follows.
- (2) The Minister has exclusive possession over the relevant land.
- (3) The following persons may enter the relevant land at any time:
 - (a) the Minister;
 - (b) an employee of the administrative unit of the Public Service that is, under the Minister, responsible for the administration of the Act;
 - (c) an agent of the Minister;
 - (d) a contractor engaged by the Minister for the purposes of undertaking any designated works;
 - (e) any other person authorised by the Minister in connection with the operation of the easement.
- (4) A person who enters the relevant land under subclause (3) may—
 - (a) remove any items, stock or fixtures on the relevant land; and
 - (b) break the surface of, dig, open up or use the relevant land for the purpose of constructing, laying down, fixing, taking up, repairing, replacing, re-laying or examining drains, pipes, channels, banks, bridges, weirs, monitoring stations or other forms of works or infrastructure; and
 - (c) remove weeds or vermin, and clear vegetation and other material, located on the relevant land; and
 - (d) make inspections and surveys, take measurements, undertake tests, and take samples of any substance or thing; and
 - (e) carry out fencing work; and
 - (f) carry out other work authorised by the Minister for any purpose associated with the Project.

- (5) The Minister, and any person acting on behalf of the Minister, may—
- (a) use and maintain, and alter or replace, any drains, pipes, channels, banks, bridges, weirs, stations or other forms of works or infrastructure located on the relevant land; and
 - (b) intercept, divert, store or transport any water on or under the relevant land (including water that has flowed on to the relevant land).
- (6) Subject to the operation of the preceding subclauses, a person must not enter the relevant land, or permit stock or other animals to enter or remain on the relevant land, unless authorised by the Minister to do so.
- (7) Subclause (6) does not, however, apply—
- (a) to temporary access to the relevant land in an emergency situation; or
 - (b) to access to the relevant land by a person before the commencement of work for the purposes of the Project, if the person—
 - (i) does not erect a fence on the relevant land, or along the boundary of the relevant land, without the approval of the Minister; and
 - (ii) does not undertake any activity on or in relation to the relevant land contrary to any written direction of the Minister; and
 - (iii) complies with any written direction of the Minister to vacate the relevant land and to remove any plant, machinery, infrastructure or other items, or any animals, specified by the Minister; or
 - (c) to access to the relevant land by a person after the relevant date in relation to the land—
 - (i) where the relevant land is not fenced and access is for the purposes of grazing stock, carrying out periodic weed or vermin control or eradication, or undertaking fire prevention or control measures, if the person complies with any written direction of the Minister to cease any such activity, to reduce or replace stock, or to remove any plant, machinery, infrastructure or other items, or any animals, specified by the Minister; or
 - (ii) where the access consists of crossing over the relevant land, with or without stock or machinery, at a crossing point established or provided as part of the Project.
- (8) Without limiting a preceding subclause, the owner of the relevant land—
- (a) must not undertake any activity that constitutes a nuisance or hindrance to the Minister's use of the relevant land or to the exercise of a power conferred on the Minister under the Act or this easement; and
 - (b) without limiting paragraph (a)—must not erect a fence on any part of the relevant land, or along the boundary of the relevant land, without the approval of the Minister; and
 - (c) must take reasonable steps to ensure the safety of any person who is permitted by the owner to gain access to the relevant land on account of any access allowed under this easement; and

- (d) must immediately notify the Minister, in a manner and form determined or approved by the Minister, if the owner damages or obstructs—
- (i) any aspect of the Project works scheme; or
 - (ii) any Project works, or the operation of any Project works; or
 - (iii) any other aspect of the Project Undertaking,
- or if the owner becomes aware of any such damage or obstruction.
- (9) In this clause—
- designated works*** means any work or other activity in connection with the implementation of the Project or furthering or enhancing the Project Undertaking;
- fencing work*** has the same meaning as for the purposes of section 21 of the Act;
- relevant date***, in relation to any land, means—
- (a) the relevant date that applies in relation to the land under section 13 or 13A of the Act (as the case requires); or
 - (b) if the Minister has, by notice published in a newspaper in the area where the land is situated, fixed an earlier date for practical completion of works in relation to the land—that earlier date.

2—Saving provision

To avoid doubt, all Project works and other infrastructure of the Minister on the relevant land (including in the nature of a fixture) remain the property of the Minister despite the establishment of the statutory easement or the effect of any term of the statutory easement.

Schedule 4—Statutory easement—public land

1—Statutory easement—public land

- (1) The terms of a statutory easement for public land are set out as follows.
- (2) The Minister has exclusive possession over the relevant land.
- (3) The following persons may enter the relevant land at any time:
 - (a) the Minister;
 - (b) an employee of the administrative unit of the Public Service that is, under the Minister, responsible for the administration of the Act;
 - (c) an agent of the Minister;
 - (d) a contractor engaged by the Minister for the purposes of undertaking any designated works;
 - (e) any other person authorised by the Minister in connection with the operation of the easement.
- (4) A person who enters the relevant land under subclause (3) may—
 - (a) remove any items, stock or fixtures on the relevant land; and

- (b) break the surface of, dig, open up or use the relevant land for the purpose of constructing, laying down, fixing, taking up, repairing, replacing, re-laying or examining drains, pipes, channels, banks, bridges, weirs, monitoring stations or other forms of works or infrastructure; and
 - (c) remove weeds or vermin, and clear vegetation and other material, located on the relevant land; and
 - (d) make inspections and surveys, take measurements, undertake tests, and take samples of any substance or thing; and
 - (e) carry out fencing work; and
 - (f) carry out other work authorised by the Minister for any purpose associated with the Project.
- (5) The Minister, and any person acting on behalf of the Minister, may—
- (a) use and maintain, and alter or replace, any drains, pipes, channels, banks, bridges, weirs, stations or other forms of works or infrastructure located on the relevant land; and
 - (b) intercept, divert, store or transport any water on or under the relevant land (including water that has flowed on to the relevant land).
- (6) Subject to the operation of the preceding subclauses, a person must not enter the relevant land, or permit stock or other animals to enter or remain on the relevant land, unless authorised by the Minister to do so.
- (7) Subclause (6) does not, however, apply—
- (a) to access to a public road subject to the easement, other than access to any area that has been fenced off by or on behalf of the Minister (in which case the authorisation of the Minister is required); or
 - (b) to temporary access to the relevant land in an emergency situation; or
 - (c) to access by a person to an area that has not been fenced off by or on behalf of the Minister, if the person—
 - (i) does not erect a fence on the relevant land, or along the boundary of the relevant land, without the approval of the Minister; and
 - (ii) does not undertake an activity on or in relation to the relevant land contrary to any written direction of the Minister; and
 - (iii) complies with any written direction of the Minister to vacate the relevant land and to remove any plant, machinery, infrastructure or other items, or any animals, specified by the Minister.
- (8) Without limiting a preceding subclause, the public authority with respect to relevant land—
- (a) must take reasonable steps to maintain any relevant land that has not been fenced off by or on behalf of the Minister (including by carrying out periodic weed or vermin control or eradication, undertaking fire prevention or control measures, and ensuring public safety to a reasonable degree); and

- (b) if Project works are situated underneath a public road—subject to subclauses (9) and (10), must take reasonable steps to maintain the public road (including by providing any road base but not so as to be responsible for any barrier that has been erected by or on behalf of the Minister to protect public safety or to prevent access to any area); and
 - (c) must not undertake any activity that constitutes a nuisance or hindrance to the Minister's use of the relevant land or to the exercise of any power conferred on the Minister under the Act or this easement; and
 - (d) must immediately notify the Minister, in a manner and form determined or approved by the Minister, if the owner damages or obstructs—
 - (i) any aspect of the Project works scheme; or
 - (ii) any Project works, or the operation of any Project works; or
 - (iii) any other aspect of the Project Undertaking,or if the public authority becomes aware of any such damage or obstruction.
- (9) Subclause (8)(b) does not apply to the extent that access to a public road has been permanently blocked by the Minister.
- (10) The public authority with respect to the bridge known as the *G Cutting Bridge* on the Kingston/Keith road must maintain that bridge, in all respects, at its own expense.
- (11) For the purposes of this clause—

designated works means any work or other activity in connection with the implementation of the Project or furthering or enhancing the Project Undertaking;

fencing work has the same meaning as for the purposes of section 21 of the Act.

2—Saving provision

To avoid doubt—

- (a) all Project works and other infrastructure of the Minister on relevant land (including in the nature of a fixture) remain the property of the Minister despite the establishment of the statutory easement or the effect of any term of the statutory easement; and
- (b) all works and structures constructed or fixed on or in relation to the relevant land (including roads and bridges) by a public authority remain the property, or under the care, control and management, of the public authority; and
- (c) all other structures lawfully constructed or fixed on or in relation to the relevant land (including pipelines and telecommunications infrastructure) by another entity remain the property of the other entity.

Legislative history

Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of these regulations (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Principal regulations and variations

New entries appear in bold.

| Year | No | Reference | Commencement |
|-------------|------------|---------------------------------------|-----------------------|
| 2002 | 233 | <i>Gazette 19.12.2002 p4816</i> | 19.12.2002: r 2 |
| 2005 | 137 | <i>Gazette 16.6.2005 p1831</i> | 16.6.2005: r 2 |
| 2007 | 57 | <i>Gazette 10.5.2007 p1982</i> | 10.5.2007: r 2 |
| 2008 | 2 | <i>Gazette 17.1.2008 p268</i> | 17.1.2008: r 2 |
| 2008 | 265 | <i>Gazette 25.9.2008 p4602</i> | 25.9.2008: r 2 |
| 2009 | 271 | <i>Gazette 26.11.2009 p5279</i> | 26.11.2009: r 2 |
| 2010 | 4 | <i>Gazette 21.1.2010 p265</i> | 21.1.2010: r 2 |
| 2010 | 156 | <i>Gazette 24.6.2010 p3211</i> | 1.7.2010: r 2 |
| 2010 | 251 | <i>Gazette 9.12.2010 p5582</i> | 9.12.2010: r 2 |

Provisions varied

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

| Provision | How varied | Commencement |
|---|--|------------------|
| <i>r 2</i> | <i>omitted under the Legislation Revision and Publication Act 2002</i> | <i>16.6.2005</i> |
| r 5 | | |
| r 5(2) | varied by 137/2005 r 4 | 16.6.2005 |
| | varied by 2/2008 r 4 | 17.1.2008 |
| | varied by 271/2009 r 4 | 26.11.2009 |
| r 6 | varied by 271/2009 r 5(1), (2) | 26.11.2009 |
| r 8A | inserted by 4/2010 r 4 | 21.1.2010 |
| r 8B | inserted by 251/2010 r 4 | 9.12.2010 |
| <i>r 10 before deletion by 265/2008</i> | <i>inserted by 137/2005 r 5</i> | <i>16.6.2005</i> |
| <i>r 10(3)</i> | <i>inserted by 57/2007 r 4</i> | <i>10.5.2007</i> |
| <i>r 10</i> | <i>deleted by 265/2008 Sch 1 cl 2</i> | <i>25.9.2008</i> |

| | | |
|--------------|----------------------------|------------|
| r 10 | inserted by 156/2010 r 4 | 1.7.2010 |
| Sch 1 | varied by 271/2009 r 6 | 26.11.2009 |
| Sch 2 | | |
| cl 1 | varied by 137/2005 r 6 | 16.6.2005 |
| | substituted by 57/2007 r 5 | 10.5.2007 |
| Schs 3 and 4 | inserted by 4/2010 r 5 | 21.1.2010 |

Historical versions

16.6.2005
10.5.2007
17.1.2008
25.9.2008
26.11.2009
21.1.2010
1.7.2010