

South Australia

Groundwater (Border Agreement) (Amending Agreement) Amendment Act 2006

An Act to amend the *Groundwater (Border Agreement) Act 1985*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Groundwater (Border Agreement) (Amending Agreement) Amendment Act 2006*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Groundwater (Border Agreement) Act 1985*

4—Amendment of section 4—Interpretation

Section 4(a)—delete paragraph (a) and substitute:

- (a) **Agreement** means the Border Groundwaters Agreement, a copy of which is set out in Schedule 2, as that Agreement is amended by the Amending Agreement; and
- (ab) **Amending Agreement** means the Border Groundwaters Agreement Amendment Agreement, a copy of which is set out in Schedule 3; and

5—Insertion of section 5A

After section 5 insert:

5A—Approval of Amending Agreement

The Amending Agreement is approved.

6—Amendment of section 12—Bores for observation and providing data

Section 12(2)—delete subsection (2) and substitute:

- (2) Subsection (1) does not derogate from any power under the *Natural Resources Management Act 2004*.

7—Repeal of section 14

Section 14—delete the section

8—Repeal of First Schedule

First Schedule—delete the Schedule

9—Substitution of heading to Second Schedule

Second Schedule—delete the heading to this Schedule and substitute:

Schedule 2

10—Insertion of Schedule 3

After Schedule 2 insert:

Schedule 3—Border Groundwaters Agreement Amendment Agreement

AN AGREEMENT made this 18 day of 10, Two thousand and five between—

THE STATE OF SOUTH AUSTRALIA of the first part and

THE STATE OF VICTORIA of the second part.

WHEREAS the South Australian and Victorian Governments wish to amend the Agreement made between the parties on 15th October 1985 (which Agreement is herein called “the principal agreement”), in order to provide the necessary capacity and flexibility to effectively manage the shared groundwater resources of western Victoria and the Mallee and south-eastern South Australia.

NOW IT IS HEREBY AGREED as follows—

Interpretation.

1. Unless the contrary intention appears, expressions used in this Agreement have the same meanings as in the principal agreement except as amended by this Agreement.

Definitions.

2. (1) The following definitions shall be inserted in place of those in clause 1 of the principal agreement—

“**Bore**” with respect to South Australia, means any well as defined by section 3 of the *Natural Resources Management Act 2004* and with respect to Victoria, means any bore as defined by section 3 of the *Water Act 1989*, but in neither case includes any well or bore from which water is extracted or proposed to be extracted for one or more of the following purposes and for no other purposes—

- (a) household purposes;
- (b) watering animals kept for domestic and stock purposes; or
- (c) the irrigation of a garden not exceeding 0.4 hectares in extent used solely in connection with a dwelling and from which no produce is sold.

“**Granting authority**” means—

- (a) in the case of South Australia, the Minister administering the *Natural Resources Management Act 2004*; and

- (b) in the case of Victoria, the Minister administering the *Water Act 1989*.

"Groundwater" with respect to South Australia means any underground water as defined by section 3 of the *Natural Resources Management Act 2004* and with respect to Victoria means any groundwater as defined by section 3 of the *Water Act 1989*.

"Minister" with respect to South Australia means the Minister administering the *Natural Resources Management Act 2004* and with respect to Victoria means the Minister administering the *Water Act 1989*.

"Permissible annual volume" means the permissible annual volume of extraction specified for a particular zone or aquifer within a zone in the Second Schedule, or in relation to a particular zone or aquifer within a zone, such other volume as has been determined by the Committee under clause 28(2).

"Permissible distance from the border between the State of South Australia and the State of Victoria" means a distance of one kilometre from that border, or in relation to a particular zone, sub-zone, or aquifer within a zone or sub-zone, such other distance as has been determined by the Committee under clause 28(2).

"Permit" means—

- (a) any licence provided for in section 146 of the South Australian *Natural Resources Management Act 2004*;
 - (b) any permit provided for in section 135 of the South Australian *Natural Resources Management Act 2004*;
 - (c) any licence provided for in Part 5 of the Victorian *Water Act 1989*;
 - (d) any licence provided for in section 51 of the Victorian *Water Act 1989*.
- (2) The following definition shall replace the definition "Permissible level of salinity" in clause 1 of the principal agreement—

"Permissible salinity" means—

- (a) a maximum rate of increase; and/or
- (b) a designated maximum level—

of salinity, measured as electro-conductivity of so many microsiemens per centimetre at twenty-five degrees Celsius, that must not be exceeded as may be agreed upon by the Minister of each Contracting Government for a particular zone, sub-zone or aquifer within a zone or sub-zone, pursuant to clause 28(6), or in relation to a particular zone, sub-zone or aquifer within a zone or sub-zone, such other rate and/or level as has been agreed upon by the Minister of each Contracting Government under clause 28 (4).’.

- (3) The following two definitions shall replace the definition of “Permissible rate of potentiometric surface lowering” in clause 1 of the principal agreement. The first definition shall be inserted immediately before the definition for “Permissible salinity” and the second definition shall be inserted immediately after the definition for “Permit”—

“Permissible potentiometric surface lowering” means—

- (a) a rate set out in the Third Schedule or such other rate as has been agreed upon by the Minister for each Contracting Government under clause 28(4), and/or
- (b) the potentiometric surface level as agreed upon by the Minister of each Contracting Government under clause 28(4).

“Potentiometric surface lowering” means—

- (a) a rate of potentiometric surface lowering that must not be exceeded, and/or
- (b) a potentiometric surface level that must not be exceeded—

for a particular zone, sub-zone or aquifer within a zone or sub zone.’.

- (4) The following additional terms shall be defined in clause 1 of the Agreement—

The following definition shall be inserted immediately before the definition for “Aquifer”—

“Allowable annual volume” means the allowable annual volume of extraction specified for a particular sub zone or aquifer within a sub-zone as has been determined by the Committee under clause 28(7).’.

The following definition shall be inserted immediately after the definition for “Schedule” and immediately before the definition for “Zone”—

"Sub-zone" means a subdivision of a zone with boundaries determined by the Committee under clause 28(7).’.

Approval.

3. (1) This Agreement, other than clause 3(2), is subject to approval by the Parliaments of the States of South Australia and Victoria; and shall come into effect when so approved.
- (2) The Contracting Governments hereby agree to submit this Agreement for approval to the respective Parliaments of the said States as soon as practicable after the date of this Agreement.

Application of legislation.

4. The following clause shall replace clause 25 in the principal agreement—

"25. Subject to the provisions of this Agreement—

- (a) the provisions of the South Australian *Natural Resources Management Act 2004* and of regulations made thereunder shall apply to such portion of the State of South Australia as is within the Designated Area;
- (b) the provisions of the Victorian *Water Act 1989* and of regulations made thereunder shall continue to apply to such portion of the State of Victoria as is within the Designated Area—

and the provisions of those Acts and regulations shall respectively be applied to—

- (i) all bores existing within the Designated Area at the date of this Agreement;
- (ii) all applications to construct, deepen, enlarge or alter bores or to extract water therefrom as are made after the date of this Agreement; and

- (iii) any bores constructed, deepened, enlarged or altered or from which water is extracted, after the date of this Agreement.”.

Management Prescriptions.

- 5. The following clause shall replace clause 26 in the principal agreement—

"26.(1) Subject to clause 28 no application for a permit shall be granted and no permit renewed—

- (a) in relation to the construction, deepening, enlarging or altering of any bore which passes or will pass through two or more aquifers unless a condition is attached to such permit which requires that an impervious seal be made and maintained between such aquifers;
- (b) in relation to the construction, deepening, enlarging or altering of any bore, or the extraction of water from any bore, in a particular zone, or aquifer within a zone, where the effect of extracting water from that bore would be to exceed the permissible annual volume for that particular zone, or aquifer within a zone;

- (c) in relation to the construction, deepening, enlarging or altering of any bore, or the extraction of water from any bore, in a particular zone, sub-zone or aquifer within a zone or sub-zone if that bore is situated within, or proposed to be situated within, a distance less than the permissible distance from the border between the State of South Australia and the State of Victoria for that zone, sub-zone or aquifer within a zone or sub-zone unless the Committee has first considered the matter and determined that such application may be granted or such permit may be renewed;
 - (d) in relation to the construction, deepening, enlarging or altering of any bore, or the extraction of water from any bore, where the bore is situated, or proposed to be situated, in a particular sub-zone or aquifer within a sub-zone, where the effect of extracting water from that bore would be to exceed the allowable annual volume for a particular sub-zone or aquifer within a sub-zone.”.
6. The following sub-clause shall be inserted immediately after clause 26(1) and immediately before clause 27 in the principal agreement—
- "(2) Subject to clause 28—
 - (a) no application for a permit shall be granted and no permit renewed; or
 - (b) a period of restriction shall be declared subject to clause 29(3)—
where the potentiometric surface lowering has exceeded the permissible potentiometric surface lowering in a particular zone, sub-zone or aquifer within a zone or sub-zone over the preceding five years.”.

Preparation of reports.

7. The following paragraph shall replace clause 27(1)(d) in the principal agreement—
 - "(d) details of the potentiometric surface levels obtained from observation bores within each particular zone, sub-zone or aquifer within a zone or sub-zone in the preceding year ending on 30 June; and".
8. The following paragraph shall replace clause 27(1)(e) in the principal agreement—
 - "(e) the rate of increase or level of salinity in such bores within a particular zone, sub-zone or aquifer within a zone or sub-zone as shall be specified by the Committee in the preceding year ending on 30 June."
9. The following sub-clause shall replace clause 27(3) in the principal agreement—
 - "(3) In this clause "Observation bore" with respect to South Australia, means any well as defined by section 3 of the *Natural Resources Management Act 2004* and with respect to Victoria, means any bore as defined by section 3 of the *Water Act 1989*."

Powers of Review Committee.

10. The following sub-clause shall replace clause 28(2) in the principal agreement—
 - "(2) At intervals of not more than five years, the Committee shall review—
 - (a) the permissible distance from the border between the State of South Australia and the State of Victoria in relation to a particular zone, sub-zone or aquifer within a zone or sub-zone;
 - (b) the permissible annual volume of extraction in relation to a particular zone or aquifer within a zone;
 - (c) the allowable annual volume of extraction in relation to a particular sub-zone or aquifer within a sub-zone—

and shall have the power to alter any or all of the same in relation to a particular zone, sub-zone or aquifer within a zone or sub-zone.”.

- 11.** The following sub-clause shall replace clause 28(3) in the principal agreement—

"(3) At intervals of not more than five years, the Committee shall review—

- (a) the permissible potentiometric surface lowering;
- (b) the permissible salinity (if any) established pursuant to sub-clause (6)—

in relation to each particular zone, sub-zone or aquifer within a zone or sub-zone and if the Committee is satisfied that alteration to any or all of the same is desirable in relation to a particular zone, sub-zone or aquifer within a zone or sub-zone, it may recommend any such alteration to the Minister of each Contracting Government.”.

- 12.** The following sub-clause shall replace clause 28(4) in the principal agreement—

"(4) Where the Minister of each Contracting Government agrees with any such recommendation, the permissible potentiometric surface lowering and/or the permissible salinity, for a particular zone, sub-zone or aquifer within a zone or sub-zone shall be deemed to have been altered in accordance with any such recommendation.”.

- 13.** The following sub-clause shall replace clause 28(5) in the principal agreement—

"(5) The Committee may at any time recommend to the Minister of each Contracting Government that a permissible salinity be declared for a particular zone, sub-zone or aquifer within a zone or sub-zone.”.

- 14.** The following sub-clause shall replace clause 28(6) in the principal agreement—

"(6) Where the Minister of each Contracting Government agrees with any such recommendation, a permissible salinity shall be deemed to have been declared for that particular zone, sub-zone or aquifer within that zone or sub-zone in accordance with that recommendation."

15. The following sub-clause shall be inserted immediately after clause 28(6) and immediately before clause 29 of the principal agreement—

"(7) The Committee, having regard to the size and variability of a zone, may—

- (a) divide the zone or the aquifer within a zone into two or more sub-zones;
- (b) determine the boundaries of a particular sub-zone or aquifer within a sub-zone;
- (c) determine the allowable annual volume for the sub-zone or aquifer within a sub-zone that does not exceed that permissible annual volume of which the sub-zone forms part;
- (d) determine the permissible distance from the border between the State of South Australia and the State of Victoria for a particular sub-zone or aquifer within a zone or sub-zone—

and shall have the power to alter any or all the same in relation to a particular sub-zone or aquifer within a sub-zone."

Periods of Restriction.

16. The following sub-clause shall replace clause 29(3) in the principal agreement—

"(3) A period of restriction may be declared in relation to any zone, sub-zone or aquifer within a zone or sub-zone notwithstanding that the permissible annual volume or the allowable annual volume or the permissible salinity (if any) or the permissible potentiometric surface lowering for that zone or sub-zone, or any or all of them, has not been exceeded in any previous year."

Publication of declarations, etc.

17. The following clause shall replace clause 31 in the principal agreement—

"31. Any alteration made under clause 28(2) or 28(4) or 28(7) or any declaration made under clause 28(6) or 29(1) with respect to any zone or sub-zone shall be published in the Government Gazette of the Contracting Government within whose jurisdiction such zone is situate and in a newspaper circulating in that zone or sub-zone and shall take effect from the date of such publication in the Government Gazette."

18. The following Schedule shall replace the SECOND SCHEDULE of the principal agreement—

SECOND SCHEDULE

Zone	Permissible annual volume (Megalitres)	
	Tertiary Limestone Aquifer	Tertiary Confined Sand Aquifer
1A	30900	9200
1B	45720	14500
2A	25000	2900
2B	25000	5100
3A	24000	1900
3B	16500	1000
4A	20000	710
4B	14000	300
5A	18500	540
5B	11949	570
6A	8850	360
6B	9838	360
7A	7500	350
7B	6600	350
8A	7700	340
8B	6760	330
9A	11595	570
9B	5960	630
10A	9400	320
10B	6720	560

11A	6861	0
11B	1823	0

19. The following Schedule shall replace the THIRD SCHEDULE of the principal agreement—

THIRD SCHEDULE

Zone	Permissible potentiometric surface lowering Rate (metres per annum)	
	Tertiary Limestone Aquifer	Tertiary Confined Sand Aquifer
1A	0.25	0.25
1B	0.25	0.25
2A	0.25	0.25
2B	0.25	0.25
3A	0.25	0.25
3B	0.25	0.25
4A	0.25	0.25
4B	0.25	0.25
5A	0.25	0.25
5B	0.25	0.25
6A	0.05	0.05
6B	0.05	0.05
7A	0.05	0.05
7B	0.05	0.05
8A	0.05	0.05
8B	0.65	0.65
9A	0.65	0.65
9B	0.65	0.65
10A	0.65	0.65
10B	0.65	0.65
11A	0.65	0.65
11B	0.65	0.65

20. Clause 24(2) in the principal agreement shall be deleted.

IN WITNESS WHEREOF this Agreement has been executed by the parties hereto as at the day and year first above-written.

SIGNED on behalf of THE STATE OF VICTORIA by the Honourable STEVE BRACKS, Premier of Victoria, in the presence of—

} STEVE BRACKS

Rosa Silvestro

SIGNED on behalf of THE STATE OF SOUTH AUSTRALIA by the Honourable MIKE RANN, Premier of South Australia, in the presence of—

} MIKE RANN

Nick Alexandrides