

South Australia

Groundwater (Border Agreement) Act 1985

An Act to approve and provide for carrying out an Agreement for the management of groundwater adjacent to the border of South Australia and Victoria; and for other purposes.

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Legislative history

The Parliament of South Australia enacts as follows:

1—Short title

This Act may be cited as the *Groundwater (Border Agreement) Act 1985*.

3—Act to bind Crown

This Act binds the Crown.

4—Interpretation

In this Act, unless the contrary intention appears—

- (a) *the Agreement* means the Border Groundwaters Agreement a copy of which is set out in Schedule 2; and
- (b) words and expressions defined in the Agreement have the same meaning as in the Agreement.

5—Approval of Agreement

The Agreement is approved.

6—Constitution of Committee

- (1) The Minister shall appoint two members and one deputy member of the Committee.
- (2) A member or deputy member appointed under subsection (1) holds office, subject to this Act, for such period (not exceeding 5 years) as is specified in the instrument of appointment but is eligible for re-appointment.
- (3) The Minister may in the instrument of appointment of a member or deputy member specify terms and conditions of appointment not inconsistent with this Act.
- (4) The Minister may at any time remove or suspend a member or deputy member from office.
- (5) A member or deputy member may resign from the office of member by writing signed by the member and delivered to the Minister but the resignation does not have effect unless and until it is accepted by the Minister.

7—Remuneration

A member or deputy member appointed under section 6(1), other than an officer or employee who holds a full-time office in the Public Service of the State, is entitled to be paid—

- (a) such remuneration as is specified in the instrument of appointment or as may be fixed from time to time by the Minister; and
- (b) such travelling and other allowances and expenses as may be fixed from time to time by the Minister.

8—Powers of the Minister

The Minister has all the powers conferred on the Minister by the Agreement and must not exercise those powers except in accordance with this Act and the Agreement.

9—Powers of the Committee

The Committee has all the powers conferred on the Committee by the Agreement and must not exercise those powers except in accordance with the Agreement.

10—Entry into land

For the purposes of the Agreement—

- (a) a member of the Committee; or
- (b) a person who is so authorised by the Committee,

may enter any lands and have free access to any bore situated on those lands.

11—Acquisition of land

The Minister may, subject to and in accordance with the *Land Acquisition Act 1969* acquire land for the purposes of the Agreement.

12—Bores for observation and providing data

- (1) The Minister or any person authorised by the Minister may establish, equip and maintain bores and ancillary works for any or all of the following purposes:
 - (a) groundwater observation;

- (b) providing data for assessing groundwater resources;
 - (c) predicting changes in the quality or quantity of groundwater that will be available;
 - (d) monitoring the level of salinity and other chemical or bacteriological qualities in any aquifer.
- (2) Subsection (1) does not derogate from the powers of the Minister under the *Water Resources Act 1976*.

13—Annual report

The Minister shall cause a copy of an annual report submitted to the Minister under the Agreement to be laid before each House of Parliament within 14 sitting days of the Minister's receipt of the report if Parliament is then in session, but if Parliament is not then in session, within 14 days of the commencement of the next session of Parliament.

Schedule 2

(Section 5)

BORDER GROUNDWATERS AGREEMENT

AGREEMENT made the 15th day of October One thousand nine hundred and eighty-five between—

PREMIER of the State of South Australia for and on behalf of that State of the first part and

PREMIER of the State of Victoria for and on behalf of that State of the second part.

WHEREAS it is desirable to make provision to protect the Groundwater resources adjacent to the border between the State of South Australia and the State of Victoria and to provide for the cooperative management and equitable sharing of those resources and to guard against the undue depletion or degradation thereof:

NOW IT IS HEREBY AGREED as follows—

PART I.—INTERPRETATION

1. Definitions.

In this Agreement save where inconsistent with the context—

"**Aquifer**" means a geological structure or formation or an artificial land fill permeated or capable of being permeated permanently or intermittently with water.

"**Bore**" with respect to South Australia, means any well as defined by section 5 of the *Water Resources Act 1976* and with respect to Victoria, means any bore as defined by section 2 of the *Groundwater Act 1969*, 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 connexion with a dwelling and from which no produce is sold.

"**Committee**" means the Review Committee constituted under clause 6.

"**Contracting Government**" means the Government of the State of South Australia or the Government of the State of Victoria.

"**Designated Area**" means the area comprising part of the State of South Australia and part of the State of Victoria as specified in the First Schedule.

"**Extraction**" in relation to any bore includes withdrawing, taking, using or permitting the withdrawing, taking or using of water from that bore.

"**Granting authority**" means—

- (a) in the case of South Australia, the Minister administering the *Water Resources Act 1976*; and

(b) in the case of Victoria—

- (i) the Minister administering Part III of the *Groundwater Act 1969*;
- (ii) the Director-General of Water Resources; or
- (iii) the Rural Water Commission of Victoria—

as the case requires.

"Groundwater" with respect to South Australia means any underground waters as defined by section 5 of the *Water Resources Act 1976* and with respect to Victoria means any groundwater as defined by section 2 of the *Groundwater Act 1969*.

"Member" means a member of the Committee.

"Minister" with respect to South Australia means the Minister administering the *Water Resources Act 1976* and with respect to Victoria means the Minister administering Part V of the *Groundwater Act 1969*.

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

"Permissible level of salinity" means such level of salinity as results in electro-conductivity not in excess of so many microsiemens per centimetre at twenty-five degrees Celsius as may be agreed upon by the Minister of each Contracting Government for any zone pursuant to clause 28(6), or in relation to a particular zone, such other level as has been agreed upon by the Minister of each Contracting Government under clause 28(4).

"Permissible rate of potentiometric surface lowering" means an average annual rate of potentiometric surface lowering of 0.05 metres, or in relation to a particular zone, such other rate as has been agreed upon by the Minister of each Contracting Government under clause 28(4).

"Permit" means:

- (a) any licence provided for in section 43 of the South Australian *Water Resources Act 1976*;
- (b) any permit provided for in section 49 of the South Australian *Water Resources Act 1976*;
- (c) any permit provided for in Part III of the Victorian *Groundwater Act 1969*;
- (d) any licence provided for in section 51 of the Victorian *Groundwater Act 1969*;

"Schedule" means a schedule to this Agreement.

"Zone" means any zone as specified in the First Schedule.

2. Interpretation.

- (1) Unless the contrary intention appears, a reference in this Agreement to any Act shall be read as including a reference to any Act amending, or in substitution for, that Act.
- (2) The heading of Parts, Divisions and Clauses shall not affect the interpretation of this Agreement.
- (3) Unless the contrary intention appears, words importing the singular shall include the plural and vice versa and words importing any gender shall include any other gender.
- (4) Unless the contrary intention appears, a reference to a member shall be read as including a deputy member who is acting as a member.

PART II.—APPROVAL AND ENFORCEMENT

3. Approval.

This Agreement, other than clause 4, is subject to approval by the Parliaments of the States of South Australia and Victoria; and shall come into effect when so approved.

4. Submission to Parliament.

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.

5. Parties to provide for enforcement of Agreement and Acts.

Each of the Contracting Governments so far as its jurisdiction extends and so far as it may be necessary shall provide for or secure the execution and enforcement of the provisions of this Agreement and of any Acts approving it.

PART III.—THE REVIEW COMMITTEE

6. Constitution.

There shall be a Review Committee for the purposes of this Agreement, which shall have such status and such powers and duties and enjoy such privileges and immunities as may be conferred upon it by this Agreement and any Acts approving it.

7. The Committee shall consist of four members.

8. Appointment of members and deputy members.

Two members and one deputy member shall be appointed by the Minister of each Contracting Government.

9. Term of appointment.

Each member and deputy member shall be appointed for a term not exceeding five years but shall be eligible for re-appointment.

10. When deputy member may act.

Whenever—

- (a) A member is
 - (i) absent from Australia or from duty;
 - (ii) unable for any reason to attend a meeting of the Committee; or
 - (iii) otherwise unable to perform the duties of that member's office; or

(b) there is a vacancy in the office of a member for either State—

the deputy member for the same State shall act as a member for that State and while so acting, shall have all the powers and perform all the duties of a member.

11. Powers of members.

Subject to the provisions of this Agreement the members shall have equal powers.

12. Remuneration of members and deputy members.

Each member or deputy member shall be paid by the Contracting Government by whose Minister that member or deputy member has been appointed such remuneration, allowance or expenses (if any) as shall be determined by or under any applicable law or, in the absence of such law, by that Contracting Government.

13. Removal from office.

A member or deputy member may at any time be removed from office by the Minister of the State for which that member or deputy member was appointed.

14. Resignation.

A member or a deputy member may at any time tender resignation of his or her appointment by writing signed by that member or deputy member addressed to the Minister of the State for which that member or deputy member was appointed and such resignation shall take effect upon, and only upon, acceptance thereof by that Minister.

15. Vacancies.

Whenever a vacancy occurs in the office of a member or deputy member, the Minister of the State for which the member or deputy member whose office has become vacant was appointed shall appoint a person to the vacant office.

16. Validity of proceedings.

No act, proceeding or determination of the Committee shall be invalid on the ground only of any defect in the appointment of any member or deputy member.

17. Meetings of the Review Committee.

- (1) The members may meet together for the transaction of the Committee's business and may adjourn any meeting.
- (2) A member may at any time call a meeting of the Committee.
- (3) The members shall, at the first meeting in any calendar year, elect a member as President during that year who shall preside at all meetings of the Committee at which he or she is present.
- (4) At any meeting of the Committee at which the elected president is not present, the members present shall appoint a President from among their number, for the purposes of that meeting.
- (5) The four members shall be a quorum and, subject to clause 18(2), the concurrence of all of them shall be necessary for the transaction of the business of the Committee.
- (6) Subject to this Agreement, the Committee shall regulate the conduct of its own proceedings.
- (7) The Committee shall cause proper minutes of all its proceedings to be kept.

- (8) A resolution in writing, signed by all the members of the Committee shall have the same validity and effect as it would have had if it had been passed at a meeting of the Committee duly convened and held. Any such resolution may consist of several documents in like form, each signed by one or more of the members. The date and time of affixing a signature as aforesaid shall be endorsed on the document to which it is affixed and, provided that all members have signed as aforesaid, the resolution shall be deemed to have been passed at the latest time so endorsed.

18. Delegation.

- (1) The Committee may either generally or in relation to a matter or class of matters by resolution of the Committee delegate to any member any of its powers under this Agreement other than this power of delegation.
- (2) A delegation under clause 18(1) may be revoked by a majority vote of the four members or, and in the event of an equality of votes the President shall have a second or casting vote.
- (3) A delegation of any power pursuant to this clause shall not prevent the exercise of that power by the Committee.
- (4) A power so delegated, when exercised by the delegate, shall for the purposes of this Agreement, be deemed to have been exercised by the Committee.

19. Liability for acts of members of Review Committee.

Each Contracting Government shall indemnify the members and deputy member appointed by the Minister of that Contracting Government in respect of any act or omission of those members or that deputy member, and for any losses or costs incurred by them, in the *bona fide* execution of the powers vested in the Committee by or under this Agreement or the Act approving the same.

20. Studies and investigations.

The Committee may from time to time co-ordinate, or cause to be carried out, surveys, investigations and studies concerning the use, control, protection, management or administration of groundwater within the Designated Area.

21. Recommendations to Contracting Governments.

The Committee may make recommendations to the Contracting Governments or to any authority, agency or tribunal of a Contracting Government concerning any matter which in the opinion of the Committee may in any way affect the investigation, use, control, protection, management or administration of groundwater within the Designated Area.

22. Proposals to amend Agreement.

The Committee shall from time to time review this Agreement and, if in its opinion amendments thereto are necessary or desirable, make recommendations to the Contracting Governments accordingly.

23. Furnishing information and particulars.

Each Contracting Government shall furnish or cause to be furnished to the Committee, at such times as the Committee may require, all the information and particulars that the Committee may require for any of the purposes of this Agreement and which that Contracting Government is able to furnish.

PART IV.—MANAGEMENT PLAN

24. Designation of Border Area and potentiometric surface levels.

- (1) This Agreement shall apply to all lands and to all groundwater within the Designated Area.
- (2) For the purposes of this Agreement, the potentiometric surface levels of groundwater within any zone shall be determined by reference to, and shall be deemed to be as at 1 July 1982, as indicated in the Third Schedule.

25. Application of legislation.

Subject to the provisions of this Agreement—

- (a) the provisions of the South Australian *Water Resources Act 1976* 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 *Groundwater Act 1969* 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.

26. Management prescriptions.

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 any zone where the effect of extracting water from that bore would be to exceed the permissible annual volume for that zone;
- (c) in relation to the construction, deepening, enlarging or altering of any bore, or the extraction of water from any bore, in any 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 unless the Committee has first considered the matter and determined that such application may be granted or such permit may be renewed; or

- (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 in, or proposed to be situated in a zone where the average annual rate of potentiometric surface lowering has exceeded the permissible rate of potentiometric surface lowering over the preceding five years.

27. Preparation of reports.

- (1) As soon as practicable after 30 June in each year, each contracting Government shall in relation to the zones within its respective jurisdiction cause to be prepared a report stating—
 - (a) the number of permits granted or renewed in each of those zones in the preceding year ending on 30 June;
 - (b) the annual volume of extraction which has been authorised in relation to each such permit;
 - (c) the total number of bores situated in each zone in the preceding year ending on 30 June;
 - (d) details of the potentiometric surface levels obtained from observation bores within each zone in the preceding year ending on 30 June; and
 - (e) the levels of salinity in such bores within each zone as shall be specified by the Committee in the preceding year ending on 30 June.
- (2) The report referred to in sub-clause (1) shall be considered by the Committee as soon as practicable after the report has become available.
- (3) In this clause "**observation bore**" with respect to South Australia, means any well as defined by section 5 of the *Water Resources Act 1976* and with respect to Victoria, means any bore as defined by section 2 of the *Groundwater Act 1969*.

28. Powers of Review Committee.

- (1) The Committee shall meet to consider the report prepared by each Contracting Government relating to the previous year.
- (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; and
 - (b) the permissible annual volume of extraction—in relation to each zone and shall have the power to alter either or both of the same in relation to any zone.
- (3) At intervals of not more than five years, the Committee shall review—
 - (a) the permissible rate of potentiometric surface lowering;and
 - (b) the permissible levels of salinity (if any) established pursuant to sub-clause 28(6)—

in relation to each zone and if the Committee is satisfied that any alteration to either or both of the same is desirable in relation to any zone, it may recommend any such alteration to the Minister of each Contracting Government.

- (4) Where the Minister of each Contracting Government agrees with any such recommendation, the permissible rate of potentiometric surface lowering or the permissible level of salinity, or both as the case may be, for any zone shall be deemed to have been altered in accordance with any such recommendation.
- (5) The Committee may at any time recommend to the Minister of each Contracting Government that a permissible level of salinity be declared for any zone.
- (6) Where the Minister of each Contracting Government agrees with any such recommendation, a permissible level of salinity shall be deemed to have been declared for that zone in accordance with such recommendation.

29. Periods of restriction.

- (1) Whenever in the opinion of the Committee it is necessary or desirable for the better investigation, use, control, protection, management or administration of groundwater within the Designated Area, it may by resolution declare a period of restriction in relation to any zone.
- (2) A period of restriction may be declared for any period not exceeding five years and may be renewed from time to time for any further period not exceeding five years.
- (3) A period of restriction may be declared in relation to any zone notwithstanding that the permissible annual volume or the permissible level of salinity (if any) or the permissible rate of potentiometric surface lowering for that zone, or any or all of them, has not been exceeded in any previous year.
- (4) During any period of restriction no application for a permit shall be granted and no permit renewed in relation to the construction, deepening, enlarging or altering of any bore, or the extracting of water from any bore in any zone to which the period of restriction relates unless—
 - (a) the details of the application or of the proposed renewal have first been considered by the Committee;
 - (b) the granting authority has first considered any recommendation made by the Committee with respect to the application or the proposed renewal; and
 - (c) thirty days have elapsed from the date on which the details of the application or of the proposed renewal have been considered by the Committee.
- (5) Where contrary to any recommendation made by the Committee pursuant to sub-clause (4)(b), the granting authority determines that an application for a permit shall be granted or a permit renewed, the granting authority shall forthwith notify the Minister of the other Contracting Government of that determination.

30. Annual report.

- (1) As soon as practicable after 30 June in each year, the Committee shall prepare a report on its activities during the year ended on the preceding 30 June.
- (2) The Committee shall give a copy of each report under sub-clause (1) to the Minister of each Contracting Government forthwith after it is prepared.

31. Publication of declarations, etc.

Any alteration made under sub-clause 28(2) or 28(4) or any declaration made under sub-clause 28(6) or 29(1) with respect to any 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 and shall take effect from the date of such publication in the *Government Gazette*.

FIRST SCHEDULE

The Designated Area shall be the lands within the boundaries delineated red and the zones shall be the lands within the boundaries delineated blue and bearing the numbers shown:

- (a) in the case of South Australia, on the plan entitled "Border Groundwaters Agreement Plan No. 1" which is deposited in the general registry office as G.R.O. number 370/1985;
- (b) in the case of Victoria, on the plan entitled "Border Groundwaters Agreement Plan No. 1" entered in the central plan register of the Central Plan Office.

SECOND SCHEDULE

Zone	Permissible annual volume (Megalitres)
1A	71 000
1B	71 000
2A	25 000
2B	25 000
3A	16 500
3B	16 500
4A	11 000
4B	11 000
5A	11 500
5B	11 500
6A	5 500
6B	5 500
7A	4 500
7B	4 500
8A	3 500
8B	3 500
9A	6 000
9B	6 000
10A	6 000
10B	6 000
11A	12 000

Zone	Permissible annual volume (Megalitres)
11B	12 000

THIRD SCHEDULE

The plan of potentiometric surface levels referred to in sub-clause 24(2) shall be—

- (a) in the case of South Australia, the plan entitled "Border Groundwaters Agreement Plan No. 2" which is deposited in the general registry office as G.R.O. number 371/1985;
- (b) in the case of Victoria, the plan entitled "Border Groundwaters Agreement Plan No. 2" entered in the central plan register of the Central Plan Office.

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 JOHN CAIN, Premier of Victoria, in the presence of—
G. E. BROUWER } JOHN CAIN

SIGNED on behalf of THE STATE OF SOUTH AUSTRALIA by
the Honourable JOHN BANNON, Premier of South Australia, in
the presence of—
JOHN W. SLATER } J. C. BANNON

Legislative history

Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- 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.

Legislation amended by principal Act

The *Groundwater (Border Agreement) Act 1985* amended the following:

Water Resources Act 1976

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1985	104	<i>Groundwater (Border Agreement) Act 1985</i>	7.11.1985	19.12.1985 (<i>Gazette 19.12.1985 p1883</i>)
2006	20	<i>Groundwater (Border Agreement) (Amending Agreement) Amendment Act 2006</i>	28.9.2006	31.10.2006 (<i>Gazette 26.10.2006 p3811</i>)

Provisions amended

New entries appear in bold.

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

Provision	How varied	Commencement
Long title	amended under <i>Legislation Revision and Publication Act 2002</i>	
<i>s 2</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	
<i>s 14</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	
<i>Sch 1</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	