

RIVER MURRAY WATERS ACT AMENDMENT ACT, 1958

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River Murray Waters Act Amendment Act, 1958, No. 25 of 1958 [Assented to 6th November, 1958]¹.

An Act to ratify and approve an Agreement for the further variation of the Agreement entered into between the Prime Minister of the Commonwealth and the Premiers of the States of New South Wales, Victoria, and South Australia respecting the River Murray and Lake Victoria and other waters, and for other purposes.

WHEREAS the Prime Minister of the Commonwealth acting for and on behalf of the Commonwealth and the Premiers of the States of New South Wales, Victoria and South Australia acting for and on behalf of those States respectively have entered into an Agreement (in this Act referred to as the "Fifth Amending Agreement") to vary the Agreement relating to the River Murray and Lake Victoria and other waters made on the ninth day of September, nineteen hundred and fourteen, as hereinafter amended from time to time: Preamble.

AND WHEREAS the Fifth Amending Agreement is expressed to be subject to ratification by the Parliaments of the Commonwealth and the said States:

AND WHEREAS it is desirable to ratify and approve the Fifth Amending Agreement:

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. (1) This Act may be cited as the "River Murray Waters Act Amendment Act, 1958". Short titles.

(2) The River Murray Waters Act, 1935-1954, as amended by this Act, may be cited as the "River Murray Waters Act, 1935-1958".

(3) The River Murray Waters Act, 1935-1954, is hereinafter referred to as "the principal Act".

2. This Act shall come into force on a day to be fixed by the Governor by proclamation¹. Commencement.

3. This Act is incorporated with the principal Act and that Act and this Act shall be read as one Act. Incorporation.

4. This Act shall bind the Crown.

Act to bind the
Crown.

5. The Fifth Amending Agreement, a copy of which is set out in the schedule to this Act, is hereby ratified and approved. Ratification of
Fifth Amending
Agreement.

¹ Came into operation 12th December, 1958: *Gaz.* 18th December 1958, p.1635.

Meaning of
term "the
Agreement".

6. Any reference to the Agreement in the principal Act shall be construed as a reference to the Agreement set out in the first schedule to that Act as amended by all subsequent amending Agreements.

THE SCHEDULE

AGREEMENT made the eleventh day of September One thousand nine hundred and fifty-eight BETWEEN THE RIGHT HONOURABLE ROBERT GORDON MENZIES, Prime Minister of the Commonwealth of Australia for and on behalf of the Commonwealth of Australia, of the first part, THE HONOURABLE JOHN JOSEPH CAHILL, Premier of the State of New South Wales for and on behalf of that State, of the second part, THE HONOURABLE HENRY EDWARD BOLTE, Premier of the State of Victoria for and on behalf of that State, of the third part, and THE HONOURABLE SIR THOMAS PLAYFORD, G.C.M.G., Premier of the State of South Australia for and on behalf of that State, of the fourth part.

WHEREAS on the ninth day of September One thousand nine hundred and fourteen an Agreement was entered into by the Prime Minister of the Commonwealth of Australia and the Premiers of the States of New South Wales, Victoria and South Australia with regard to the economical use of the waters of the River Murray and its tributaries for irrigation and navigation and to the reconciling of the interests of the Commonwealth of Australia and the said States which Agreement was ratified by the Parliament of the Commonwealth of Australia and the Parliaments of the said States and which Agreement is in this Agreement referred to as "the Principal Agreement":

AND WHEREAS by further Agreements dated the tenth day of August One thousand nine hundred and twenty-three, the twenty-third day of July One thousand nine hundred and thirty-four, the twenty-sixth day of November One thousand nine hundred and forty-eight and the second day of November One thousand nine hundred and fifty-four (in this Agreement respectively referred to as "the first Amending Agreement", "the second Amending Agreement", "the third Amending Agreement" and "the fourth Amending Agreement") all made between the Prime Minister of the Commonwealth of Australia and the Premiers of the States of New South Wales, Victoria and South Australia certain provisions of the Principal Agreement were modified:

AND WHEREAS the first Amending Agreement, the second Amending Agreement, the third Amending Agreement and the fourth Amending Agreement were all subsequently ratified by the Parliament of the Commonwealth of Australia and by the Parliaments of the said States:

NOW IT IS HEREBY FURTHER AGREED AS FOLLOWS:—

I. RATIFICATION AND ENFORCEMENT

1. This Agreement is subject to ratification by the Parliaments of the Commonwealth of Australia and of the States of New South Wales, Victoria and South Australia, and shall come into effect when so ratified.

2. The Contracting Governments hereby agree to submit this Agreement for ratification to the respective Parliaments of the Commonwealth of Australia and of the said States during the present session of any such Parliament or if any such Parliament is not in session at the date of this Agreement then at the first session of that Parliament held after the date of this Agreement.

3. 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 any Acts ratifying it.

4. On and after the date of ratification of this Agreement, the Principal Agreement as amended by the first Amending Agreement, the second Amending Agreement, the third Amending Agreement and the fourth Amending Agreement shall be read and construed as if the amendments made by this Agreement were incorporated in the Principal Agreement as so amended.

II. AMENDMENT OF PRINCIPAL AGREEMENT AS AMENDED BY FIRST, SECOND, THIRD AND FOURTH AMENDING AGREEMENTS

5. Clause 45 of the Principal Agreement is amended by adding at the end thereof the following sub-clauses:—

"(2) (a) The quantity of water diverted from the Tooma River to the Adaminaby Storage and the Tumut River by the works of the Authority shall be deemed to be water diverted by works of the States of New South Wales and Victoria from a stream above Albury, and to have been so diverted as to one-half by works of each of those States.

(b) Either the State of New South Wales or the State of Victoria may allow to flow into the River Murray from any convenient source a quantity of water as replacement in whole or in part of the quantity of water deemed by paragraph (a) of this sub-clause to have been diverted by it, and the quantity so deemed to have been diverted by it shall be reduced by the quantity so replaced.

The rights conferred by this paragraph shall be supplementary to and not in substitution for the rights conferred by clauses forty-six, forty-seven and forty-eight of this Agreement.

"(3) Until such time as the necessary works have been constructed to enable water diverted from the Tooma River to the Adaminaby Storage and to the Tumut River to be replaced by water diverted from the Snowy River to a stream feeding or joining the River Murray above Hume Reservoir—

- (a) The State of Victoria shall be entitled in each month to divert and use from the River Murray a volume of water equal to one-half of the quantity of water so diverted from the Tooma River in the preceding month. In order to enable that diversion and use, the State of New South Wales shall provide from the Murrumbidgee River a volume of water equivalent to one-half of the quantity so diverted from the Tooma River which volume shall, for the purpose of meeting the obligations of the State of Victoria under this Agreement, be treated in all respects as if it had been contributed by a tributary of the River Murray in the territory of Victoria joining that River below Albury.
- (b) The quantities of water to be allocated to the States of New South Wales, Victoria and South Australia for use from the River Murray (exclusive of its tributaries below Albury) during any period of restriction declared pursuant to clause 51 of this Agreement shall be not less than the quantities which would have been available to those States if there had been no diversion of the waters of the Tooma River during or prior to that period of restriction."

6. Clause 47 of the Principal Agreement as amended by the third Amending Agreement is amended by deleting the words "clauses fifty and fifty-one" and substituting the words "clause fifty".

7. Clause 51 of the Principal Agreement as substituted by clause 15 of the third Amending Agreement is omitted and the following clause is inserted in its stead:—

"51. (1) The Commission may in a year of drought declare a period of restriction.

"(2) Without prejudice to the last preceding sub-clause, the Commission shall declare a period of restriction when the quantity of water held in reserve in the Upper Murray Storage and the Lake Victoria Storage falls to one million acre feet unless the Commission resolves that it is not necessary to do so.

"(3) When a period of restriction has been declared by the Commission pursuant to this clause, the Commission may vary the provisions of this Agreement respecting—

- (a) the volumes of water to be held in reserve in the Upper Murray Storage and the Lake Victoria Storage; and
- (b) the depth of water to be maintained at weirs and locks constructed pursuant to this Agreement.

"(4) As soon as practicable after a period of restriction has been declared and from time to time during that period, the Commission shall—

- (a) determine the quantity of Murray water;
- (b) determine the quantity of water which is to be allowed—
 - (i) for losses by evaporation, percolation and lockages other than losses under sub-paragraph (ii) of this paragraph, and
 - (ii) for losses by evaporation, percolation and lockages in the River from Lake Victoria outlet to the River mouth, but not including Lakes Alexandrina and Albert, and
 - (iii) for dilution within South Australia;
- (c) having regard to its determinations under paragraphs (a) and (b) of this sub-clause, determine the quantity of water to be made available for use during each month by the contracting States.

The quantity determined in accordance with this paragraph is in this clause referred to as 'the available water'.

"(5) For the purposes of this clause, 'Murray water' means—

- (a) the water stored in the Upper Murray Storage at the time the Commission makes its determination;
- (b) the water stored in Lake Victoria Storage at the time the Commission makes its determination;
- (c) the water in the weir pools at the time the Commission makes its determination; and
- (d) (i) where the determination is made after works of the Authority have been constructed to enable water to be diverted from the Tooma River to the Adaminaby Storage and the Tumut River but before works of the Authority have been constructed to enable water so diverted to be replaced by water diverted from the Snowy River to a stream feeding or joining the River Murray above Hume Reservoir—the flow during the period of restriction of the River Murray above the Upper Murray Storage and its tributaries above Albury including waters diverted during the period of restriction from the Tooma River to the Adaminaby Storage and to the Tumut River by works of the Authority;

- (ii) where the determination is made after works of the Authority have been constructed to enable water diverted from the Tooma River to the Adaminaby Storage and to the Tumut River to be replaced by water diverted from the Snowy River to a stream feeding or joining the River Murray above Hume Reservoir—the flow during the period of restriction of the River Murray above the Upper Murray Storage and its tributaries above Albury, excluding water diverted from the Tooma River to the Adaminaby Storage and the Tumut River but including any waters coming into the River Murray and its tributaries above Albury by reason of the permanent works of the Authority.

“(6) During a declared period of restriction, the available water shall be divided between the State Contracting Governments in the following proportions—

New South Wales—one million,

Victoria—one million,

South Australia—six hundred and three thousand,

and each of those Governments shall be entitled to use each month from the River Murray (exclusive of its tributaries below Albury) its monthly share as so ascertained of the available water, but the quantities used by New South Wales and Victoria may be varied in any month by agreement between the Commissioners representing those States and without affecting South Australia's share.

“(7) New South Wales and Victoria shall each have the full use during a declared period of restriction of all tributaries of the River Murray within their respective territories below Albury, and shall have the right to divert, store and use the flows thereof and the right below the confluence with the River Murray of any such tributary to use each month in a declared period of restriction from the River Murray, in addition to the share of the available water to which each of the said States is respectively entitled under sub-clause (6) of this clause, volumes equivalent to those arriving at the place of diversion during that month as the result of contribution by each such tributary.

“(8) The States of New South Wales and Victoria shall be entitled, during any month in a declared period of restriction, to use from any portion of the River Murray below Albury water in excess of the quantity to which they are entitled under sub-clauses (6) and (7) of this clause provided that a quantity equal to the excess so used is contributed by the State concerned from a tributary or tributaries of the River Murray below Albury.

In the exercise of the rights conferred by this sub-clause, neither such State shall take additional water to an extent which would prejudice the rights of either of the other States parties to this Agreement. In the event of disagreement between the Commissioners representing New South Wales and Victoria as to the quantity of water to be used or as to the manner of such contribution, the matter shall be determined by the Commission by a majority vote.

“(9) The quantity of available water which the State of South Australia is entitled to receive in any month shall be made up of water allowed to pass to South Australia, and water returned from Lake Victoria; and the quantity to which that State is entitled shall be measured as at the point in the River Murray immediately below the confluence of the Rufus River and the River Murray. In addition to its share of the available water, the State of South Australia shall be entitled to the quantity determined by the Commission pursuant to sub-paragraphs (ii) and (iii) of paragraph (b) of sub-clause (4) of this clause.

“(10) (a) New South Wales and Victoria shall each have the right during a period of restriction to divert, store and use the flows of the tributaries of the River Murray within their respective territories above Albury subject to deduction from either State's share of the available water of volumes equivalent to those that that State by its works so diverts, stores or uses from time to time during the period of restriction.

(b) Either the State of New South Wales or the State of Victoria may allow to flow into the River Murray from any convenient source a quantity of water as replacement in whole or in part of the quantity of water diverted by it pursuant to this sub-clause, and the amount of the deduction to be made pursuant to the last preceding paragraph shall be reduced by the quantity so replaced.

“(11) The Commission may from time to time, having regard to the volumes of water in the Upper Murray Storage and the Lake Victoria Storage, the time of the year, the requirements for irrigation in each of the States and any other relevant circumstances, vary by declaration for a period not exceeding six months at any one time the proportions set out in sub-clause (6) of this clause.

“(12) The State of South Australia may during any month in a declared period of restriction use a greater amount of water from the River Murray than that to which it is entitled under sub-clause (6) of this clause—

- (a) if the flow in the River Murray is in excess of the quantity which can be passed into Lake Victoria, in which event the greater amount which may be used may be equal to the amount provided in that sub-clause together with the said excess; or
- (b) if the Commission considers that the flow in the River Murray is in excess of the quantity which need be passed into Lake Victoria to raise the level of that storage, in which event the State of South Australia may use a greater amount equal to the amount to which it is entitled under sub-clause (6) of this clause together with the whole of the said excess, but the Commission shall not arrange for such greater amount to be used if the reserve storage in Lake Victoria is less than two hundred thousand acre feet.

“(13) The provisions of this Part other than this clause shall not, except as hereinafter provided, operate during a declared period of restriction.

The provisions of clause 50 shall continue in force during a declared period of restriction but may be modified as provided in this clause.

The provisions of paragraph (b) of sub-clause (3) of clause 45 shall have effect during a declared period of restriction.”.

8. Clause 61 of the Principal Agreement as amended by the second Amending Agreement is amended by inserting after the definition of “State Contracting Governments” the following definitions:—

“‘the Authority’ means the Snowy Mountains Hydro-electric Authority; and

‘the Snowy Mountains Agreement’ means the agreement made between the Commonwealth, New South Wales and Victoria on the eighteenth day of September One thousand nine hundred and fifty-seven, and the agreement between the same parties made on the fourteenth day of December One thousand nine hundred and fifty-seven, both of which agreements are set out in schedules to the *Snowy Mountains Hydro-electric Power Act 1949-1958* of the Commonwealth.”.

III. OPERATION OF THIS AGREEMENT

9. The Principal Agreement is amended by inserting next after Part IX the following new Part:—

“IXA. *Effect of Snowy Mountains Agreement*

“60A. (1) This Agreement shall operate according to its tenor to define the rights to water in the River Murray and its tributaries of the States of New South Wales, Victoria and South Australia.

“(2) The provisions as to sharing of waters contained in this Agreement shall apply to the exclusion of the provisions contained in sub-clause (2) of clause 12 of the Snowy Mountains Agreement.

“(3) To the extent to which any provision of this Agreement conferring rights on the State of South Australia to the use of water are inconsistent with the provisions of the Snowy Mountains Agreement, the first mentioned provisions shall prevail, and the provisions of the Snowy Mountains Agreement shall be modified accordingly.

“(4) Except to the extent provided in sub-clauses (2) and (3) of this clause, the Snowy Mountains Agreement shall continue in full force and effect.”.

IN WITNESS whereof the said parties to these presents have hereunto set their hands and seals the day and year first above-written.

Signed sealed and delivered by the above-named
ROBERT GORDON MENZIES in the presence of: } ROBERT G. MENZIES (I.S.)
RONALD MENDELSON

Signed sealed and delivered by the above-named
JOHN JOSEPH CAHILL in the presence of: } J. J. CAHILL.
K. N. COMMENS

Signed sealed and delivered by the above-named
HENRY EDWARD BOLTE in the presence of: } HENRY E. BOLTE (I.S.)
THOMAS F. MORNANE

Signed sealed and delivered by the above-named
SIR THOMAS PLAYFORD in the presence of: } T. PLAYFORD (I.S.)
R. R. ST. C. CHAMBERLAIN