

MORGAN-WHYALLA WATERWORKS AGREEMENT.

No. 75 of 1940.

An Act to ratify and approve an Agreement made
between The Commissioner of Waterworks
of the State of South Australia and the
Commonwealth of Australia.

[Assented to 16th December, 1940.]

[Date of commencement, 13th January, 1941.]

BE it enacted by the King's Most Excellent Majesty, the Senate,
and the House of Representatives of the Commonwealth of
Australia, as follows :—

1. This Act may be cited as the *Morgan-Whyalla Waterworks* **Short title.**
Agreement Act 1940.

4168.—13

Ratification and approval of agreement.

2. The agreement between The Commissioner of Waterworks (being the body corporate continued in existence by section eight of the Waterworks Act, 1932-1936 of the State of South Australia) and the Commonwealth of Australia (a copy of which agreement is set forth in the Schedule to this Act) is hereby ratified and approved.

Appropriation.

3. There shall be payable out of the Consolidated Revenue Fund, which is hereby appropriated accordingly, such sums as are necessary for the purpose of meeting the liabilities of the Commonwealth arising under or out of the agreement ratified and approved by this Act.

THE SCHEDULE.

THIS AGREEMENT made on the 20th day of November Nineteen hundred and forty BETWEEN THE COMMISSIONER OF WATERWORKS (being the body corporate continued in existence by Section 8 of the Waterworks Act 1932-1936 of South Australia) of the one part AND THE COMMONWEALTH OF AUSTRALIA of the other part :

WHEREAS the said Commissioner intends to lay down a pipe line and construct other waterworks for the purpose of providing at Port Augusta, Whyalla, and elsewhere in the Northern Areas of South Australia a supply of water drawn from the River Murray, and is desirous of selling certain quantities of such water to the Commonwealth :

AND WHEREAS the Commonwealth is willing to purchase certain quantities of such water on the terms and conditions set out in this Agreement :

Now THIS AGREEMENT WITNESSETH as follows :—

Interpretation.

1. In this Agreement—

“ the commencing day ” means the day on which the Commissioner commences to deliver water under this Agreement :

“ the Commissioner ” means the body corporate continued in existence by Section 8 of the Waterworks Act, 1932-1936, of the State under the name of “ The Commissioner of Waterworks ” :

“ the Commonwealth ” means the Commonwealth of Australia :

“ the Morgan-Whyalla waterworks ” means the pipeline and other waterworks laid down and constructed as mentioned in Clause 4 of this Agreement :

“ the State ” means the State of South Australia :

“ year ” means period of twelve months commencing on the first day of July in any year.

Ratification of Agreement.

2. The clauses of this Agreement other than this clause shall have no force or effect until this Agreement is ratified by the Parliaments of the Commonwealth and the State.

Term of Agreement.

3. THIS AGREEMENT shall remain in operation until the expiration of twenty years after the thirtieth day of June next after the commencing day: Provided that if the commencing day is the first day of July, this Agreement shall remain in operation for twenty years as from that day.

Duty of Commissioner to construct works and give information to Commonwealth.

4.—(1) The Commissioner shall lay down and construct a pipeline and other waterworks capable of supplying from the River Murray at or near Morgan to Port Augusta, Whyalla, and other Northern areas of South Australia approximately two thousand one hundred million gallons of water per annum.

(2) The Commissioner shall cause plans of the said pipeline and waterworks to be drawn up and shall submit copies of such plans to the Commonwealth as soon as possible after such plans have been prepared and shall from time to time during the laying down and construction of the said pipeline and waterworks furnish the Commonwealth with progress reports showing the progress of such laying down and construction.

(3) The Commissioner shall during the term of this Agreement maintain the said pipeline and waterworks in good repair and working order.

Commencement of delivery of water.

5. THE Commissioner shall give the Commonwealth one month's notice in writing of the day on which he will commence the delivery of water under this Agreement; and the obligation of the Commissioner to deliver water and of the Commonwealth to take and pay for water under this Agreement shall commence on that day or if some other day is mutually agreed on then on that other day.

THE SCHEDULE—*continued.*

6. THE Commissioner shall on and after the commencing day deliver to the Commonwealth from time to time such quantity of water drawn from the River Murray as the Commonwealth requires, but not exceeding three million gallons in any week or one hundred and fifty million gallons in any year.

Delivery of water.

7. THE Commonwealth shall within six months after the ratification of this Agreement by the Parliaments of the Commonwealth and the State give the Commissioner written notice of the point at which the Commonwealth desires that water drawn from the River Murray shall be delivered to it under this Agreement. The point so notified shall be a point in the water mains of the Commonwealth at or near Port Augusta, and for the purpose of delivering the water, the Commissioner shall connect the mains of the Morgan-Whyalla waterworks with those of the Commonwealth at the notified point of delivery.

Point of delivery.

8.—(1) Subject to the provisions hereinafter contained as to a minimum annual payment by the Commonwealth, the Commonwealth will pay the Commissioner for all water delivered by him to the Commonwealth at the rate of two shillings and fourpence per thousand gallons.

Price of water.

(2) Payments under this section shall be made within twenty-eight days after the thirtieth day of June and the thirty-first day of December in each year and each payment shall be for the water supplied during the preceding half year.

9.—(1) Within three months after the end of each year the minimum amount to be paid by the Commonwealth in respect of that year shall be ascertained in accordance with this clause, and that amount, less any sum paid or payable under the last preceding clause of this Agreement for water supplied during the said year, shall be paid by the Commonwealth to the Commissioner not later than six months after the end of the said year: Provided that if the commencing day is a day other than the first day of July no payment shall be made under this clause in respect of the period between the commencing day and the next following first day of July.

Minimum annual payment by Commonwealth.

(2) The minimum amount to be paid by the Commonwealth in respect of any year shall be based upon the loss incurred by the Commissioner in connexion with the operation of the Morgan-Whyalla water works during that year and shall be as follows:—

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|-------------------------------------------------------------------------|------------------------------------------------|
| (a) If the said loss is £75,000 or more— | £37,500 |
| (b) If the said loss is not less than £50,000 but is less than £75,000— | One half of the amount of the said loss. |
| (c) If the said loss is less than £50,000— | The sum by which the said loss exceeds £25,000 |

(3) The loss incurred in connexion with the operation of the Morgan-Whyalla waterworks during any year shall be the amount (if any) by which the expenditure on the said waterworks for that year exceeds the revenue therefrom for the same year.

(4) For the purposes of this Agreement the expenditure on the Morgan-Whyalla waterworks for any year shall be—

- (a) the interest payable in respect of that year on loan moneys expended on the construction of the said waterworks at the rate actually paid by the State on those moneys;
 - (b) the cost of maintenance and operation during that year of the said waterworks, including the cost of repairs, and the overhead expenses incurred by the Commissioner in connexion with the said waterworks;
 - (c) an allowance for depreciation for that year at the rate of twenty-two shillings and sixpence per cent. on the amount of loan moneys expended on the construction of the pumping machinery and plant comprised in the Morgan-Whyalla waterworks;
 - (d) an allowance for depreciation for that year at the rate of five shillings per cent. on the amount of loan moneys expended on the construction of the mains, storages, buildings, and all other works except pumping machinery and plant in the Morgan-Whyalla waterworks.
- (5) In ascertaining for the purposes of this Agreement the amount of loan moneys expended upon the construction of any work—
- (a) the discounts charges and other expenses incurred in connexion with the borrowing of the said loan moneys; and
 - (b) any interest payable on the said loan moneys during the period of such construction (being interest which according to the usual practice of the State is paid from loan moneys and treated as part of the cost of construction):

shall be treated as loan moneys expended on such construction.

THE SCHEDULE—*continued.*

(6) Any loan moneys borrowed for the purpose of repaying any loan moneys expended on the construction of the Morgan-Whyalla waterworks shall be deemed to be moneys expended on such construction in lieu of the moneys so repaid.

(7) For the purposes of this Agreement the total of the loan moneys expended on the said waterworks shall be deemed not to exceed the sum of three million one hundred and twenty-two thousand pounds.

(8) Capital expenditure incurred as a result of any defect in the design of the Morgan-Whyalla waterworks and expenditure upon maintenance, operation and repairs which is rendered necessary by any such defect, shall not be taken into account in computing the expenditure on the said waterworks.

(9) For the purposes of this Agreement the revenue from the Morgan-Whyalla waterworks for any year shall be—

(a) a sum equal to the price of all water supplied from the said waterworks during that year to the Broken Hill Proprietary Company Limited or its successors or assigns calculated on the scale set out in the Agreement in the Schedule to the Northern Areas and Whyalla Water Supply Act 1940 of the State, or on any lower scale charged to the Company or its successors or assigns with the prior approval in writing of the Treasurer of the Commonwealth ;

(b) a sum equal to the balance arrived at by deducting from the total costs incurred by the Commissioner in pumping water during that year from the River Murray to the points of take-off in the Morgan-Whyalla water main, that part of those costs which is fairly attributable to pumping the water delivered during that year to the Broken Hill Proprietary Company Limited or its successors or assigns and to the Commonwealth. The cost of pumping water for the purpose of this sub-clause shall include—

(i) the cost of the maintenance, operation and repair of all machinery plant and buildings used in connexion with the pumping of the water :

(ii) the interest payable as mentioned in paragraph (a) of sub-clause (4.) of this clause in respect of loan moneys expended on the construction of the said machinery plant and buildings :

(iii) the allowance for depreciation provided for in paragraph (c) of sub-clause (4) of this clause ; and

(iv) such part of the allowance for depreciation provided for in paragraph (d) of sub-clause (4) of this clause as is attributable to loan money expended on the construction of buildings used in connexion with the pumping of the water :

(c) the sum of threepence for every ton of ironstone won in the State by the Broken Hill Proprietary Company Limited or its successors or assigns or won by any person or body corporate from any land over which at the date of execution of this agreement the said company has any right to mine ironstone, which during the said year is shipped in the State, or used by the said Company or its successors or assigns or any such person or body corporate in smelting operations in the State or delivered by the said Company or its successors or assigns or any such person or body corporate on sale in the State.

Quality of water.

10. THE water to be delivered under this Agreement shall be water in the condition in which it is drawn from the River Murray at or near Morgan, and without any filtering, treatment or change except such change (if any) as necessarily occurs during the transmission of the water from Morgan to the place where the water is delivered to the Commonwealth.

Metering.

11.—(1) The Commissioner shall measure all water delivered to the Commonwealth under this Agreement by suitable meters installed at the expense of the Commissioner.

(2) The Commissioner shall during each month give the Commonwealth a written notice of the amount of water shown by the meters as having been delivered to the Commonwealth during the previous month. The notice shall be conclusive evidence of the amount of water delivered in the month to which it relates unless it is disputed as provided in this clause.

THE SCHEDULE—*continued.*

(3) The Commonwealth may within one month after receipt of any such notice give the Commissioner a written notice that it disputes the correctness of the amount of water shown in the first mentioned notice and that it requires any meter to be tested.

(4) The Commissioner shall thereupon conduct a test of the meter either by means of a check meter or by any other recognized method of testing water meters.

(5) If on any such test it is proved that the meter is not measuring correctly the water actually delivered, the amount of water shown in the disputed notice and in any subsequent notice given by the Commissioner prior to the test shall be altered so as to show the true amount of water delivered and the liability of the Commonwealth shall be adjusted accordingly. Thereafter, if the meter is not corrected or replaced, due allowance for the error proved as aforesaid shall be made in each monthly notice showing the amount of water delivered to the Commonwealth.

(6) The Commonwealth may at its own expense instal a meter at any convenient point in the pipe from which water from the River Murray is delivered to the Commonwealth. The readings for such meter shall be for the information of the Commonwealth, but shall not be binding on the Commissioner unless he agrees to accept them, with or without adjustments, as correct: Provided that this clause shall not prevent the Commonwealth from using such readings as evidence in any dispute relating to the amount of water supplied to the Commonwealth under this Agreement.

12. THE Commissioner undertakes on behalf of the State that the State will not base any claim for financial assistance from the Commonwealth upon any loss incurred by the State in connexion with the Morgan-Whyalla waterworks, and will not claim that any such loss should be taken into account in determining the amount of any financial assistance to be granted by the Commonwealth to the State.

Loss on Morgan-Whyalla waterworks to be excluded in determining State grants.

13. THE Commonwealth will not sell or supply any water supplied to it under this Agreement, to consumers in any area which for the time being is served by a water supply system maintained by the Commissioner: Provided that—

Restriction on supply to private consumers.

(a) nothing in this Agreement shall prevent the Commonwealth from providing a water supply for residential premises owned by the Commonwealth:

(b) where any residences owned by the Commonwealth and situated within the Port Augusta, Mundalio, or Nectar Brook Water District as defined by proclamation under the Waterworks Act 1932-1936, of the State, are directly supplied with water by the Commissioner, the water so supplied shall be deemed to be water supplied to the Commonwealth under this Agreement, and the Commonwealth shall not be under any liability to pay for that water otherwise than as provided in this Agreement.

14. FOR the purposes of obtaining information as to the correctness of any claim against the Commonwealth under this Agreement, the Auditor-General for the Commonwealth or any person authorized by him shall be entitled to inspect any accounts, books, records, vouchers, or other documents relating to the capital cost, revenue and expenditure of the Morgan-Whyalla waterworks; and the Commissioner shall upon request furnish the said Auditor-General or any such person with any information relating to such capital cost, revenue and expenditure.

Audit.

IN WITNESS whereof the parties hereto have executed this Agreement.

SIGNED by the Right Honourable Robert Gordon Menzies, the Prime Minister of the Commonwealth of Australia, for and on behalf of the Commonwealth in the presence of—

ROBERT G. MENZIES.

N. C. TRITTON.

THE COMMON SEAL OF THE COMMISSIONER OF WATERWORKS was hereunto affixed by Malcolm McIntosh, the person for the time being holding the office of such Commissioner, in the presence of—

(I.S.)

E. L. BEAN.

M. McINTOSH,
Commissioner of Waterworks.