



Murray-Darling Basin Agreement (Schedule D — Tagging Entitlements for Extraction in another State) Protocol 2010¹

The MURRAY-DARLING BASIN AUTHORITY, in consultation with the Basin Officials Committee and having considered the advice, if any, given by each person nominated by a Contracting Government under subclause 6 (3) of Schedule D to the Murray-Darling Basin Agreement, makes the following Protocol under clause 6 of Schedule D to that Agreement and section 18E of the *Water Act 2007*.

I, ROB FREEMAN, Chief Executive of the MURRAY-DARLING BASIN AUTHORITY, authenticate that the Authority validly made the following Protocol on 30 August 2010.

ROB FREEMAN

Chief Executive

7 September 2010

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1 Name of Protocol

This Protocol is the *Murray-Darling Basin Agreement (Schedule D —Tagging Entitlements for Extraction in another State) Protocol 2010*.

Note This Protocol deals with matters referred to in paragraph 6 (1) (f) of Schedule D to the Agreement.

2 Commencement

This Protocol commences on the day after it is registered.

3 Revocation

- (1) All protocols made under paragraph 6 (1) (f) of Schedule D to the Agreement before 1 December 2009 that apply only to interstate tagged trade of entitlements are revoked.
- (2) A protocol made under paragraph 6 (1) (f) of Schedule D to the Agreement before the commencement of this Protocol that deals with:
 - (a) interstate tagged trade of entitlements; and
 - (b) other matters;has no application to the extent that it deals with interstate tagged trade of entitlements.

4 Application

This Protocol applies to interstate tagged trade of entitlements.

5 Definitions

In this Protocol:

application means:

- (a) an application to tag an entitlement so that allocations made under that entitlement may be extracted in a State other than the State in which the allocation is made; or
- (b) an application to alter or remove a tag from an entitlement; but not an application to transfer an entitlement.

Section 6

retailer means the authority responsible for accounting for transfers of allocations, administering tagging arrangements and accounting for water used pursuant to allocations within a State.

SOD retailer means a retailer in a State of Destination.

SOO retailer means retailer in a State of Origin.

State of Destination means the State in which an allocation made under a tagged entitlement will be extracted.

State of Origin means the State in which an allocation under a tagged entitlement will be made.

wholesaler means an authority responsible for recovering costs associated with operating headworks from which allocations are supplied within a State of Origin.

Note Several other words and expressions used in this Protocol have the meaning given by the Act (including the Agreement), for example:

- allocation
- Authority
- Contracting Government
- licensing authority
- State
- tagged trade.

6 Notices

- (1) A notice under this Protocol must be given in writing.

Note Written notices may be given electronically: see section 9 of the *Electronic Transactions Act 1999*.

- (2) The Authority must, in consultation with each State Contracting Government and, where appropriate, any relevant licensing authority and any relevant retailer, determine the form and content of a notice required to be given to or by the Authority under this Protocol.

7 Processes and principles

- (1) The Authority and each SOD retailer, SOO retailer and licensing authority must follow the processes in the steps set out in Schedule 1 of this Protocol.

- (2) State of Origin wholesalers should adopt the principle that bulk water charges be billed in the same way as State entitlement holder are charged, that is, directly to the interstate owner of the share as at the date of billing.

8 Accounting for use of tagged allocations

After tagging has occurred, the Authority, each SOD retailer, each SOO retailer and each licensing authority must, in relation to each allocation, follow the processes in the steps set out in Schedule 2 of this Protocol.

9 Review of Protocol

- (1) An independent auditor appointed under subclause 16 (5) of Schedule D to the Agreement may consider the operation of this Protocol and, if the auditor considers it appropriate, recommend that the Authority review the Protocol.
- (2) The Authority must review, and if appropriate, consider amending this Protocol if:
 - (a) the Agreement is amended in a way that may be relevant to interstate transfers; or
 - (b) Commonwealth or State legislation, or an instrument under such legislation, is made or amended in a way that may affect interstate transfers; or
 - (c) any report about the operation of Schedule D to the Agreement or the markets for interstate transfers, prepared under clause 18 of Schedule D to the Agreement, indicates that a review of this Protocol is appropriate; or
 - (d) an independent auditor mentioned in subsection (1) recommends, in connection with his or her appointment as an independent auditor, that a review is appropriate.

Schedule 1 Processes and principles

(Section 7)

Step 1 Lodging applications

- (1) An application must be lodged with the SOO retailer.
- (2) An SOO retailer that receives a duly completed application form must immediately:
 - (a) note the application in its records; and
 - (b) verify that the proposed tagging of the entitlement is not prohibited by any Protocol concerning limits on transfers; and
 - (c) if the transfer is prohibited by such a Protocol – notify the applicant that the transfer is prohibited; and
 - (d) if the transfer is not so prohibited – allocate a transaction identification number and forward a copy of the application and identification number to the relevant SOD retailer.

Step 2 Consideration of application by SOO retailer

- (1) After completing Step 1, the SOO retailer must then promptly:
 - (a) verify ownership of the entitlement to which the application refers; and
 - (b) verify that the person named in the application has the power to deal with an allocation made under the relevant entitlement; and
 - (c) verify that the application will not result in the breach of any restriction on volumes transferable from the relevant trading zone or any other limits on transfers; and
 - (d) verify that, if the application is approved, the entitlement will not be tagged to a location in more than one zone of destination; and
 - (e) in view of paragraphs (a) to (d) and any other matters that the SOO retailer is required to consider, determine whether the application may be approved if Steps 3 and 4 are also satisfied.

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- (2) If the SOO retailer determines that the application may not be approved, it must promptly notify the SOD retailer and the applicant.
 - (3) If the SOO retailer determines that the application may be approved, it must promptly notify the SOD retailer.

Step 3 Consideration of application by SOD retailer

When an SOD retailer receives a notification from an SOO retailer that an application may be approved, it must promptly:

- (a) if appropriate – determine whether the SOD retailer can deliver the water comprised in the relevant allocation; and
- (b) in view of any other matters it is required to consider, determine whether or not the application will be approved if Step 4 is also satisfied.

Step 4 Finalisation of tagging and advising the Authority

- (1) When an SOD retailer determines that an application will be approved, it must:
 - (a) notify the SOO retailer and the Authority that the application will be approved; and
 - (b) notify the applicant of any conditions which the SOD retailer will attach to the delivery of water pursuant to the relevant allocation.
- (2) The SOO retailer must:
 - (a) ensure that all relevant fees have been paid; and
 - (b) update its records to show that the allocation under the relevant entitlement is tagged to the location in the State of Destination; and
 - (c) record the date on which the tagging of the allocation under the entitlement takes effect, and advise the SOD retailer and the Authority of that date; and
 - (d) advise the applicant that the allocation made under the entitlement is tagged.
- (3) The Authority must:

- (a) record on the Transfer Register any approved tagging arrangement of which it is advised; and
- (b) make any consequential adjustments to the cap as may be required; and
- (c) make any adjustments to valley accounts as may be required; and
- (d) make any adjustments to salinity registers as may be required.

Step 5 Reconciling records

- (1) Within 7 days after the end of a month, each licensing authority within a State must send to the Authority a copy of all the records of the licensing authority relating to the interstate tagging of entitlements for the preceding month.
- (2) The Authority must examine whether there are any discrepancies between the information in the records of a licensing authority provided in respect of a month and:
 - (a) similar records provided by the licensing authority in any preceding month of that year; and
 - (b) information recorded in the Transfer Register.
- (3) The Authority must:
 - (a) record any discrepancy other than an allowable discrepancy; and
 - (b) provide the relevant licensing authority with a report on every discrepancy required to be recorded by paragraph (a) within 14 days after the end of the month in which the Authority receives the records referred to in clause (1) of this step.
- (4) In paragraph (3) (a) of this step, *allowable discrepancy* means:
 - (a) a discrepancy of no more than 1 ML in relation to the volume of any transfer; or
 - (b) a spelling error in a record; or
 - (c) an abbreviation of the first name of an applicant.
- (5) A licensing authority that receives a report mentioned in paragraph (3) (b) of this step must:

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- (a) give any explanation of the discrepancy to the Authority, within 14 days after receiving the report; and
 - (b) in consultation with the Authority, promptly seek to resolve the discrepancy.
- (6) If a discrepancy is not resolved within the same month as the month in which a licensing authority receives a report mentioned in paragraph (3) (b) of this step, the Authority must:
- (a) inform the Interstate Water Trade Taskforce; and
 - (b) report the discrepancy to the independent auditor referred to in subclause 16 (5) of Schedule D for that year.

Step 6 Preparation of interstate transfer report

- (1) The Authority must, within 30 days after the end of each quarter, prepare and give to each Contracting Government and every licensing authority within each State an interstate transfer report with respect to the preceding quarter.
- (2) A report referred to in clause (1) of this step must set out the following information with respect to each valley for which a valley account is kept under clause 11 of Schedule D:
 - (a) the number of interstate tags of entitlements;
 - (b) the volume of water represented by such tagged entitlements;
 - (c) the number and type of discrepancies that have not been resolved under clause (5) of step 5, and the name of the relevant licensing authority for each discrepancy; and
 - (d) any other information, comment or recommendation that the Authority thinks appropriate.

Schedule 2 Processes – accounting for tagged allocations

(Section 8)

Step 1 Making an allocation

- (1) An SOO retailer must make the allocation into the relevant SOO allocation account for the entitlement.
- (2) The SOO retailer must promptly advise the relevant SOD retailer of the consequent credit available in the SOO allocation account.
- (3) The SOD retailer must establish an allocation account in the State of Destination for the person entitled to receive the allocation in the State of Destination.

Step 2 Ordering from an allocation

- (1) The person entitled to extract an allocation in the State of Destination must place an order with the relevant SOD retailer.
- (2) The SOD retailer must determine whether the credit available in the SOO allocation account is sufficient to meet the volume ordered.
- (3) An SOD retailer must not deliver water pursuant to an order, unless the credit available in the SOO allocation account is sufficient to meet the volume ordered.

Step 3 Keeping relevant accounts

- (1) Where an SOD retailer determines that the credit is sufficient under clause (2) of step 2, the SOD retailer must:
 - (a) record an order made under clause (1) of step 2 as a first estimate of use; and
 - (b) adjust the SOD allocation account accordingly.
- (2) The SOD retailer must promptly notify the SOO retailer of any order referred to in clause (1) of this step.

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- (3) After notice is given under clause (2) of this step, a volume equivalent to the volume of the order must be transferred from the SOO allocation account to the SOD allocation account by:
 - (a) the SOO retailer debiting the SOO allocation account; and
 - (b) the SOO retailer notifying the SOD retailer of the reduced credit available in the SOO allocation account; and
 - (c) the SOD retailer crediting the SOD allocation account with the equivalent of the volume debited to the SOO allocation account.
 - (4) If, on receiving notice of an order under clause (2) of this step, a SOO retailer determines that the volume of available water in the SOO allocation is insufficient to meet the order, it must promptly notify the SOD retailer of that fact.
 - (5) If a person entitled to receive a tagged allocation in the State of Destination subsequently extracts any volume of water pursuant to an order referred to in clause (4) of this step, the State of Destination must deal with that extraction as if it were an unauthorised use of water in the State of Destination.

Step 4 Recording use of allocations

- (1) If:
 - (a) a person entitled to receive an allocation in a State of Destination alters an order placed under step 2 before it has been delivered; or
 - (b) a reading of that person's meter indicates that water has been used in the State of Destination which ought to have been attributed to a tagged allocation;the processes in this step must be applied.
- (2) The SOD retailer must revise any first estimate of use made under clause (1) of step 3 and alter the SOD allocation account accordingly.
- (3) The SOD retailer must promptly advise the SOO retailer of the alteration made under clause (2) of this step.
- (4) The delivery of water pursuant to the tagged allocation must be adjusted accordingly.

- (5) The SOO retailer must adjust the SOO allocation account accordingly.

Step 5 Transfers

- (1) An application to transfer:
 - (a) an allocation from a tagged entitlement to another person;
or
 - (b) an allocation under another entitlement to a tagged entitlement;must be made to the relevant SOO retailer.
- (2) An SOO retailer that receives such an application must:
 - (a) determine the application in accordance with the law of the State of Origin; and
 - (b) make any necessary consequential adjustment to the SOO allocation account.
- (3) If the SOO retailer approves such an application, the SOO retailer must promptly notify the SOD retailer of that fact and of any consequential adjustment made to the SOO allocation account.
- (4) On receiving a notice given under clause (3) of this step, the SOD retailer must make any necessary consequential adjustment to the SOD allocation account.

Step 6 Reporting

- (1) Within 7 days after the end of a month, an SOD retailer must, in relation to each State of Origin, notify the Authority of the volume of water delivered pursuant to all tagged allocations from that State in the preceding month.
- (2) After receiving each report referred to in clause (1) of this step, the Authority must make any appropriate consequential adjustments to the cap, valley accounts and salinity registers.

Step 7 Recovering charges

- (1) An SOO retailer must keep the relevant wholesaler informed about the approval or delivery of tagged allocations which may

have an effect on the amount of any charges which the wholesaler is entitled to recover from the holder of the relevant entitlement.

- (2) An SOD retailer may impose and recover such charges as it is entitled to recover from the person entitled to receive a tagged allocation under the law of the State of Destination.

Notes

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See www.frli.gov.au.