

12 FEB 2013

DATE RECEIVED



11<sup>TH</sup> February, 2013

Mr. E. J. Hall,  
Chief Executive,  
Queensland Competition Authority,  
GPO Box 2257,  
BRISBANE QLD 4001

Dear Mr. Hall,

Subject- QCA Draft Report on SE QLD WSS Pricing Path.

We refer to discussions held between MBRI and QCA in the period July 2012 to January 2013. On 3 separate occasions over this period there has been a statement by your officers that legal advice has been obtained by QCA in connection with the legality of MBRI members continuing entitlement to take water from the Mid Brisbane River. The first occasion was following a meeting with QCA in July 2012 whereby we were provided by email with some legal advice to the effect that the 2002 transitional regulation, imposing a condition on Seqwater's allocation to make available 7,000ML to irrigators at no charge, only applied for one year and expired. This prompted Mr. John Craigie to write a supplementary submission to the QCA. Following contact with Mr. Angus McDonald, Mr. Craigie was advised that legal advice had been obtained from a number of sources and each of the arguments put forward by Mr. Craigie had been found to be incorrect. Mr. Craigie requested a copy of the advices so that he could consider them and respond but was advised that it was privileged and would not be released. However, Mr. Craigie was advised that the draft report would cover the issues in general terms.

The second time was during a call from Mr. MacDonald to Mr. Tom Wilkinson on 9<sup>th</sup> November at 3.15pm when Mr MacDonald advised that MBRI/Craigie claim was unrealistic and that the QCA had legal eagles all over Mr. Craigie's submission and they were unanimous in their advice that Mr. Craigie had cleverly set out his reasoning, but that he was wrong. I asked him for a copy of the advice and was advised the key parts of it would be in the Draft report. As well as that it was "privileged". The third was at the Fernvale meeting of 24<sup>th</sup> January when the repeated statement was that "we have received exhaustive legal advice". On the strict legal definition of what documents are privileged, we can see no justification for this legal advice to be withheld from MBRI. As a small voluntary organization we should not be obliged to spend our scarce resources legally challenging the fact that QCA may be unjustifiably claiming privilege on documentation secured with public money.

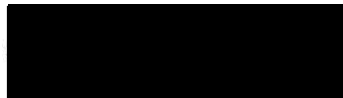
However, in recent communication with Seqwater they have provided us with a copy of a June 2008 transfer notice which clearly shows the Government's intention of a continuance of our pre-existing right to 7,000ML at no charge. It also shows a similar pre-existing right by Glamorgan Vale Water Board also to draw water at no charge. Yet on page 83 of your draft report it is stated "the saving provision in the *Acts Interpretation Act 1954* that provides for the maintenance of rights or privileges that existed under legislation on the repeal or expiry of that legislation does not preserve the requirement on SEQWater to provide free water allocations – the rights of irrigators were limited to a one year duration." Clearly QCA was wrong in its draft report. The 2002 Transitional Regulation heading under section 3 evidences an intention by Parliament for it to continue. It states "Continuing allocation for South East Queensland Water Corporation Limited" and the allocation of 7,000ML to irrigators was a condition on that continuing allocation. It is also noted that the transfer notice attached was made some 15 months after the Water Resource Moreton Plan 2007 was tabled in Parliament. The Moreton Resource Operations Plan of 2009 under the *Water Act 2000* must be consistent with the Moreton Resource Plan of 2007. In the Explanatory Memorandum to the Moreton Resource Plan of 2007, which is required to be produced, there is recognition that the plan assigned water allocations to the 'Medium' and 'High Priority A' groups which aligned with their historical water entitlements.

We are at a loss as to understand why the QCA is unwilling to be open and transparent on what is MBRI's most important issue, the potential loss of pre-existing rights to water. It would be constructive for QCA to provide us with the names of the sources of the legal advices received. Were these opinions in writing? Were the two documents referred to or included as part of the documented history? Are these documents complete of themselves? This may lead us to a decision as to whether the credibility of the source of your advice would warrant our contesting your right to privilege over these documents. We are of the understanding that the attached document may have been the subject of legal opinion prepared for Seqwater.

We also wish to place on record that the issues list promised at the meeting of the 24<sup>th</sup> January has not yet been received in the draft form promised as of 8<sup>th</sup> February 2013.

Because time is of the essence we would appreciate a prompt response to this letter

Yours faithfully,



TOM WILKINSON

CHAIRMAN,

MID BRISBANE RIVER IRRIGATORS INC.

Phone: 0754267208 Email: [fernvalecharolais@bigpond.com](mailto:fernvalecharolais@bigpond.com)

Attachment 1 and 2

Queensland



Subordinate Legislation 2002 No. 170

*Water Act 2000*

**WATER (TRANSITIONAL) AMENDMENT  
REGULATION (No. 1) 2002**

**TABLE OF PROVISIONS**

Section	Page
1 Short title .....	2
2 Commencement .....	2
3 Regulation amended .....	2
4 Replacement of pt 2 .....	2
<b>PART 2—TRANSITIONAL PROVISIONS FOR WATER RESOURCES REGULATION 1999</b>	
3 Continuing allocation for South East Queensland Water Corporation Limited .....	2
4 Conditions for company allocation .....	3
<b>PART 2A—TRANSITIONAL PROVISIONS FOR AWOONGA—CALLIDE PIPELINE</b>	
4A Definitions for pt 2A .....	4
4B Existing supply arrangements taken to be supply contracts .....	4

### 1 Short title

This regulation may be cited as the *Water (Transitional) Amendment Regulation (No. 1) 2002*.

### 2 Commencement

This regulation commences on 1 July 2002.

### 3 Regulation amended

This regulation amends the *Water (Transitional) Regulation 2002*.

### 4 Replacement of pt 2

Part 2—

*omit, insert—*

#### **‘PART 2—TRANSITIONAL PROVISIONS FOR WATER RESOURCES REGULATION 1999**

#### **‘3 Continuing allocation for South East Queensland Water Corporation Limited**

‘(1) Despite the repeal of the *Water Resources Regulation 1999*, the water allocation of 345 000 ML a year (the “**company allocation**”) from the sources mentioned in subsection (2) continues for South East Queensland Water Corporation Limited (the “**company**”).<sup>1</sup>

‘(2) The sources for the company allocation are—

- (a) the impoundments of the Wivenhoe, Somerset and North Pine Dams; and

---

1 This allocation was fixed on the basis of the following full supply levels—

- (a) Somerset Dam—RL 99.00 metres AHD;
- (b) Wivenhoe Dam—RL 67.00 metres AHD;
- (c) North Pine Dam—RL 39.63 metres AHD;
- (d) Mt Crosby Weir—RL 6.90 metres AHD.

- (b) the section of the Brisbane River between the Wivenhoe Dam and Mt Crosby Weir.

#### **‘4 Conditions for company allocation**

‘(1) The conditions stated in this section are imposed on the company allocation.

‘(2) The maximum volume of water the company may take from the impoundment of the North Pine Dam in a year is 59 000 ML.

‘(3) The company must make available from the company allocation to Esk Shire Council, free of charge—

- (a) 220 ML a year for use for the Town of Esk; and
- (b) 270 ML a year for use for the Town of Lowood.

‘(4) The company must make available from the company allocation to the Glamorgan Vale Water Board, free of charge, 250 ML a year for use for the Glamorgan Vale Water Supply Area.

‘(5) The company must make available from the company allocation, free of charge—

- (a) a sufficient volume of water, but not more than 7 000 ML a year, to meet the rights to water of licensees authorised under licences issued under part 4 of the repealed Act to take water for irrigation purposes from the Brisbane River between the Wivenhoe Dam and Mt Crosby Weir; and
- (b) a sufficient volume of water to meet the riparian rights of persons under section 36 of the repealed Act relating to any of the sources to which the company allocation relates; and
- (c) a sufficient volume of water to meet the rights to water of other persons under authorisations under the repealed Act if the authorisations—
  - (i) were in force on the commencement of section 15B of the repealed *Water Resources Regulation 1999*; and
  - (ii) relate to any of the sources to which the company allocation relates.



## **'PART 2A—TRANSITIONAL PROVISIONS FOR AWOONGA–CALLIDE PIPELINE**

### **'4A Definitions for pt 2A**

In this part—

**"Awoonga–Callide pipeline"** means the pipeline from Awoonga Dam that supplies water to Callide Power Station and runs to Stag Creek.

**"stock purposes"**, in relation to taking water, means watering stock of a number that would normally be depastured on the land.

**"SunWater"** means the entity corporatised under the *Government Owned Corporations (State Water Projects Corporatisation) Regulation 2000*.

### **'4B Existing supply arrangements taken to be supply contracts**

'(1) This section applies if—

- (a) immediately before 1 October 2000, an owner of land held a licence under the repealed Act to take water from the Awoonga–Callide pipeline for stock or domestic purposes; and
- (b) the owner of the land to which the licence related has continued to take water for the same purpose and on the same conditions under an arrangement with SunWater.

'(2) The arrangement for the supply of water to the owner by SunWater is taken to be a supply contract until the owner and SunWater enter a supply contract.'

---

#### ENDNOTES

1. Made by the Governor in Council on 27 June 2002.
2. Notified in the gazette on 28 June 2002.
3. Laid before the Legislative Assembly on . . .
4. The administering agency is the Department of Natural Resources and Mines.

**Water Act 2000  
Transfer Notice  
(Section 360ZDN)**

**Transfer of water authorisations to the SEQ Water Grid Manager  
and related matters**

**1. Water Authorities and Instruments**

Pursuant to section 360 ZDN of the *Water Act 2000* (Qld), I, Paul Lucas, Deputy Premier and Minister for Infrastructure and Planning, do the following with effect on and from the Effective Date:

- (a) replace the water authorities listed in Column 1 of Schedule 1 with the authorities listed in Column 2 of Schedule 1;
- (b) transfer the authorities in Column 2 of Schedule 1 (transferring entity) from the entity listed in Column 3 of Schedule 1 to the entity listed in Column 4 of Schedule 1 (receiving entity);
- (c) in Schedule 1, where the entity in Column 4 (receiving entity) is the same as the entity in Column 3 (transferring entity), make provision in Column 4 about an entity continuing to hold an authority listed in Column 2;
- (d) replace the limited authorities listed in Column 1 of Schedule 2 with the authorities listed in Column 2 of Schedule 2;
- (e) where a limited authority has been replaced with two or more authorities pursuant to (d), transfer the authorities listed in Column 2 of Schedule 2 from the entity listed in Column 3 of Schedule 2 (transferring entity) to the entity listed in Column 4 (receiving entity);
- (f) where a limited authority has not been replaced with two or more authorities pursuant to (d), transfer the authorities listed in Column 1 of Schedule 2 from the entity listed in Column 3 of Schedule 2 (transferring entity) to the entity listed in column 4 of Schedule 2 (receiving entity);
- (g) transfer from the transferring entity to the receiving entity:
  - (i) all of the rights of the transferring entity arising under or relating to the agreements set out in Schedule 3 from and after the Effective Date; and
  - (ii) all of the liabilities of the transferring entity arising under the agreements in Schedule 3 from and after the Effective Date;so that, with effect from and after the Effective Date:
  - (iii) the receiving entity will replace the transferring entity as a party to each of the agreements in Schedule 3;
  - (iv) each reference to the transferring entity, as a party, in each of the agreements in Schedule 3 will be taken to be a reference to the receiving entity; and
  - (v) the receiving entity will be entitled to the rights of the transferring entity arising under or relating to each of the agreements in Schedule 3 and will perform the obligations and liabilities of the transferring entity arising under each of the agreements in Schedule 3 from and after the Effective Date;



- (h) transfer an application made by a Local Government or the Bulk Water Supply Authority pursuant to section 206 of the *Water Act 2000*, for a water licence to take water for urban, town water supply or town supply purpose to the Water Grid Manager;
- (i) provide that, from and after, the Effective Date:
  - (i) the rights and obligations of the transferring entity arising under or relating to a Replacement Authority, or limited authority that has not been replaced under 1 (d), are the rights and obligations of the receiving entity listed in the corresponding row of Schedules 1 and 2;
  - (ii) each reference to the transferring entity, in each limited authority set out in column 1 of Schedule 2, where that limited authority has not been replaced under 1 (d), will be taken to be a reference to the receiving entity; and
  - (iii) any applications referred to in (h) are taken to have been made in the name of the Water Grid Manager.

## 2. Definitions

In this Transfer Notice:

**Bulk Water Supply Authority** means the Queensland Bulk Water Supply Authority established under section 6 of the *South East Queensland Water (Restructuring) Act 2007*.

**Effective Date** means the beginning of the day of 1 July 2008.

**Local Government** means a local government included in the SEQ Region under section 341 of the *Water Act 2000*.

**ML** means one million litres.

**Repealed Act** means the *Water Resources Act 1989*.

**Replacement Authority** means an authority listed in column 2 of Schedule 1 and column 2 of Schedule 2.

**SEQ Region** means the region defined in section 341 of the *Water Act 2000*.

**Water Grid Manager** means the SEQ Water Grid Manager established under section 6 of the *South East Queensland Water (Restructuring) Act 2007*.

---

The Honourable Paul Lucas MP  
Deputy Premier and  
Minister for Infrastructure and Planning

Signed on the 24<sup>th</sup> day of June 2008

**Schedule 1 – Relevant Authorities**

Column 1 Relevant Authority	Column 2 Replacement Authority	Column 3 Transferring Entity	Column 4 Receiving Entity	Column 5 Row Number
Authority continued under section 1037A (5) of the <i>Water Act 2000</i> as detailed in the <i>Water (Transitional) Amendment Regulation (No.1) 2002</i> .	<p>Authority to interfere with water to the extent provided under the authorisation listed in Column 1 for the sources listed below.</p> <p>The sources are:                      (a) The impoundments of the Wivenhoe, Somerset and North Pine Dams; and                      (b) The section of the Brisbane River between the Wivenhoe Dam and Mt Crosby Weir.</p> <p>The overall amount provided under the authority in rows 2 and 3 was fixed on the basis of the following full supply levels-                      (a) Somerset Dam—RL 99.00 metres AHD;                      (b) Wivenhoe Dam—RL 67.00 metres AHD;                      (c) North Pine Dam—RL 39.63 metres AHD;                      (d) Mt Crosby Weir—RL 6.90 metres AHD.</p>	Bulk Water Supply Authority	Bulk Water Supply Authority	1
	<p>1) Authority to take water for operational purposes and use for amenities and recreational areas associated with the storages, detailed in row 1, but not more than a total of 25 ML per year across all sources.</p> <p>2) Authority to take water to the extent provided under the authority listed in Column 1 continued under s1037A (5) sufficient to allow the following conditions to be fulfilled:                      The authorised entity is to make available free of charge:                      (a) a sufficient volume of water, but not more than 7 000 ML a year, to meet the rights to water of licensees authorised under licences issued under part 4 of the repealed Act to take water for irrigation purposes from the Brisbane River between the Wivenhoe Dam and Mt Crosby Weir; and                      (b) a sufficient volume of water to meet the riparian rights of persons under section 36 of the repealed Act relating to any of the sources to which the authority relates; and                      (c) a sufficient volume of water to meet the rights to water of other persons under authorisations under the repealed Act if the authorisations—                      (i) were in force on the commencement of section 15B of the repealed <i>Water Resources Regulation 1999</i>; and                      (ii) relate to any of the sources to which the authority relates.</p>	Bulk Water Supply Authority	Bulk Water Supply Authority	2
	Authority to take water to the extent provided under the authority listed in	Bulk Water	Water Grid	3