

# RIVER MURRAY WATERS.

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No. 98 of 1963.

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 other Waters, and for other purposes.

[Assented to 1st November, 1963.]

**Preamble.**

**W**HEREAS 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 further amending Agreement”) to vary the agreement relating to the River Murray and other waters a copy of which is set out in the First Schedule to the *River Murray Waters Act* 1915-1958, as amended by the agreements copies of which are set out in the Second, Third, Fourth, Fifth and Sixth Schedules to that Act:

AND WHEREAS the fifth further amending Agreement is expressed to be subject to ratification by the Parliament of the Commonwealth and the Parliaments of the said States:

AND WHEREAS it is desirable to ratify and approve the fifth further amending Agreement:

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

1.—(1.) This Act may be cited as the *River Murray Waters Act 1963*. Short title and citation.

(2.) The *River Murray Waters Act 1915–1958\** is in this Act referred to as the Principal Act.

(3.) The Principal Act, as amended by this Act, may be cited as the *River Murray Waters Act 1915–1963*.

2. This Act shall come into operation on a date to be fixed by Proclamation. Commencement.

3. This Act binds the Crown. Act to bind Crown.

4. The fifth further amending Agreement, a copy of which is set out in section six of this Act, is hereby ratified and approved. Ratification of fifth further amending Agreement.

5. Section four of the Principal Act is amended by omitting from the definition of "The Agreement" the words "and Sixth Schedules" and inserting in their stead the words " , Sixth and Seventh Schedules ". Definitions.

6. The Principal Act is amended by adding at the end thereof the following Schedule:— Seventh Schedule.

## THE SEVENTH SCHEDULE.

### THE FIFTH FURTHER AMENDING AGREEMENT.

AN AGREEMENT made the eighth day of October One thousand nine hundred and Sixty-three BETWEEN THE RIGHT HONOURABLE SIR 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 ROBERT JAMES HEFFRON, 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, 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

\* Act No. 46, 1915, as amended by No. 20, 1923; No. 11, 1934; No. 90, 1948; No. 80, 1950; No. 80, 1954; and No. 82, 1958.

THE SEVENTH SCHEDULE—*continued.*

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 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, the second day of November One thousand nine hundred and fifty-four and the eleventh day of September One thousand nine hundred and fifty-eight (in this Agreement respectively referred to as "the first Amending Agreement", "the second Amending Agreement", "the third Amending Agreement", "the fourth Amending Agreement" and "the fifth 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, the fourth Amending Agreement and the fifth 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, the fourth Amending Agreement and the fifth 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, FOURTH AND FIFTH AMENDING AGREEMENTS.

5. Clause 6 of the Principal Agreement is amended by deleting the words "subject clause 44 of this Agreement".

6. Clause 7 of the Principal Agreement is amended by adding the words "or except as provided in sub-clause (8) of clause 51 of this Agreement" at the end of the clause.

7. Clauses 19, 20, 23, 28A, 32, 45 and 50 of the Principal Agreement are amended by substituting the words "Hume Reservoir" for the words "Upper Murray Storage" wherever occurring.

8. Clause 20 of the Principal Agreement is amended by inserting after paragraph (ii) the following new paragraph:—

"(iia) the provision of a storage (in this Agreement referred to as "the Chowilla Reservoir") on the River Murray between Renmark and Wentworth with a capacity of approximately four and three-quarter million acre feet of water and with a roadway along the top of the containing dam (in this Agreement referred to as "the Chowilla Dam") and with provision for vessels drawing four feet six inches of water to pass."

9. Clauses 22 and 27 of the Principal Agreement are amended by substituting for the words "five feet of water" the words "four feet six inches of water" wherever occurring.

10. Clause 25 of the Principal Agreement and its marginal note are omitted and the following clause and marginal note inserted in their stead:—

THE SEVENTH SCHEDULE—*continued.*

" 25 (1) The Commission may, from time to time declare that any of the works referred to in clause 20 of this Agreement have been affected by the construction of the Chowilla Reservoir and have become ineffective for the purposes of this Agreement, whereupon the Commission may forthwith dismantle so much of those works as it thinks fit.

" Maintenance of works".

(2) The Governments of New South Wales, Victoria and South Australia shall each maintain the works constructed by them respectively under this Agreement and keep the same effective for the purpose for which they were respectively designed, with the exception of those works declared to have become ineffective in accordance with this clause".

11. Clause 32 of the Principal Agreement is amended by substituting for the words " Nineteen million seven hundred and fifty thousand pounds " the words " Thirty-six million pounds."

12. Clause 44 of the Principal Agreement and its marginal note are omitted and the following clause and marginal note inserted in their stead:—

" 44. At any time after the commencement of the construction of the Chowilla Dam, the Commission may declare that the Chowilla Reservoir has become effective for the purposes of this Agreement."

" Effectiveness of Chowilla Reservoir."

13. Clause 47 of the Principal Agreement and its marginal note are omitted and the following clause and marginal note inserted in their stead:—

" 47. (1) Until such time as the Chowilla Reservoir is declared to have become effective for the purposes of this Agreement, and except during a period of restriction declared under clause 51 of this Agreement all rights under clauses 45 and 46 of this Agreement shall be subject to provision by each of the States of New South Wales and Victoria from the flow of its tributaries or from its share of the flow of the River Murray at Albury or both of its contribution towards maintaining the share allotted by this Agreement to the State of South Australia, and subject also to sub-clause (1) of clause 50 of this Agreement.

" Limitation of rights under clauses 45, 46 ".

(2) After the Chowilla Reservoir is declared to have become effective for the purposes of this Agreement, and except during a period of restriction declared under clause 51 of this Agreement, when the volume of water in the Chowilla Reservoir is not sufficient to maintain fully the share allotted by this Agreement to the State of South Australia, all rights under clauses 45 and 46 of this Agreement shall be subject to the provision by each of the States of New South Wales and Victoria from the flow of its tributaries or from its share of the flow of the River Murray at Albury or both of its contribution towards maintaining the share allotted by this Agreement to the State of South Australia."

14. Clause 48 of the Principal Agreement and its marginal note are omitted and the following clause and marginal note inserted in their stead:—

" 48. (1) Until such time as the Chowilla Reservoir is declared to have become effective for the purposes of this Agreement, and except during a period of restriction declared under clause 51 of this Agreement, the quantity of water to be allowed to pass in each month for supply to the State of South Australia as set out in clause 49 of this Agreement shall be contributed by the States of New South Wales and Victoria in equal volumes, but these proportions may be varied in any month by agreement between the Commissioners representing the States of New South Wales and Victoria.

" Proportion of waters allotted to South Australia to be contributed by New South Wales and Victoria respectively."

(2) After the Chowilla Reservoir is declared to have become effective for the purposes of this Agreement, and except during a period of restriction declared under clause 51 of this Agreement when the volume of water in the Chowilla Reservoir is not sufficient to maintain fully the share allotted by this Agreement to the State of South Australia the quantity of water required in each month to ensure supply to the State of South Australia under clause 49 of this Agreement shall be contributed by the States of New South Wales and Victoria in equal volumes, but these proportions may be varied in any month by agreement between the Commissioners representing the States of New South Wales and Victoria."

15. Clause 49 of the Principal Agreement and its marginal note are omitted and the following clause and marginal note inserted in their stead:—

" 49. Except as provided in clause 51 of this Agreement, the minimum quantities to be allowed to pass for supply to the State of South Australia at the outlet of the Chowilla Reservoir or the Lake Victoria outlet, as the case may be, shall be one hundred and

" Allowance to South Australia."

THE SEVENTH SCHEDULE—*continued.*

thirty-four thousand acre feet per month during the months of January, February, November and December; one hundred and fourteen thousand acre feet per month during the months of March, September and October; ninety-four thousand acre feet per month during the months of April, May and August; and forty-seven thousand acre feet per month during the months of June and July; but, notwithstanding the provisions of this clause, the Commission may, from time to time, at the request of the Commissioner representing the State of South Australia, vary any of the monthly quantities set out in this clause over a specific period subject to the sum of the quantities passed to the State of South Australia at the outlet of Chowilla Reservoir or the Lake Victoria outlet, as the case may be, at the request of that State for any period of twelve months from June to May inclusive not exceeding one million two hundred and fifty-four thousand acre feet. Monthly quantities in excess of the monthly quantities stated in this clause, or in excess of those last-mentioned monthly quantities as varied by the Commission at the request of the Commissioner representing the State of South Australia, shall not be included for the purpose of computing the annual delivery to the State of South Australia."

16. Clause 50 of the Principal Agreement is amended—

- (a) by inserting the symbols and figure " (1) " at the commencement of the clause;
- (b) by inserting the words and figures " paragraph (ia) and those specified in " before the words and figures " paragraph (vi) "; and
- (c) by adding the following new sub-clause namely:—

" (2) After the Chowilla Reservoir has been declared to have become effective for the purposes of this Agreement, the discharge from the Hume Reservoir and the Chowilla Reservoir shall be regulated to provide a reserve of water in storage for use in dry years, that reserve to be fixed from time to time by the Commission and drawn on at the discretion of the Commission, but the quantity of water so held in reserve shall not be less than two million four hundred thousand acre feet at the thirtieth day of April in any year, of which not less than eight hundred thousand acre feet shall be in the Hume Reservoir unless it is otherwise so decided by the Commission."

17. Clause 51 of the Principal Agreement and its marginal note are omitted and the following clause and marginal note inserted in their stead:—

" Drought."

- " 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—
- (a) prior to the Chowilla Reservoir having been declared to have become effective for the purposes of this Agreement, when the quantity of water held in the Hume Reservoir and the Lake Victoria Storage falls to one million acre feet or less, unless the Commission resolves that it is not necessary to do so; and
  - (b) after the Chowilla Reservoir has been declared to have become effective for the purposes of this Agreement, unless the Commission is satisfied that the quantities of water held in the Hume Reservoir and in the Chowilla Reservoir will not fall below the respective amounts set out in sub-clause (2) of clause 50 of this Agreement by the thirtieth day of April then next ensuing, or unless it 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 Hume Reservoir and the Lake Victoria Storage or the Chowilla Reservoir as the case may be; 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 water under the control of the Commission;
  - (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;
    - (ii) for losses by evaporation, percolation and lockages in the River Murray from Lake Victoria or the Chowilla Reservoir as the case may be, to

THE SEVENTH SCHEDULE—*continued.*

the mouth of the River Murray but not including Lakes Alexandrina and Albert; and

(iii) for dilution in 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 State Contracting Governments.

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 "the water under the control of the Commission" means the aggregate of—

- (a) the water stored in the Hume Reservoir at the time the Commission makes its determination;
- (b) the water stored in the Lake Victoria Storage or the Chowilla Reservoir, as the case may be, 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 Hume Reservoir 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; or
- (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 Hume Reservoir 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) (a) (i) During a declared period of restriction prior to the Chowilla Reservoir having been declared to have become effective for the purposes of this Agreement, 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.

(ii) During a declared period of restriction after the Chowilla Reservoir has been declared to have become effective for the purposes of this Agreement, the available water shall be divided between the State Contracting Governments in equal proportions.

(b) Each of the State Contracting Governments shall be entitled to use each month from the River Murray (exclusive of its tributaries below Albury) its monthly share as ascertained under this clause of the available water, but the quantities used by the States of New South Wales and Victoria may be varied in any month by agreement between the Commissioners representing those States if the variation does not affect the share of the State of South Australia.

(7) The States of 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 a result of contribution by each such tributary.

THE SEVENTH SCHEDULE—*continued.*

(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 of those States shall take additional water to an extent which would prejudice the rights of either of the other States parties to this Agreement.

Notwithstanding anything to the contrary elsewhere contained in this Agreement, in the event of disagreement between the Commissioners representing the States of New South Wales and Victoria as to the quantity of water to be used or as to the manner in which the contribution by the State concerned is to be made the matter shall be determined by the Commission by a majority vote but, if the Commissioners are equally divided, the question shall be decided by the casting vote of the Commissioner representing the Commonwealth of Australia.

(9) (a) The total quantity of water to which the State of South Australia is entitled shall be measured at a point in the River Murray below the confluence of the Rufus River or, at a time to be decided by the Commission after the commencement of the construction of the Chowilla Dam, at a point immediately downstream of that dam.

(b) 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) The States of 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 Hume Reservoir and the Lake Victoria Storage or the Chowilla Reservoir, as the case may be, 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 paragraphs (a) and (b) of sub-clause (6) of this clause.

(12) During any month in a declared period of restriction, if the Commission decides that the flow or prospective flow of the River Murray downstream of its junction with the Great Ana Branch of the Darling River is, or will be, in excess of the sum of—

(a) the quantities which are necessary to supply the allocation to the State of South Australia under sub-clause (6) of this clause; and

(b) any quantities which, in the opinion of the Commission, ought to be impounded in any storage below the said junction controlled by the Commission with the object of filling all such storages at some time before the end of the ensuing June,

the State of South Australia may use that excess in addition to the quantity of water to which it is entitled under sub-clause (6) of this clause.

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

The provisions of clause 50 of this Agreement 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 of this Agreement shall have effect during a declared period of restriction."

18. The heading of Part VIII and clause 54 of the Principal Agreement and the marginal note to that clause are omitted and the following heading, clause and marginal note inserted in their stead:—

" VIII. *Lake Victoria and Chowilla Reservoir Works.*

THE SEVENTH SCHEDULE—*continued.*

" 54. The States of New South Wales and Victoria, so far as they can do so and may be necessary in pursuance of this Agreement, will authorize and facilitate the construction and maintenance by the State of South Australia and the use by the Commission of the Lake Victoria and the Chowilla Reservoir works mentioned and described in this Agreement." " Construction to be facilitated."

19. Clause 58 of the Principal Agreement and its marginal note are omitted and the following clause and marginal note inserted in their stead:—

" 58. If a difference of opinion arises among the Commissioners on any question, not being a question of law or prescribed as formal business, that question, unless the Commissioners concur within two months after submission by a Commissioner of a resolution thereon, shall, as provided in this clause, be referred for decision to an arbitrator, who shall be appointed by the Contracting Governments." " Arbitration."

A Contracting Government may give to the other Contracting Governments written notice to concur in the appointment of an arbitrator and to refer that question to that arbitrator for decision.

If the appointment be not made within two months after the giving of that notice the Chief Justice of the Supreme Court of Tasmania or other the person for the time being discharging the duties of that office may, at the request of that Contracting Government, appoint an arbitrator, who shall have the like powers to act in the reference to decide the question as if he had been appointed by the Contracting Governments.

The decision of an arbitrator appointed to decide the question shall be binding on the Commission and the Contracting Governments and shall be deemed to be the opinion of the Commission."

20. The marginal notes set out in the second column of the Schedule to this agreement are added to, or substituted for the existing marginal notes to, the respective clauses of the Principal Agreement specified in the first column of the said Schedule against which they appear.

## THE SCHEDULE.

Clause of Principal Agreement.	Marginal note to be added or substituted.
28A.	" Protection of catchment of Hume Reservoir "
28B.	" Commission may initiate proposals."
33.	" Apportionment of cost of maintenance."
50.	" Reserves."
60A.	" Reconciliation with Snowy Mountains Agreement."
61.	" Interpretation."

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 SIR ROBERT GORDON MENZIES in the presence of— W. SPOONER, Minister of State for National Development.	}	ROBERT G. MENZIES      (L.s.)
SIGNED SEALED AND DELIVERED by the above-named ROBERT JAMES HEFFRON in the presence of— K. COMMENS.	}	R. J. HEFFRON      (L.s.)
SIGNED SEALED AND DELIVERED by the above-named HENRY EDWARD BOLTE in the presence of— THOMAS F. MORNANE.	}	HENRY E. BOLTE      (L.s.)
SIGNED SEALED AND DELIVERED by the above-named SIR THOMAS PLAYFORD in the presence of— J. C. WHITE.	}	T. PLAYFORD      (L.s.)