

Queensland



**NEW SOUTH
WALES-QUEENSLAND
BORDER RIVERS
AMENDMENT ACT 1993**

Act No. 31 of 1993

Queensland



**NEW SOUTH WALES–QUEENSLAND
BORDER RIVERS AMENDMENT ACT
1993**

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SCHEDULE 2

NEW SOUTH WALES–QUEENSLAND BORDER RIVERS
AGREEMENT 1968

SCHEDULE 3

NEW SOUTH WALES–QUEENSLAND BORDER RIVERS
AGREEMENT 1993

Queensland



**New South Wales–Queensland Border Rivers
Amendment Act 1993**

Act No. 31 of 1993

An Act to amend the *New South Wales–Queensland Border Rivers Act 1946*, and for other purposes

[Assented to 2 June 1993]

The Parliament of Queensland enacts—

Short title

1. This Act may be cited as the *New South Wales–Queensland Border Rivers Amendment Act 1993*.

Commencement

2. This Act commences on a day to be fixed by proclamation.

Repeal of Act

3. The *New South Wales–Queensland Border Rivers Act Amendment Act 1968* is repealed.

Amended Act

4. The *New South Wales–Queensland Border Rivers Act 1946* is amended as set out in this Act.

Replacement of long title

5. Long title—

omit, insert—

South Wales–Queensland Amendment Act 1993, the State of New South Wales, Macintyre and Barwon Rivers, and for other purposes’.

Omission of preamble

6. Preamble—

omit.

Amendment of s.4 (Interpretation)

7.(1) Section 4 (definitions “**Governor**”, “**Person**”, “**Premier**”, “**Prescribed**”, “**The Agreement**” and “**The Schedule**”)—

omit.

(2) Section 4—

insert—

“**agreement**” means the original agreement, as amended by—

- (a) the first amending agreement; and
- (b) the second amending agreement;

“**first amending agreement**” means the agreement a copy of which is set out in Schedule 2;

“**original agreement**” means the agreement a copy of which is set out in Schedule 1;

“**second amending agreement**” means the agreement a copy of which is set out in Schedule 3;’.

Insertion of new heading

8. After section 4—

insert—

‘**AGREEMENTS**’.

Replacement of s.5 (Execution of Agreement)

9. Section 5—

omit, insert—

‘Ratification of agreements

‘5. Each of the following agreements is ratified—

- (a) the original agreement;
- (b) the first amending agreement;

(c) the second amending agreement.

‘Binding effect of agreement

‘5A. While the agreement continues to be binding on the State of New South Wales, it is binding on the State of Queensland.’

Amendment of s.22 (Regulations)

10. Section 22(2) and (3)—

omit.

Omission of s.24 (Water Act to be read subject to the Agreement)

11. Section 24—

omit.

Replacement of Schedule heading

12. Schedule (heading)—

omit, insert—

‘SCHEDULE 1

**‘NEW SOUTH WALES–QUEENSLAND BORDER
RIVERS AGREEMENT 1946**

section 4’.

Insertion of new Schedules 2 and 3

13. After the Schedule—

insert—

‘SCHEDULE 2

‘NEW SOUTH WALES–QUEENSLAND BORDER RIVERS AGREEMENT 1968

section 4

AGREEMENT made the fourth day of November, one thousand nine hundred and sixty-eight BETWEEN THE STATE OF NEW SOUTH WALES of the one part AND THE STATE OF QUEENSLAND of the other part.

WHEREAS the parties hereto have on the twenty-seventh day of November, one thousand nine hundred and forty-six made an Agreement (herein referred to as the Principal Agreement) authorized by the “*New South Wales–Queensland Border Rivers Act, 1947*” and by “*The New South Wales–Queensland Border Rivers Act of 1946*” the terms of which Agreement are set out in the Schedule to each of those Acts.

AND WHEREAS it is desirable to amend the purposes for which the Principal Agreement was made and the terms thereof.

NOW IT IS HEREBY AGREED as follows:—

PART I

1. This Agreement is subject to ratification by the Parliaments of the parties hereto and shall come into effect when ratified by both such Parliaments.

Each of the parties hereto shall take all practicable steps to have this Agreement ratified.

2. The Principal Agreement shall continue to bind the parties thereto subject to the amendments, omissions and substitutions made therein by this Agreement.

PART II

3. New preamble. The preamble to the Principal Agreement being the words from and including the word “WHEREAS” to and including the words “for other purposes” is omitted and the following preamble is inserted in its stead:—

“WHEREAS it is desirable that certain works be constructed on those portions of the Dumaresq, Macintyre and Barwon Rivers which constitute part of the border between the States of New South Wales and Queensland on certain effluents from those rivers and on certain tributaries of the Dumaresq River in both the said States with a view to water conservation, water supply and irrigation in the said States and that certain investigations be made in respect of streams which intersect the said border west of the town of Mungindi with a view to determining the quantities of water which should be available to the said States from such streams and with a view to the provision of works which could be of benefit to the said States by ensuring better distribution of the water in certain of such streams and for other purposes.”

4. Amendments to clause 14. Clause 14 of the Principal Agreement is amended by—

(a) in paragraph (a) omitting the words and numerals “a place downstream of and as close as practicable to the Dumaresq Dam referred to in Clause 16” and inserting in their stead the words “the Mingoola Gauging Station”;

(b) inserting after paragraph (b) the following paragraphs:—

“(c) such of the tributaries of the Dumaresq River upstream of the Mingoola Gauging Station as the Commission deems necessary;

(d) such of the intersecting streams as the Commission deems necessary;”;

(c) re-designating the existing paragraph (c) as paragraph (e) and adding to that paragraph as so re-designated the words “and from the tributaries mentioned in paragraph (c) of this clause”;

(d) omitting the words “such tributary rivers into the Carrier Rivers” where lastly occurring and inserting in their stead the words “rivers,

tributary to the Carrier Rivers, into the Carrier Rivers and from the tributaries mentioned in paragraph (c) of this clause into the Dumaresq River”.

5. Amendments to clause 15. Clause 15 of the Principal Agreement is amended by—

(a) in paragraph (i), omitting the words and numerals “the Dumaresq storage referred to in Clause 16” and inserting in their stead the words “dams comprising the Dumaresq storage or any of them”;

(b) in paragraph (ii), omitting the words “other works referred to in that Clause” and inserting in their stead the words “works on the Carrier Rivers or on effluents therefrom”.

6. New heading to Part III. The Principal Agreement is amended by omitting the words “PART III—WORKS TO BE CONSTRUCTED AND WORKS TO BE TAKEN OVER” and inserting in their stead the words “PART III—FUNCTIONS OF COMMISSION”.

7. New clause 16. The Principal Agreement is amended by omitting clause 16 and inserting in its stead the following clause:—

“16. Functions of Commission. (1) The Commission shall have control of the construction, operation and maintenance of works taken over by it or constructed under this Agreement.

Such works include the weirs known as the Bonshaw, Cunningham, Glenarvon, Goondiwindi, Boomi and Mungindi Weirs and the regulator on the Boomi effluent immediately downstream of its off-take from the Barwon River.

(2) The Commission shall undertake field, laboratory and engineering investigations into—

(a) the provision of storage dams on the Dumaresq River and on its tributaries upstream of the Mungoola Gauging Station with a view to ensuring a regulated flow in the Carrier Rivers and, if practicable, a measure of flood reduction;

- (b) the provision of such weirs on the Carrier Rivers as may be deemed necessary to meet the requirements of users of water along those rivers including diversion of water by gravitation for the purpose of irrigation or water supply;
- (c) the provision of regulators on effluents from the Carrier Rivers with a view to providing a control of flow in and diversions from the Carrier Rivers during periods of flow whether regulated or unregulated;
- (d) the provision of such works in or on the intersecting streams as may be deemed necessary to ensure, for the joint benefit of the parties hereto, a flow of water or an equitable distribution of the flow of water whether regulated or unregulated in those streams;
- (e) the proportions or quantities of water which should be available to each of the parties hereto from the intersecting streams.

(3) The Commission shall, from time to time, report and make recommendations to the Governments of New South Wales and Queensland respectively concerning—

- (a) the construction of works which, as a result of the investigations required of it by subclause (2) of this clause, it deems necessary or desirable;
- (b) the details of the works recommended by it and the estimated cost thereof;
- (c) the regulated supply of water and any amount of flood reduction estimated to result from the works recommended by it;
- (d) the urgency of the need for each work recommended by it;
- (e) in the case of works recommended in or on the intersecting streams where the Commission expects that the supplies of water resulting from such works to the parties hereto will not be substantially equal, the proportions in which the cost of constructing such works should be met by the parties hereto and the manner in which the cost of maintaining and operating the same should be met by the parties hereto;
- (f) the proportions or quantities of water which should be available to each of the parties hereto from the intersecting streams.

(4) Subject to the approval of the parties hereto as to the time of its commencement, its actual storage capacity and the cost to be incurred in its construction the Commission shall, as expeditiously as practicable, cause to be constructed on Pike Creek at a place 4.5 miles upstream from the junction of such creek with the Dumaresq River an earth and rock-fill dam with a capacity of about 200,000 acre feet at a cost presently estimated to be \$14,000,000.

(5) The Commission shall investigate the practicability of constructing, maintaining and operating a dam on the Mole River with a view to meeting the demand for water along the Carrier Rivers in excess of the water available therefor as a result of the construction of the dam (referred to in subclause (4) of this clause) on Pike Creek.

The Commission shall report on such investigation to the Governments of New South Wales and Queensland respectively and shall recommend whether such dam should be constructed or, if it does not recommend such construction, whether any alternative proposal which to the Commission appears more practicable should be adopted.

If the Commission recommends the construction of such dam it shall, in its report, particularize the type, storage capacity and estimated cost of the same and, if it recommends the adoption of any alternative proposal, shall, in its report, particularize the type, storage capacity and estimated cost of the works required by such proposal.

(6) The work of investigating, surveying, designing and constructing works on behalf of the Commission under this Agreement shall be carried out by the Controlling Authorities of New South Wales or of Queensland as arranged by the Commission and approved by the parties hereto.

Unless the Commission, with the approval of the parties hereto, otherwise arranges, any work to be carried out on behalf of the Commission under this Agreement in a State shall be carried out by the Controlling Authority of that State.

A Controlling Authority which has carried out on behalf of the Commission and, where required by this Agreement, with the approval of the parties hereto first had and obtained, work under this Agreement shall be reimbursed by the Commission out of funds paid to it by the parties hereto in accordance with this Agreement.

(7) The Commission may on its own initiative authorize work of maintenance the estimated total cost of which does not exceed \$40,000 but shall not authorize any other work except with the approval of the parties hereto first had and obtained.

(8) Neither party hereto shall unreasonably delay the making of a decision required of it in relation to a recommendation of the Commission for the purposes of this Agreement.

(9) Subject to the approval of the parties hereto as to the time of its commencement and the cost to be incurred in its construction the Commission shall cause to be constructed every work recommended by it pursuant to this clause and approved by the parties hereto.

The Commission shall arrange the carrying out of work approved by the parties hereto as expeditiously as practicable.”

8. New clause 17. The Principal Agreement is amended by omitting clause 17 and inserting in its stead the following clause:—

“17. Operation and maintenance of works. The work of operating and maintaining any works constructed on behalf of or taken over by the Commission shall be carried out by the Controlling Authorities of New South Wales or of Queensland or by the Commission’s own servants as arranged by the Commission.

Unless the Commission otherwise arranges, the work of operating and maintaining—

- (a) the Goondiwindi Weir and Mungindi Weir shall be carried out by the Controlling Authority of the State of Queensland;
- (b) the Boomi Regulator shall be carried out by the Controlling Authority of the State of New South Wales;
- (c) works constructed on behalf of the Commission by the Controlling Authority of a State a party hereto shall, subject to subparagraphs (a) and (b) of this paragraph, be carried out by such Controlling Authority.”

9. Amendment to clause 18. Clause 18 of the Principal Agreement is amended by omitting the words “any work” and inserting in their stead the word “works”.

10. Clauses 19, 20 and 21 deleted. The Principal Agreement is amended by omitting clauses 19, 20 and 21.

11. Amendments to clause 22. Clause 22 of the Principal Agreement is amended by—

(a) in subclause (1), omitting paragraph (a) and re-designating paragraphs (b) and (c) as paragraphs (a) and (b) respectively;

(b) in subclause (2) omitting the words “the general scheme embracing such work and”.

12. New clause 23. The Principal Agreement is amended by omitting clause 23 and inserting in its stead the following clause:—

“23. Powers of Commission to direct work. The Commission shall have power to give, from time to time, all directions it deems necessary or expedient to secure the suitability, durability and proper construction of works to be constructed pursuant to this Agreement, the maintenance of works constructed or taken over by or on behalf of the Commission pursuant to this Agreement, and the due observance of the provisions of this Agreement and in particular, the power to direct with respect to—

(a) the order in time in which works shall be constructed and, subject to subclause (7) of clause 16 of this Agreement, the time when the construction of any works shall be commenced;

(b) the rate of progress of the construction or maintenance of works;

(c) the method and extent of maintenance of works.

The Controlling Authority of each of the parties hereto shall comply with every direction given by the Commission to the extent that such Authority is concerned with the direction in question.”

13. New clause 24. The Principal Agreement is amended by omitting clause 24 and inserting in its stead the following clause:—

“24. Powers of Commission to control the operation of works. The Commission shall have power to give, from time to time, all directions it deems necessary or expedient with respect to—

- (a) the operation and control of works constructed or taken over by or on behalf of the Commission pursuant to this Agreement;
- (b) the control of the storage of water provided by any of such works;
- (c) the times for and rates of discharge of water from the Dumaresq Storage and any other storage of water provided by any of such works;
- (d) the times for and rates of discharge of water past any of such works.

All authorities and persons concerned with a direction given by the Commission shall comply therewith.”

14. Amendment to clause 25. Clause 25 of the Principal Agreement is amended by omitting the words and numerals “referred to in Clause 16” and inserting in their stead the words “which, pursuant to this Agreement,”.

15. Clause 26 deleted. The Principal Agreement is amended by omitting clause 26.

16. Amendments to clause 27. Clause 27 of the Principal Agreement is amended by,—

- (a) in subclause (2),—
 - (i) adding to the general words preceding paragraph (a) the words “but, in relation to the items referred to in paragraph (g) or (h) of this subclause, subject to subclause (3) of this clause”;
 - (ii) omitting paragraph (e) and inserting in its stead the following paragraph:—

“(e) the costs and expenses incurred by each of the parties hereto in carrying out investigations in respect of, and the designing, construction, operation and maintenance of works on behalf of the Commission under this Agreement other than the designing, construction, operation and maintenance of such works in or on the intersecting streams in relation to which the Commission has made a recommendation under paragraph (e) of subclause (3) of clause 16 of this Agreement;”;

(b) adding the following subclause:—

“(3) The costs and expenses of and in connexion with the designing, construction, operation and maintenance of works constructed or to be constructed on behalf of the Commission in or on the intersecting streams in relation to which the Commission has made a recommendation under paragraph (e) of subclause (3) of clause 16 of this Agreement (including the costs and expenses of the items referred to in paragraph (g) or (h) of subclause (2) of this clause incurred or to be incurred in relation to such works and, in the case of an item referred to in the said paragraph (g), subject to the restriction therein contained) shall be paid by the parties hereto in the proportions approved by them as the proper proportions in which the cost of constructing such works should be met or, as the case may be, in which the cost of maintaining and operating the same should be met.”

17. Amendments to clause 28. Clause 28 of the Principal Agreement is amended by—

(a) inserting after the words “paragraphs (a) to (h) inclusive of subclause (2)”, wherever they appear, the words “or in subclause (3);

(b) in subclause (3), omitting the words “one half of the amount of such estimate” and inserting in their stead the words “the proportion of the amount of such estimate required by this Agreement to be paid by the party in question”;

(c) in subclause (4), omitting the words “one half of the amount of such excess” and inserting in their stead the words “the proportion of the amount of such excess required by this Agreement to be paid by the party in question”.

18. Amendment to clause 29. Clause 29 of the Principal Agreement is amended by inserting after the words and numeral “paragraphs (c) to (h) inclusive of subclause (2)”, wherever they appear, the words and numeral “or in subclause (3)”.

19. New clause 33. The Principal Agreement is amended by omitting clause 33 and inserting in its stead the following clause:—

“33. Apportionment of water. (1) (a) Before the creation of the Dumaresq Storage, the daily flow in the Dumaresq River at the Mingoola Gauging Station together with the water available in the weirs along the Carrier Rivers shall, at all times, subject to this Agreement, be available to the parties hereto in equal shares.

(b) After the creation of the Dumaresq storage the quantity of water available each year commencing on the first day of July from the unregulated flow at the Mingoola Gauging Station, from water discharged from the Dumaresq storage as directed by the Commission in accordance with the provisions of paragraph (iii) of subclause (1) of clause 37 of this Agreement and from water stored in weirs along the Carrier Rivers shall, subject to this Agreement, be available to the parties hereto in equal shares.

(c) If at any time in a year the quantity of the unregulated flow at Mingoola Gauging Station exceeds the quantity of such flow required to meet the aggregate entitlements of the parties hereto as determined pursuant to clause 37 of this Agreement in relation to that time, any part of that excess used by either party hereto shall not be part of the entitlement of that party in relation either to that time or to any time later in that year.

(2) (a) If at any time the share of the anticipated available quantity, determined for the time being by the Commission in accordance with clause 37 of this Agreement, available to a party hereto under this Agreement exceeds the requirements of that party the Premiers of the parties hereto may agree that the excess or any part thereof shall, subject to this Agreement, be available to the other party hereto.

(b) Thereupon and so long as the agreement remains in force, but subject to this Agreement,

- (i) the shares of water respectively available to the parties hereto shall be altered to conform to such agreement; and

- (ii) the parties hereto shall bear all payments becoming due and payable in respect of the capital costs incurred (either before or after the date of such agreement) in providing the Dumaresq Storage in the same proportions as they are entitled to share the available water.

(c) The Premiers of the parties hereto may make agreements under this subclause from time to time.

(3) (a) If the Controlling Authority of a party hereto considers that the amount of the share or altered share of water which is available for the time being to that party, as prescribed by subclause (1) or agreed upon under subclause (2) of this clause, will not be sufficient to meet the requirements of that party, the Controlling Authorities of both parties hereto may arrange that the Controlling Authority of the other party hereto make available to the party hereto requiring the same additional water from its share.

Such an arrangement shall not be entered into—

- (i) without the prior consent in writing of the Commission; or
- (ii) in respect of a period other than one year.

(b) Thereupon and during the period for which the arrangement remains in force, but subject to this Agreement, the shares of water respectively available to the parties hereto shall be altered to conform to such arrangement.

(c) The party hereto which acquires the additional water shall make to the other party hereto a payment equal to five per centum of the difference between the following amounts, namely—

- (i) the amount which, at the date the arrangement is entered into, is the proportion to be borne by such party (being the party firstmentioned in this paragraph (c)) of the capital costs incurred in providing the Dumaresq Storage; and
- (ii) the amount which would be the proportion to be borne by such party of the capital costs specified in subparagraph (i) of this paragraph were the parties hereto required to bear those capital costs in proportion to their shares in the water as altered by the arrangement.

(d) The Controlling Authorities may make arrangements under this subclause from time to time.

(4) For the purposes of this clause a certificate signed by the Chairman or Deputy Chairman of the Commission that the amount or amounts stated in the certificate are costs incurred in respect of the capital costs referred to in this clause shall be conclusive evidence of the facts stated therein, and binding accordingly upon the parties hereto.

(5) The entitlement under this clause for the time being of a party hereto to water is subject to loss of water occasioned by natural causes.”

20. New clause 35. The Principal Agreement is amended by omitting clause 35 and inserting in its stead the following clause:—

“35. Diversions upstream of Mingoola Gauging Station. Water diverted by the Controlling Authority of a party hereto or pursuant to a licence, permit, authority or approval granted on behalf of a party hereto from the Dumaresq River and its tributaries upstream of the Mingoola Gauging Station and from the Dumaresq Storage shall be regarded as part of the share of the State in which it is used or in which the land to which it is applied is situated and all such diversions shall be dealt with in the same manner as diversions from the Carrier Rivers.”

21. Amendment to clause 36. Clause 36 of the Principal Agreement is amended by omitting the words and numerals “referred to in clause 16” and inserting in their stead the words “controlled by the Commission under this Agreement”.

22. New clause 37. The Principal Agreement is amended by omitting clause 37 and inserting in its stead the following clause:—

“37. Determination of anticipated available quantity. (1) The Controlling Authority of each of the parties hereto shall, from time to time as and when required by the Commission, supply to the Commission in respect of each year commencing on the first day of July particulars of the supply of water estimated by it to be required by its State at the Mingoola Gauging Station during each calendar month of that year.

The Commission, having regard to—

- (a) such particulars supplied;
- (b) the Commission's anticipation of the requirements of the parties hereto during the ensuing months of the year in question;
- (c) the quantity of water diverted from the Carrier Rivers and from the Dumaresq River and its tributaries upstream of the Mingoola Gauging Station for use by each of the parties hereto during the two consecutive calendar months immediately preceding the calendar month in which the determination required by this clause is to be made by the Commission;
- (d) the quantity of water for the time being stored in the Dumaresq Storage;
- (e) the period of the year;
- (f) the prevailing weather conditions;
- (g) subject to subclause (2) of this clause, such other matters as the Commission considers to be pertinent,

shall, at least once in each year commencing on the first day of July and during each such year as, in the Commission's opinion, is required by the prevailing conditions,—

- (i) determine the anticipated quantity of water available for that year or, as the case may be, the remainder of that year from the unregulated flow at the Mingoola Gauging Station, from water available for discharge from the Dumaresq Storage and from water stored in weirs along the Carrier Rivers; and
- (ii) determine and notify the Controlling Authority of each of the parties hereto of the supply of water available from the anticipated available quantity as determined for the time being for diversion for use by that party until further notification by the Commission under this clause; and
- (iii) direct the rate or rates at which water shall be discharged from the Dumaresq Storage.

(2) In determining the supply of water to which a party hereto is, for any complete year, entitled, the Commission shall not allocate to that party any

part of the supply of water to which that party was entitled in respect of any previous period of time and which was not expended by that party.”

23. New clause 38. The Principal Agreement is amended by omitting clause 38 and inserting in its stead the following clause:—

“38. (1) Restrictions on diversions of water. Whenever the quantity of water, being the flow (whether regulated or unregulated) in the Dumaresq River at the Mingoola Gauging Station is, in the opinion of the Commission,—

- (a) not more than sufficient; or
- (b) less than sufficient,

to meet the requirements for domestic and stock watering purposes, town and railway water supplies and other public purposes usually met from the Dumaresq Storage or the Carrier Rivers the Commission may, from time to time, direct the Controlling Authorities of the parties hereto that all or any diversions from the Dumaresq Storage and the Carrier Rivers—

- (c) in a case to which provision (a) of this subclause relates, for any purpose other than those referred to in the foregoing provisions of this subclause;
- (d) in a case to which provision (b) of this subclause relates, for any purpose,

shall until further direction, cease or be reduced to the extent specified by the Commission.

(2) Whenever, in the opinion of the Commission, the quantity of water taken or to be taken from the Dumaresq Storage or the Carrier Rivers by way of diversions by the Controlling Authority of a party hereto or pursuant to licences, permits, authorities, or approvals granted in the territory of a party hereto exceeds or will exceed the share of water to which that party is for the time being entitled (as prescribed by this Agreement or under any agreement or arrangement made pursuant to clause 33 of this Agreement) the Commission may from time to time direct the Controlling Authority of that party that all or any of such diversions from the Dumaresq Storage or the Carrier Rivers shall, until further direction, be reduced to the extent specified by the Commission.

(3) **Compliance with directions.** The Controlling Authority of a party hereto shall take all steps necessary to give effect to a subsisting direction issued to it by the Commission under this clause and, in particular, shall take all steps necessary to ensure compliance with the direction issued by the Commission by the holders of licences, permits, authorities and approvals to which the direction relates.

(4) In the event of the failure of a holder of a licence, permit, authority or approval to make diversions from the Dumaresq Storage or the Carrier Rivers to comply with a direction issued (whether issued as a consequence of a direction issued under this clause by the Commission or otherwise) to him by the Controlling Authority of a party hereto requiring him to cease, limit or restrict such diversions the Controlling Authority concerned shall, irrespective of its taking any other action to enforce his compliance, cancel or suspend (as it sees fit) the licence, permit, authority or approval in question.

(5) Each of the parties hereto shall invest its Controlling Authority with all powers necessary to enable it to fulfil its obligations under subclauses (3) and (4) of this clause.”

24. New clause 39. The Principal Agreement is amended by omitting clause 39 and inserting in its stead the following clause:—

“39. Height of water in and flow of water past weirs and regulators.

(1) The Commission may from time to time determine the maximum height to which water may be held upstream of each of the weirs and regulators controlled by the Commission under this Agreement and all such determinations shall be observed by the Controlling Authority carrying out the work of operating the weir or regulator in question as provided for by or arranged under clause 17.

(2) The Commission having regard to—

- (a) the requirements along the full length of the Carrier Rivers;
- (b) the diversion from the part of the Carrier Rivers upstream of each weir and regulator; and
- (c) losses of water along the Carrier Rivers and whilst impounded by the weirs and regulators controlled by the Commission under this

Agreement,

may direct what proportions of the regulated or unregulated flow shall be allowed to pass each weir and regulator controlled by the Commission under this Agreement and all such directions shall be carried out by the Controlling Authority carrying out the work of operating the weir or regulator in question as provided for by or arranged under clause 17.”

25. Amendments to clause 41. Clause 41 of the Principal Agreement is amended by—

(a) omitting the words “regulated flow from the Dumaresq Storage” and inserting in their stead the words “flow in the Dumaresq River at the Mingoola Gauging Station”;

(b) adding the words “plus all adjustments necessary on account of losses of water (referred to in clause 36) which have occurred prior to its reaching the said point”.

26. New clause 42. The Principal Agreement is amended by omitting clause 42 and inserting in its stead the following clause:—

“42. Diversion of water tributary to Carrier Rivers. (1) Each of the parties hereto shall, subject to subclause (2) of this clause, have full right and liberty, as it deems fit, to conserve and to divert and use and to authorize the diversion and use of the waters of all rivers within its territory tributary to the Carrier Rivers downstream of the Mingoola Gauging Station and to cause the whole or any part of such waters to flow into and along the Carrier Rivers or any part thereof and, subject to losses being taken into account as provided by clause 36 of this Agreement, to divert and authorize the diversion from the Carrier Rivers at any point upstream or downstream of the point of entry of such tributary waters into the Carrier Rivers of a quantity of water equal to the quantity of water caused to flow into and along any part of the Carrier Rivers as aforesaid and to use and authorize the use of water so diverted for any purpose and the water so diverted shall not be treated as part of the water to be shared by the parties hereto under this Agreement.

(2) Where, purportedly under the authority of subclause (1) of this

clause, it is proposed to divert water from the Carrier Rivers at a point upstream of the point of entry into the Carrier Rivers of the tributary waters to which the diversion is referable such diversion shall not be made by or on behalf of a party hereto or by or on behalf of any person under authority granted by a party hereto unless such diversion and the use of the water so diverted does not in the opinion of the Commission prejudice the rights of the other party hereto to water in the Carrier Rivers at the point of diversion or downstream thereof.

(3) Where the tributary contribution to the Carrier Rivers of a party hereto exceeds that party's requirements for any period of time of water at points downstream of the point of entry into the Carrier Rivers of such tributary waters the Commission may, with the consent of that party, make the excess available to satisfy the requirements of water of the other party hereto if those requirements would have to be satisfied otherwise by discharge of water from the Dumaresq Storage."

27. Amendments to clause 43. Clause 43 of the Principal Agreement is amended by—

(a) omitting the words "Dumaresq Storage" where those words firstly appear and inserting in their stead the words "Mingoola Gauging Station";

(b) omitting the words "that storage" and inserting in their stead the words "that station".

28. Amendments to clause 44. Clause 44 of the Principal Agreement is amended by—

(a) in paragraph (a), inserting after the words "Dumaresq River" the words "upstream of the Mingoola Gauging Station";

(b) omitting paragraph (b) and inserting in its stead the following paragraph:—

"(b) shall in each calendar month subsequent to the calendar month in which the return referred to in the preceding paragraph (a) is supplied supply to the Commission a return containing such particulars as the Commission may require of all additional licences, permits, authorities or approvals to divert water from the

Border Rivers and from the tributaries of the Dumaresq River upstream of the Mingoola Gauging Station granted in its State during the preceding calendar month;”

(c) omitting paragraphs (c) and (d) and inserting in their stead the following paragraph:—

“(c) shall in each calendar month subsequent to the month in which the return referred to in paragraph (a) of this clause is supplied supply to the Commission a return in relation to all licences, permits, authorities and approvals to divert water theretofore notified to the Commission under paragraph (a) or (b) of this clause containing such particulars as the Commission may require of the cancellation, suspension or lapsing of the same or any of them which has occurred, in the case of the first such return, since the date to which the return supplied under paragraph (a) of this clause was compiled and, in the case of each subsequent such return, since the date to which the return last made under paragraph (b) of this clause was compiled.”

29. Amendment to clause 45. Clause 45 of the Principal Agreement is amended by omitting the words “Dumaresq Storage” where those words firstly appear and inserting in their stead the words “Mingoola Gauging Station”.

30. New clause 50. The Principal Agreement is amended by omitting clause 50 and inserting in its stead the following clause:—

“**50. Marginal and other notes.** The marginal and other notes placed opposite or in and at the beginning of the several clauses or subclauses of this Agreement purporting to indicate the contents or objects of such clauses or subclauses respectively shall not be taken as part of this Agreement or in any manner affect the construction of this Agreement or of any provision of this Agreement.”

31. New clause 50A. The Principal Agreement is amended by inserting after clause 50 the following clause:—

“50A. Watershed of Dumaresq River, &c. For the purposes of this Agreement the Dumaresq River and its tributaries upstream of the Mingoola Gauging Station include every stream within the watershed of the Dumaresq River upstream of that station.”

32. Amendments to clause 51. Clause 51 of the Principal Agreement is amended by—

(a) in the definition “Border Rivers”,

- (i) omitting the word “Severn”;
- (ii) adding the words “the actual border for the purposes of this Agreement being the median line of the river in question”;

(b) omitting the definition “Carrier Rivers” and inserting in its stead the following definition:—

“ “Carrier Rivers” means the parts of the Dumaresq, Macintyre and Barwon Rivers constituting part of the boundary between New South Wales and Queensland and located between the Mingoola Gauging Station and the point where the Barwon River reaches the twenty-ninth parallel of south latitude.”;

(c) inserting after the definition “Diversion” the following definition:—

“ “Dumaresq Storage” means the storage and basin or basins which at the relevant time are provided by any dam or dams constructed under this Agreement on Pike Creek or on the Dumaresq River upstream of the Mingoola Gauging Station or on a tributary of that river upstream of that station.”;

(d) inserting after the definition “Governor” the following definition:—

“ “Intersecting Streams” means the Moonie, Bokhara, Narran, Culgoa, Ballandool, Warrego and Paroo rivers and the effluents and tributaries thereof and any stream or watercourse which forms part of the Darling River drainage system and crosses the New South Wales–Queensland border west of the town of Mungindi.”.

IN WITNESS WHEREOF the Premiers of the States of New South Wales and Queensland have hereunto set their hands the day and year first hereinbefore written.

SIGNED SEALED and DELIVERED)
 by The Honourable ROBIN WILLIAM)
 ASKIN the Premier of the State of New) R.W. ASKIN
 South Wales for and on behalf of that)
 State in the presence of—) L.S.

G.M. GRAY

SIGNED SEALED and DELIVERED)
 by The Honourable JOHANNES BJELKE-)
 PETERSEN the Premier of the State of) J. BJELKE-PETERSEN
 Queensland for and on behalf of that)
 State in the presence of—) L.S.

KEITH SPANN

‘SCHEDULE 3

‘NEW SOUTH WALES–QUEENSLAND BORDER RIVERS AGREEMENT 1993

section 4

AN AGREEMENT made on 15 March 1993 between **THE STATE OF NEW SOUTH WALES** and **THE STATE OF QUEENSLAND**.

WHEREAS—

- (a) an agreement was made between the States on 27 November 1946 (the “**original agreement**”) that was approved and ratified under—
 - (i) the New South Wales–Queensland Border Rivers Act, 1947 of the State of New South Wales; and
 - (ii) the *New South Wales–Queensland Border Rivers Act 1946* of the State of Queensland; and
- (b) an agreement amending the original agreement was made between the States on 4 November 1968 (the “**amending agreement**”) that was approved and ratified under—
 - (i) the New South Wales–Queensland Border Rivers (Amendment) Act, 1968 of the State of New South Wales; and
 - (ii) the *New South Wales–Queensland Border Rivers Act Amendment Act 1968* of the State of Queensland; and
- (c) the States desire to make further amendments of the original agreement as amended by the amending agreement.

NOW IT IS AGREED as follows—

PART 1—PRINCIPAL AGREEMENT

Definition

1. In this agreement—

“**principal agreement**” means the original agreement as amended by the amending agreement.

Binding of States

2. The principal agreement continues to bind the States subject to the amendments of the principal agreement made by this agreement.

PART 2—RATIFICATION OF AGREEMENT

Ratification

3.(1) This agreement—

- (a) is subject to ratification by the Parliaments of the States; and
- (b) comes into effect when so ratified.

(2) Each State is to take all practicable steps to have this agreement ratified.

PART 3—AMENDMENT OF PRINCIPAL AGREEMENT

Amended agreement

4. The principal agreement is amended as set out in this agreement.

Amendment of preamble

5. Preamble (after ‘streams’ (last occurring))—

insert ‘and that certain investigations be made in respect of groundwater resources associated with the Carrier Rivers with a view to determining the proportions or quantities of groundwater that should be available to the States from those resources’.

Insertion of new cl. 14A

6. After clause 14—

insert—

‘14A. Monitoring of groundwater. (1) The Commission must arrange for the construction, maintenance, operation and control of an effective system of monitoring groundwater.

‘(2) Each of the States must, through its Controlling Authority—

- (a) record the matters it is directed by the Commission to record; and
- (b) supply to the Commission the particulars the Commission from time to time requires;

relating to monitoring carried out under subclause (1).

‘(3) Any costs or expenses incurred by a party under subclause (2) are to be borne by the Commission.’.

Amendment of cl. 15 (Certain powers and duties of Commission)

7.(1) After clause 15(a)—

insert—

- ‘(b)** may from time to time so far as may be necessary for giving effect to this agreement determine any part of the groundwater area to be a zone;’.

(2) Clause 15(b)—

redesignate as clause 15(c).

Amendment of cl. 16 (Functions of Commission)

8.(1) Clause 16(2)—

omit ‘laboratory and engineering investigations’,

insert ‘laboratory, engineering and hydrogeological investigations’.

(2) Clause 16(2)(e)—

omit ‘streams.’, *insert* ‘streams;’.

(3) After clause 16(2)(e)—

insert—

‘(f) the carrying out of works on the Carrier Rivers for river improvement purposes;

(g) in relation to groundwater—

(i) its occurrence, quantity and quality; and

(ii) its potential for use, contamination or pollution; and

(iii) its interaction with surface water resources.’.

(4) Clause 16(3)(f)—

omit ‘streams.’, *insert* ‘streams;’.

(5) After clause 16(3)(f)—

insert—

‘(g) the proportions or quantities of groundwater in any zone which should be available to each of the parties;

(h) the interaction of surface water and groundwater in any zone.’.

Amendment of cl. 28 (Estimates of Expenditure)

9. Clause 28(2)—

omit ‘in the month of March in each year commencing with the month of March immediately preceding the expiration of the first period’,

insert ‘, at such times in each year as may be agreed upon from time to time between the Commission and the parties.’.

Replacement of heading to Part V (DISTRIBUTION AND USE OF WATERS)

10. Heading to Part V—

omit, insert—

‘PART V—DISTRIBUTION AND USE OF SURFACE WATERS’.

Amendment of cl. 33 (Apportionment of water)

11. Clause 33(1)(b)—

omit ‘each year commencing on the first day of July’,

insert ‘each water year’.

Amendment of cl. 37 (Determination of anticipated available quantity)

12. Clause 37(1) (wherever occurring)—

omit ‘each year commencing on the first day of July’,

insert ‘each water year’.

Insertion of new Part VA—

13. After clause 42—

insert—

‘PART VA—GROUNDWATER

‘42A. Determinations relating to groundwater. (1) The Controlling Authority of a State must take the steps it considers necessary to give effect to any determination made by the Government of the State in respect of any matter relating to the proportions or quantities of groundwater available to the State.

‘(2) A determination of a Government under subclause (1) must be made following receipt by it of recommendations of the Commission

concerning a matter mentioned in clause 16(3)(g).

‘(3) Each of the States must confer on its Controlling Authority the powers necessary to enable it to fulfil its obligations under this clause.

‘**42B. Use of groundwater.** Subject to this agreement, each of the States may use the groundwater to which it is entitled under this agreement for such purposes as it may determine.’.

Insertion of new cl. 45A

14. After clause 45 (in Part VI)—

insert—

‘**45A. Statements relating to groundwater.** (1) The Controlling Authority of each State must—

- (a) at least once in each water year; and
- (b) otherwise from time to time as and when required by the Commission;

give to the Commission a written statement under this clause.

‘(2) The statement must—

- (a) contain such particulars relating to groundwater as are required by the Commission; and
- (b) relate to such periods as are specified by the Commission.

‘(3) The particulars relating to groundwater that may be required by the Commission include particulars of the quantities of groundwater taken from any zone.’.

Amendment of cl. 51

15.(1) Clause 51 (after the definition “**Governor**”)—

insert—

‘ “**Groundwater**” means water occurring—

- (a) in a geological structure or formation; or
- (b) in an artificial landfill;

under the surface of the ground in the groundwater area, excluding water from a formation in the Great Artesian Basin.

“Groundwater Area” means the area comprising—

- (a) part of the State of New South Wales; and
- (b) part of the State of Queensland;

overlying alluvium containing groundwater associated with the Carrier Rivers.’.

(2) Clause 51 (after the definitions **“River”** and **“Tributary”**)—

insert—

“Water Year” means—

- (a) the period—
 - (i) beginning on the first 1 July occurring after this definition comes into effect; and
 - (ii) ending on 30 September of the year after the year in which the period begins; or
- (b) the period of 12 months beginning at the end of the period to which paragraph (a) applies and each successive period of 12 months; or
- (c) any other period of 12 months fixed, for the purposes of this paragraph, by the Controlling Authorities of the States and approved by the Commission.

“Zone” means any part of the groundwater area determined by the Commission to be a zone.’.

IN WITNESS OF WHICH the Premiers of the States of New South Wales and Queensland have to this Agreement set their hands and seals on the date first written above

SIGNED SEALED AND DELIVERED

by The Honourable John Joseph Fahey
the Premier of the State of New South Wales for
and on behalf of that State in the presence
of—

JOHN FAHEY

R.B. WILKINS

SIGNED SEALED AND DELIVERED

by The Honourable Wayne Keith Goss
the Premier of the State of Queensland for
and on behalf of that State in the presence
of—

WAYNE GOSS

E. CASEY