

SCHEDULE F PROTOCOL**ADJUSTING CAPS ON DIVERSIONS FOR ENVIRONMENTAL ENTITLEMENTS AND USES****1. AUTHORISING PROVISION**

This Protocol is made under clause 10(1) of Schedule F.

2. PURPOSE

The purpose of this Protocol is to prescribe:

- (a) procedures for adjusting long-term diversion caps and annual diversion targets established under Schedule F, after environmental entitlements are created, transferred or used; and
- (b) associated monitoring and reporting requirements.

3. DEFINITIONS AND INTERPRETATION

- (1) Expressions defined in the Schedule F to the Agreement (including its Appendices) and the Living Murray Business Plan have the same meaning in this Protocol.

- (2) In this Protocol:

allocation means the volume of water allocated for use under an entitlement in any water year (as defined in clause 2 of Schedule F) created under the law of a State;

annual diversion target has the same meaning as in Schedule F;

Cap Adjustment means the volume subtracted from an annual diversion target in respect of a designated river valley, in accordance with clause 5 of this Protocol;

Cap Register means the Register maintained by the Commission, as required by sub-clause 13(7) of Schedule F;

designated river valley has the same meaning as in Schedule F;

Diversion Formula Register has the same meaning as in Schedule F;

environmental entitlement means a defined, continuing entitlement to water to be used for environmental purposes, created under the law of a State;

environmental use means the use of water diverted, released or provided for an environmental purpose;

long-term diversion cap for a designated river valley has the same meaning as in clauses 5 to 9 of Schedule F;

non-environmental entitlement means any entitlement created under the law of a State that is not an environmental entitlement;

non-environmental use means the use of water for a purpose other than an environmental purpose;

Water Audit Monitoring Report means an annual Report on diversions and annual diversion targets prepared and published by the Commission under clause 13(5) to (6) of Schedule F.

4. APPLICATION

This Protocol applies to the development and use of, and monitoring and reporting in relation to, long-term diversion caps and annual diversion targets.

5. CAP ADJUSTMENTS FOR ENVIRONMENTAL ENTITLEMENTS AND USE

- (1) After this Protocol is made, the Commission and a State annually must adjust each annual diversion target calculated under clause 12(1) of Schedule F for any water year by subtracting the Cap Adjustment, determined in accordance with the following formula:

$$\text{Cap Adjustment} = A + B + C + D - E$$

Where

- A = an estimate of the component of the calculated annual diversion target that relates to environmental uses included in the baseline conditions;
- B = an estimate of the component of the annual diversion target that represents any non-environmental entitlement included as part of the baseline conditions but which subsequently has been converted to an environmental entitlement;
- C = an estimate of the component of the annual diversion target that represents water savings which have been converted to an environmental entitlement;
- D = an estimate of any environmental use of a non-environmental allocation;
- E = an estimate of any non-environmental use of an environmental allocation,

and components A to E are estimated in accordance with this clause 5.

- (2) Components A, B and C of the Cap Adjustment must not include any environmental use or environmental entitlement that has subsequently been converted to a non-environmental entitlement;
- (3) Before calculating a Cap Adjustment under sub-clause 5(1), a State must seek and obtain the Commission's approval of that State's proposed method for estimating components A, B and C of the Cap Adjustment.
- (4) A State may propose to the Commission one or more of the following methods for estimating components A, B and C of the Cap Adjustment:

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- (a) to estimate a component by:
 - (i) a constant annual volume;
 - (ii) the total volume of allocations made to environmental entitlements;
 - (iii) the total volume of environmental uses;
 - (b) to amend an analytical model developed by that State under sub-clause 11(2) of Schedule F in order to exclude the component from the calculation;
or
 - (c) to use any other method that the State considers appropriate.
- (5) In order to preserve, as far as possible, environmental uses and environmental entitlements to water, the Commission must, when deciding whether to approve a method proposed by a State:
- (a) in relation to an estimate of component A of the Cap Adjustment, compare the volume of the adjustment with both the environmental use under baseline conditions and the expected future use of the environmental entitlement;
 - (b) in relation to an estimate of component B of the Cap Adjustment, compare the volume of the adjustment with the expected future use of the environmental entitlement;
 - (c) in relation to an estimate of component C of the Cap Adjustment, compare the average volume of the reduction in losses with the expected future use of the environmental entitlement;
 - (d) in relation to an estimate of component A, B or C of the Cap Adjustment, consider
 - (i) the reliability of supply for other users;
 - (ii) the preservation of the downstream flow regime;
 - (iii) the cost of monitoring and reporting required in accordance with clause 8 of this Protocol;
 - (iv) whether the proposed method is both simple and easy to understand;
and
 - (v) any other factor that the Commission considers relevant; and
 - (e) in relation to any proposed analytical model or proposed modification to an analytical model, consider the matters that the Commission must consider under sub-clause 11(5) of Schedule F.

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- (6) The Commission may request a State to provide any information which the Commission considers may assist it in implementing the requirements of sub-clause 5(5).
- (7) A State must comply with any request made by the Commission under sub-clause 5(6).
- (8) After considering the matters set out in sub-clause 5(5), the Commission may:
 - (a) approve a proposed method;
 - (b) approve the proposed method with amendments; or
 - (c) refuse to approve the proposed method.
- (9) An estimate of component D of the Cap Adjustment must be equal to the sum of the products of:
 - (a) the volume of each allocation transferred to an environmental use; and
 - (b) the appropriate Cap transfer rate specified in Table 1 of the Protocol to Schedule E entitled "Calculating Cap Adjustments".
- (10) An estimate of component E of the Cap Adjustment must be equal to the sum of the products of:
 - (a) the volume of each allocation transferred to a non-environmental use, and
 - (b) the appropriate Cap transfer rate specified in Table 1 of the Protocol to Schedule E entitled "Calculating Cap Adjustments".

6. **COMPARING DIVERSIONS WITH ANNUAL DIVERSION TARGETS**

- (1) After this Protocol is made, a State Government when determining compliance with an annual diversion target under sub-clause 13(2) of Schedule F, must ensure that the diversion figure that is compared with the annual diversion target:
 - (a) does not include any environmental use; and
 - (b) includes every non-environmental use of environmental allocations.
- (2) The Commission when maintaining the Cap Register under sub-clause 13(7) of Schedule F, must ensure that the figure for actual annual diversions that is used to calculate the cumulative difference between actual annual diversions and annual diversion targets:
 - (a) does not include any environmental use; and
 - (b) includes every non-environmental use of environmental allocations.

7. DETERMINING WHETHER A SPECIAL AUDIT IS REQUIRED

The Commission, when determining under sub-clause 16(c) of Schedule F whether a Special Audit is required for a designated river valley, must subtract from the average annual diversion determined under paragraph 11(4)(e) of Schedule F, the outcome of dividing the total Cap Adjustments made to the annual diversion target for the valley under this Protocol by the number of years for which data is recorded on the Cap Register for the valley.

8. MONITORING AND REPORTING

(1) For the purposes of this clause,

consumptive environmental use means use for an environmental purpose that involves diverting water from, or using water away from, the source of the water;

net consumptive environmental use means the total volume of a consumptive environmental use, less any return flow from that use to the source of the water;

non-consumptive environmental use means use for an environmental purpose that is not a consumptive use.

Example: an in-stream use for the purpose of a fish ladder is a non-consumptive environmental use.

(2) In addition to the information required to be reported under clause 13 of Schedule F, each State must monitor and report to the Commission on the following matters for each designated river valley:

- (a) the total volume of environmental uses, comprising separate information for:
 - (i) consumptive environmental uses;
 - (ii) net consumptive environmental uses; and
 - (iii) non-consumptive environmental uses;
- (b) each Cap Adjustment made under sub-clause 5(1) of this Protocol;
- (c) where an environmental entitlement has been created from water previously not included in an annual diversion target:
 - (i) the nominal volume of the entitlement created; and
 - (ii) the actual volume of water available for use under the environmental entitlement;
- (d) the total volume of any environmental allocation transferred for use in a designated river valley other than the designated river valley in which the relevant environmental entitlement was created.

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- (3) The Commission must:
 - (a) incorporate into the Cap Register; and
 - (b) publish in its annual Water Audit Monitoring Report, the information supplied by the States under sub-clause 8(2).
- (4) The Commission must report to a State any Cap Adjustment relevant to that State that is calculated by the Commission under this Protocol.