



ANNO QUARTO

GEORGI VI REGIS.

A.D. 1940.

No. 13 of 1940.

An Act to authorize the construction of a water main from Morgan to Whyalla, to ratify an Agreement made between the Commissioner of Waterworks and The Broken Hill Proprietary Company Limited relating to the supply of water from the River Murray to the Company at Whyalla, to enact certain provisions relating to the sale and supply of water by the said Company, and for other purposes.

[Assented to 3rd October, 1940.]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows :

- Short title.** **1.** This Act may be cited as the “Northern Areas and Whyalla Water Supply Act, 1940”.
- Commence-
ment.** **2.** This Act shall come into operation on a day to be fixed by the Governor by proclamation.
- Incorporation.** **3.** This Act is incorporated with the Waterworks Act, 1932-1936, and that Act and this Act shall be read as one Act.
- Interpretation.** **4.** In this Act—
- “the Company” means the company incorporated in the State of Victoria under the name of The Broken Hill Proprietary Company Limited and its successors and assigns :
- “the Agreement” means the agreement set out in the schedule to this Act.

5. The Commissioner of Waterworks may construct and maintain—

Construction of Morgan-Whyalla pipe line and works.

(a) a pipe line from a point at or near Morgan to a point at or near Whyalla for the purpose of supplying water drawn from the River Murray to Whyalla and to other towns and areas which can conveniently be supplied with water from the said pipe line :

(b) any pumping stations, reservoirs, dams, buildings, structures and other works and equipment which he deems it expedient to construct and maintain in connection with the supply of water by means of the said pipe line.

6. (1) The Agreement is hereby ratified and approved.

Ratification of Agreement.

(2) The Commissioner of Waterworks may in addition to exercising any of the powers conferred upon him by section 5 of this Act, construct and maintain any other works and equipment, and do any other act or thing which he deems it expedient to construct, maintain or do for the purpose of enabling him to carry out his obligations under the Agreement.

7. (1) The Commissioner may, at his discretion, charge the Company a price lower than that fixed in the Agreement for any water, above three hundred and forty million gallons in any year of supply, which the Company may require for, or by reason of the establishment or carrying on of any new industries at Whyalla, or for or by reason of the extension of existing industries at Whyalla: Provided that if the Commissioner pursuant to this subsection sells to the Company at a price lower than that fixed in the Agreement any water required for the establishment or carrying on of new industries by any person other than the Company or for the extension of existing industries by any person other than the Company the Company shall make in the rates or prices charged to that person a reduction corresponding to the concession in price granted to the Company.

Supply of water at reduced price for new industries.

(2) In this section " year of supply " means year of supply as defined in the Agreement.

8. (1) Where any person (in this section called " the applicant "), other than the Company, desires a supply of water within the Whyalla Water District for or by reason of the establishment or carrying on by the applicant of any new industries at Whyalla, or for or by reason of the extension of

Supply of water at reduced prices to persons other than the Company.

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existing industries by the applicant at Whyalla, at rates or prices lower than those for the time being charged by the Company, the applicant may apply to the Company for a supply at reduced rates.

(2) If the Company does not grant the application, it shall inform the Commissioner thereof and the Commissioner may, at his discretion, charge the Company a price lower than that fixed in the Agreement for such quantity of water as the Commissioner considers should be supplied to the applicant at reduced rates ; and in such a case the Company shall make in the rates or prices charged to the applicant for water, a reduction corresponding to the reduction in price granted by the Commissioner to the Company: Provided that the Commissioner shall not charge the Company a price lower than that fixed in the Agreement, except for water supplied to the Company in excess of three hundred and forty million gallons in any year of supply.

Supply of
water by the
Company.

9. (1) The Governor may by proclamation declare that any area defined or described in the proclamation and consisting of land in or near Whyalla shall be the Whyalla Water District and may from time to time by proclamation revoke or vary any such proclamation.

(2) The Company may supply water to consumers within the Whyalla Water District.

Application of
Waterworks
Act to
Company.

10. (1) Subject to this section, the Company may, within the Whyalla Water District, exercise any of the rights, powers and privileges conferred upon the Commissioner of Waterworks by Parts III., IV., V. and VIII. of the Waterworks Act, 1932-1936, and those Parts of that Act shall, except as provided in this section, apply to the Company and other persons in the Whyalla Water District—

(a) as if every reference in the said Parts to the Commissioner or the Engineer-in-Chief were a reference to the Company :

(b) as if the Whyalla Water District were a water district within the meaning of that term as used in the said Act.

(2) The Governor may by regulation—

(a) modify or alter any provision of the Waterworks Act, 1932-1936, so far as it applies in relation to the Whyalla Water District pursuant to this section, and in such a case the modified or altered provision shall apply in relation to the said District :

(b) declare that any provision of the Waterworks Act, 1932-1936, shall not apply in relation to the Whyalla Water District :

(c) revoke or vary any regulation for the time being in force under this section.

(3) Sections 7 and 8, subsection (3) of section 26, sections 27, 31a, subsection (3) of section 86, sections 100, 101, 110, 119a, 121 and 122 of the Waterworks Act, 1932-1936, shall not apply in relation to the Whyalla Water District.

(4) Instead of assessing any land or premises and declaring and recovering water rates thereon as provided in Part V. of the Waterworks Act, 1932-1936, the Company may sell water to the owner or occupier of such land or premises on terms mutually agreed upon between the Company and such owner or occupier.

(5) The Company shall at intervals of not more than three years submit to the Commissioner of Waterworks for his approval the scales or amounts of all rates or prices which it intends to charge for water within the Whyalla Water District, and shall not be entitled to recover from any person, in respect of water supplied or to be supplied, any money in excess of a sum computed on the basis of rates or prices approved by the said Commissioner : Provided that—

(a) the Commissioner shall not refuse his approval to any rates or prices intended to be charged by the Company for any water if such rates or prices are not more than the cost of the water to the Company, plus the cost incurred by the Company in delivering the water to consumers :

(b) for purposes of this proviso the cost of any water to the Company shall be the price which would be payable by the Company for that water under the scale set out in clause 7 of the Agreement, assuming that the Company were not liable for a minimum annual payment :

(c) for purposes of this proviso the cost incurred by the Company in delivering any water shall be ascertained by the Auditor-General from time to time and shall be the actual cost, if known at the time when the Commissioner's approval is sought, and if that cost is not then known, an estimate shall be made based on the actual cost previously incurred by the Company, and the amount estimated shall be deemed to be the cost :

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(d) the certificate of the Auditor-General as to any such cost as mentioned in paragraph (c) of this proviso shall be conclusive.

Financial
provision.

11. The moneys required for the purpose of enabling the Commissioner to perform his duties and exercise his powers and functions under this Act shall be paid out of moneys provided by Parliament for that purpose.

Repeal of s. 4 of
Broken Hill
Proprietary
Company's
Indenture Act,
1937.

12. Section 4 of the Broken Hill Proprietary Company's Indenture Act, 1937, is repealed.

In the name and on behalf of His Majesty, I hereby assent to this Bill.

C. M. BARCLAY-HARVEY, Governor.

SCHEDULE.

This Agreement made on the nineteenth day of August nineteen hundred and forty between The Commissioner of Waterworks (being the body corporate continued in existence by the Waterworks Act, 1932-1936 of South Australia) of the one part, and The Broken Hill Proprietary Company Limited (a company incorporated in the State of Victoria and having its registered office in Victoria at 422 Little Collins Street Melbourne) and its successors and assigns of the other part :

WHEREAS the said Company has established certain industries at Whyalla in the State of South Australia and for the purposes of those industries and for future developments which may be undertaken requires more water than is at present available, and is willing to purchase water from the said Commissioner on the terms set out in this Agreement :

AND WHEREAS the said Commissioner intends to lay down a pipe line and construct other works for the purpose of providing at Whyalla a supply of water drawn from the River Murray, and is willing to sell water to the Company on the terms set out in this Agreement :

NOW THIS AGREEMENT WITNESSETH that the parties hereto agree with each other as follows :—

1. In this Agreement—

Interpretation.

“ the commencing day ” means the day on which the Commissioner commences to deliver water in fulfilment of his obligations under this Agreement :

“ the Commissioner ” means the body corporate continued in existence by the Waterworks Act, 1932-1936 of South Australia under the name of “ The Commissioner of Waterworks ” :

“ the Company ” means the company incorporated in the State of Victoria under the name of The Broken Hill Proprietary Company Limited and its successors and assigns :

“ the State ” means the State of South Australia :

“ waterworks ” includes pipes, pumps, reservoirs, dams, and other works, plant and equipment required for the supply of water :

“ year of supply ” means period of twelve months commencing on the commencing day or on any anniversary thereof.

2. (1) The clauses of this Agreement, other than clauses 1 and 2 thereof, shall have no force or effect until the Act referred to in subclause (2) of this clause comes into operation ; but when the said Act comes into operation, the whole of this Agreement shall forthwith become binding.

Agreement
subject to
ratification.

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(2) The Commissioner shall as early as practicable after the execution of this Agreement introduce or cause to be introduced into the Parliament of the State a Bill for an Act to authorize and ratify this Agreement and to provide for carrying it fully into operation.

Term of Agreement.

3. Subject to clause 11 hereof, this Agreement shall remain in operation until the expiration of thirty years calculated as from the commencing day.

Commencement of obligation to deliver water.

4. (a) The Company shall give the Commissioner not less than three years written notice of the day on which it requires the Commissioner to commence delivery of water under this Agreement; and the obligation of the Commissioner so to deliver water shall commence on that day or some other day mutually agreed on: Provided that the Commissioner shall not be liable for any failure to commence delivery on the day so notified or agreed, if that failure is due to causes beyond his control such as—

(a) war; or

(b) inability of the Government of South Australia to obtain finance after making all reasonable efforts to do so; or

(c) inability of the said Government, after making all reasonable efforts to do so, to obtain any materials plant or equipment required for the waterworks necessary to supply water from the River Murray to Whyalla.

Delivery of water.

5. (1) The Commissioner shall, on and after the commencing day, deliver to the Company from time to time such quantity of water from the River Murray as the Company requires but not exceeding three million gallons in any period of twenty-four hours.

(2) The water shall be delivered to the Company at the dam which at the time of the execution of this Agreement belongs to the Company and is situated at Whyalla near the southern boundary of section 26, Hundred of Randall at approximately forty feet above sea level.

(3) The Company shall from time to time give the Commissioner reasonable notice of the quantities of water which it requires.

Construction of mains and other works.

6. The Commissioner shall construct and maintain in good working order all such waterworks as are necessary to provide and deliver the water which the Commissioner is obliged to deliver under this Agreement.

7. Subject to the provisions hereinafter contained as to a Price of water. minimum annual payment, the Company shall pay the Commissioner for all water delivered by him to the Company under this Agreement at the following rates :—

For all water up to the first 500 million gallons per year of supply	2s. 4d. per thousand gallons
For all water above 500 million gallons and up to 700 million gallons per year of supply	2s. 3d. per thousand gallons
For all water above 700 million gallons and up to 900 million gallons per year of supply	2s. 2d. per thousand gallons
For all water above 900 million gallons and up to 1,000 million gallons per year of supply	2s. 1d. per thousand gallons
For all water above 1,000 million gallons per year of supply	2s. per thousand gallons

8. (a) Subject to subclause (b) of this clause the Company shall pay to the Commissioner in each year of supply the sum of forty thousand pounds for water supplied or to be supplied during that year of supply. Minimum annual payment. The sum so payable for each year of supply shall be paid in four equal quarterly instalments of which the first shall become due and payable on the commencing day of the year of supply, and the remainder on the respective commencing days of the subsequent quarters in the year of supply.

(b) If during any year of supply the value of the water delivered to the Company exceeds forty thousand pounds, the Company shall also within one month after the end of that year of supply pay to the Commissioner the amount by which such value exceeds forty thousand pounds: Provided that if in any year of supply during a triennial period, as hereinafter defined, the value of the water delivered to the Company is less than forty thousand pounds, and in any subsequent year of supply during the same triennial period the value of the water so delivered is more than forty thousand pounds then the amount by which the value of the water delivered in the earlier year was less than forty thousand pounds shall be carried forward to the credit of the Company and set off against any sum or sums in excess of forty thousand pounds payable to the Commissioner by the Company in any such subsequent

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year: Provided also that in respect of each triennial period as hereinafter defined the Company shall be obliged to pay only one hundred and twenty thousand pounds or the value of the water delivered to it during that period which ever is the greater.

(c) In this clause "the value of any water" means its price computed on the scale set out in this Agreement at any lower price charged by the Commissioner under any enactment authorizing him to charge lower prices.

(d) For the purpose of this clause the term of this Agreement shall be divided into ten periods each consisting of three years of supply. The first such period shall commence on the commencing day, and the subsequent periods shall commence respectively at the end of the first period and at regular intervals of three years thereafter. In this clause the expression "triennial period" means any such period of three years of supply.

Quality of water.

9. The water to be delivered under this Agreement shall be water in the condition in which it is drawn from the River Murray at or near Morgan, and without any filtering, treatment or change except such change (if any) as necessarily occurs during the transmission of the water from Morgan to Whyalla.

Metering.

10. (a) The Commissioner shall measure all water delivered to the Company under this Agreement by a suitable meter installed at the expense of the Commissioner in the pipe from which the water is so delivered.

(b) The Commissioner shall during each month give the Company a written notice of the amount of water shown by the meter as having been delivered to the Company during the previous month. The notice shall be conclusive evidence of the amount of water delivered in the month to which the notice relates unless it is disputed as provided in this clause.

(c) The Company may within one month after receipt of any such notice give the Commissioner a written notice that it disputes the correctness of the amount of water shown in the notice given by the Commissioner and that it requires the meter to be tested.

(d) The Commissioner shall thereupon conduct a test of the meter by passing through it, into a receptacle of known capacity, sufficient water to fill that receptacle or any part thereof of known capacity. The Company shall if so required by the

Commissioner permit the Commissioner to use without payment, for the purpose of any test under this subclause, any dam or reservoir of the Company which is suitable for that purpose, and can conveniently be so used.

(e) If on such test it appears that the meter is not measuring correctly the water actually delivered, the amount of water shown in the disputed notice and in any subsequent notice given by the Commissioner prior to the test shall be altered so as to show the true amount of water delivered, and the liability of the Company shall be adjusted accordingly. Thereafter, if the meter is not corrected or replaced, due allowance for the error shall be made in each monthly notice showing the amount of water delivered to the Company.

(f) The Company may at its own expense instal a meter at any convenient point in the pipe from which water is delivered to the Company. The readings of such meter shall be for the information of the Company, but shall not be binding on the Commissioner unless he agrees to accept them, with or without adjustments, as correct.

(g) The Commissioner may, without any request from the Company, at any time test any meter installed by him for the purpose of measuring the water delivered to the Company, and the Company shall if so required by the Commissioner permit the Commissioner to use for the purpose of the test any dam or reservoir of the Company which is suitable for that purpose and can conveniently be so used.

11. (a) Within three years before the expiration of this Agreement, the Company may give the Commissioner written notice of its desire to renew this Agreement for any period specified in the notice, and being not longer than twenty years.

Renewal of
Agreement.

(b) When such a notice has been given the Commissioner and the Company shall, subject as hereinafter mentioned, continue to be bound by this Agreement during the period specified in the notice: Provided that the prices payable by the Company for water during that period shall not necessarily be the same as those set out in this Agreement, but shall be prices which, taking into account the costs of supplying water from Morgan to Whyalla at the time when such prices are being determined, are not less favourable to the Company than those set out in this Agreement; and if the parties do not agree on such prices within twelve months after the Company gives notice under subclause (a) of this clause, either party may require the prices to be determined by arbitration and they shall be determined accordingly.

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IN WITNESS whereof the parties hereto have executed this Agreement.

The Common Seal of the
Commissioner of Waterworks
was affixed hereunto on the
sixteenth day of August, 1940,
in the presence of H. T. M.
ANGWIN.

M. McINTOSH,
Commissioner of Waterworks.

The Common Seal of The
Broken Hill Proprietary
Company Limited was affixed
hereunto on the nineteenth
day of August, 1940, in the
presence of

L. DARLING, Director.
C. Y. SYME, Director.
F. M. MITCHELL, Secretary.