



Transformation Rules

JIL Policy 034

Jemalong Irrigation Limited

Effective: 25/03/2014

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Contents

Part A: General.....	1
1 Introduction	1
2 Definitions and interpretation.....	1
3 Customer must obtain own advice	2
4 Limitation of liability	2
5 Costs.....	2
Part B: Transformation	3
6 Information.....	3
7 Transformation generally.....	3
8 Types of transformation.....	4
9 Prohibited transformation	4
10 Details of irrigation rights	4
11 Details of delivery rights	5
12 Formal negotiation	6
13 Application	6
14 Determination	8
15 Implementation	9
16 Security.....	9
17 Delivery.....	11
18 Tagging.....	11

Part A: General

1 Introduction

- 1.1 A Customer's Contract binds them to these Rules.
- 1.2 These Rules:
- (1) apply to Transformation;
 - (2) should be read in conjunction with, and are subject to, the Contract, any relevant Rules, the *Water Act 2007* (Cth), the Water Market Rules, the *Water Charge (Termination Fees) Rules 2009* (Cth), the *Water Management Act 2000* (NSW), the Dealing Principles, the Water Sharing Plan, the terms of the relevant Access Licences, and all other relevant laws, regulations and orders; and
 - (3) may also be affected by rules or processes stipulated by the NSW Minister for Water or Government Agencies.

2 Definitions and interpretation

- 2.1 In these Rules, the following words have these meanings unless the contrary intention appears:
- (1) **Applicant** means a party to an Application;
 - (2) **Application** means an application, in the form of 0, for Transformation, which is completed and duly executed to the Company's satisfaction, which includes all documents required for the application, and in respect of which the relevant Charge has been paid;
 - (3) **Commonwealth Department** means the Commonwealth Department of Sustainability, Environment, Water, Population and Communities;
 - (4) **Dealing Principles** means the *Access Licence Dealing Principles Order 2004* (NSW);
 - (5) **External Annual Transfer In** means an assignment dealing (as defined in the Act) to an Access Licence held by the Company and crediting of Water Allocation to a Water Allocation Account of an Applicant;
 - (6) **External Annual Transfer Out** means an assignment dealing (as defined in the Act) from an Access Licence held by the company and debiting of Water Allocation from a Water Allocation Account of an Applicant;
 - (7) **Irrigation Right** means a right that:
 - (a) a person has against the Company to receive water (such as a Water Entitlement);
 - (b) is not a right conferred by or under a law of a state to do either or both of the following:
 - (i) to hold water from a water resource;
 - (ii) to take water from a water resource;

(such as an Access Licence); and

- (c) is not a right to have water delivered by the Company (such as a Delivery Entitlement);
 - (8) **Shares** means ordinary shares in the capital of the Company;
 - (9) **Transformation** has the same meaning in these Rules as *transformation arrangements* has in the *Water Act 2007* (Cth) and includes the arrangements set out in rule 8;
 - (10) **Transformed Water Allocation** means the water allocation (as defined in the Act or interstate equivalent) to which the Customer is entitled from time to time under an Access Licence (or interstate equivalent) held by the Customer;
 - (11) **Water Market Rules** means the *Water Market Rules 2009* (Cth); and
 - (12) **Water Sharing Plan** means the *Water Sharing Plan for the Lachlan Regulated River Water Source 2003* (NSW).
- 2.2 In these Rules, unless the contrary intention appears, a word or phrase defined in the Contract has the same meaning in these Rules.
- 2.3 Clause 1.2 (Interpretation) of the Contract applies to these Rules with the necessary changes.

3 Customer must obtain own advice

- 3.1 The Company does not give advice to the Customer about these Rules or anything connected with the subject matter of these Rules.
- 3.2 The Customer should seek his, her or its own professional advice about these Rules and anything connected with the subject matter of these Rules, including legal, taxation, accounting and financial advice.

4 Limitation of liability

- 4.1 The Company may change or reverse a determination with respect to an Application or a Transformation if a decision of the NSW Minister for Water or a Government Agency (including a change to, or reversal of, a previous decision) affects the Application or the Transformation.
- 4.2 Without limiting the Contract, to the maximum extent permitted by law, all liability for any determination of the Company with respect to an Application or a Transformation or the determination or decision of the Company, the NSW Minister for Water or a Government Agency with respect to an Application or a Transformation is excluded.

5 Costs

- 5.1 The Applicants must pay, and indemnify the Company against, all Costs (including stamp duty and government imposts) connected with the negotiation, preparation, execution, stamping and registration of Transformations.

Part B: Transformation

6 Information

- 6.1 The Water Market Rules commenced on 23 June 2009.¹ The transitional period ended on 31 December 2009.
- 6.2 The *Water Act 2007* (Cth), Water Market Rules and other relevant federal legislative instruments are available on the Federal Register of Legislative Instruments: www.frli.gov.au. Copies of the Water Market Rules may also be downloaded from the web site of the Commonwealth Department or obtained by contacting the Commonwealth Department. The Commonwealth Department's web site is www.environment.gov.au, its telephone number for queries about the Water Market Rules is (02) 6274 1420 and its postal address is GPO Box 787, Canberra ACT 2601.²
- 6.3 You may wish to contact the ACCC to request further information about the Water Market Rules and the ACCC's role in relation to the Water Market Rules. The ACCC's web site is www.accc.gov.au, its telephone number is (03) 9290 1800 and its postal address is GPO Box 5203, Melbourne VIC 3001.³
- 6.4 These Rules may be downloaded from the Company's web site (<http://jemalongirrigation.com.au>) or obtained at the Company's office in Forbes.⁴
- 6.5 If the Company varies its Constitution, Contract, Rules or any other contract, arrangement or understanding in a way that affects, or may affect, the respective rights and obligations of the Company and holders of Irrigation Rights in relation to Transformation, the Company will give written notice about the variation to holders of Irrigation Rights within 10 Business Days after the variation occurs.⁵

7 Transformation generally

- 7.1 Transformation:
- (1) must comply with these Rules; and
 - (2) requires the approval of the Company.
- 7.2 To the maximum extent permitted by law, the Company may, at its discretion, from time to time:
- (1) embargo Transformation; or
 - (2) make exceptions to these Rules on a case-by-case basis.

¹ Rule 5 of the Water Market Rules.

² Rule 5 of the Water Market Rules.

³ Rule 5 of the Water Market Rules.

⁴ Rule 6(1)(b) of the Water Market Rules.

⁵ Rule 21 of the Water Market Rules.

8 Types of transformation

8.1 Transformation includes any of the following arrangements:

- (1) **(transfers out – same water source)** an arrangement that would reduce the share component of an Access Licence held by the Company to allow Irrigation Rights to be permanently transformed into share component of an Access Licence that is held by someone other than the Company, provided that the arrangement is permitted by law;⁶
- (2) **(transfers out – different NSW water source)** an arrangement that would cancel an Access Licence held the Company to allow Irrigation Rights to be permanently transformed into share component of an Access Licence specifying a different water source that is issued to someone other than the Company, provided that the arrangement is permitted by law;⁷ and
- (3) **(transfers out – different state)** an arrangement that would cancel an Access Licence held by the Company to allow Irrigation Rights to be permanently transformed into a corresponding interstate Access Licence equivalent that is issued to someone other than the Company, provided that the arrangement is permitted by law.⁸

9 Prohibited transformation

9.1 To the maximum extent permitted by law, Transformation of Class A Water Entitlements is prohibited.

10 Details of irrigation rights

10.1 If a person who holds an Irrigation Right gives written notice to the Company that the person:

- (1) intends to apply, or applies, for Transformation of the whole or part of the Irrigation Right; and
- (2) requests the Company to provide details of the contractual or other arrangements between the Company and the person relating to the Irrigation Right, including the number of units or volume of water to which the person is entitled under the Irrigation Right;

the Company must, within 20 Business Days after receiving the notice, provide those details, including the number of units or volume of water to which the person is entitled in respect of the current financial year, as at the date of receipt of the notice.⁹

10.2 Requests for details under rule 10.1 can be made in the form prescribed by the Company which may be downloaded from the Company's web site (<http://jemalongirrigation.com.au>) or obtained at the Company's office in Forbes. Customers will be directed to their Contract.

⁶ Section 71Q of the Act, clause 14 of the Dealing Principles and clause 51 of the Water Sharing Plan.

⁷ Section 71R of the Act, clause 15 of the Dealing Principles and clause 52 of the Water Sharing Plan.

⁸ Section 71U of the Act, clause 18 of the Dealing Principles and clause 54 of the Water Sharing Plan.

⁹ Subrule 7(1) of the Water Market Rules.

10.3 If the holder of an Irrigation Right believes that the details provided under rule 10.1 are not complete or are incorrect and:

- (1) seeks to reach agreement with the Company as to the details of the Irrigation Right; and
- (2) the parties do not agree on the details within 10 Business Days after receipt of the details;

the holder may give notice in writing to the Company that the holder seeks a formal negotiation of the matter.¹⁰

11 Details of delivery rights

11.1 If a person who holds an Irrigation Right gives written notice to the Company that the person:

- (1) intends to apply, or applies, for Transformation of the whole or part of the Irrigation Right; and
- (2) requires the continuation of a right to have water delivered by the Company after Transformation;

the Company must, within 20 Business Days after receiving the notice, provide details of the contractual terms and conditions between the Company and the person applicable to the right to have water delivered when the notice is received with such variations (if any) to take effect from the Transformation as are permitted under rule 11.3.¹¹

11.2 Notices under rule 11.1 can be made in the form prescribed by the Company which may be downloaded from the Company's web site (<http://jemalongirrigation.com.au>) or obtained at the Company's office in Forbes. Customers will be directed to their Contract.

11.3 The Company will not make any variations to the contractual terms and conditions between the Company and the person referred to in rule 11.1 other than variations that:

- (1) are necessary as a consequence of the Transformation; or
- (2) are agreed in writing by the Company and that person.¹²

11.4 If:

- (1) a person who gives notice to the Company under rule 11.1 believes that the terms and conditions of the right to have water delivered after Transformation have not been provided by the Company under rule 11.1 or that the details provided are incorrect; or
- (2) the parties do not agree on a variation of the terms or conditions within 10 Business Days after the Company provides written details under rule 11.1;

the person may give notice in writing to the Company that the person seeks a formal negotiation of the matter.¹³

¹⁰ Subrule 7(5) of the Water Market Rules.

¹¹ Subrule 8(1) of the Water Market Rules.

¹² Subrule 8(2) of the Water Market Rules.

¹³ Subrule 8(3) of the Water Market Rules.

12 Formal negotiation

- 12.1 A formal negotiation for the purposes of rules 10.3 and 11.4 is a genuine attempt by the Company to reach agreement with the person, within 30 Business Days after the giving of the notice under rule 10.3 or rule 11.4, as to the details of the Irrigation Right or the terms and conditions of the right to have water delivered as the case requires. The Company will make a genuine attempt to reach agreement within 30 Business Days as to the details of the Irrigation Right or the terms and conditions of the right to have water delivered as the case requires. A genuine attempt for the purposes of this rule includes the taking of such steps as would reasonably be expected to result in the appointment of a third person to resolve the dispute.¹⁴
- 12.2 If a third person is appointed to resolve the dispute, the third person's costs (including remuneration and expenses) will be either:
- (1) treated as costs in the cause and paid by the Company and the Applicant in accordance with the resolution of the dispute by the third person if so determined by the third person; or
 - (2) if the third person does not make such a determination, paid by the Company and the Applicant in equal shares.
- 12.3 The Company and the Applicant must pay their own Costs of the formal negotiation.
- 12.4 If the Company is unable to reach agreement with the holder of the Irrigation Right as to the details of the Irrigation Right or the terms and conditions of the right to have water delivered, as the case requires, within 30 Business Days after the giving of the notice under rule 10.3 or 11.4, the Company must, within that period, notify the ACCC of the reasons why the Company is unable to reach agreement within that period.¹⁵

13 Application

- 13.1 An Application is required for Transformation.
- 13.2 Applications may be downloaded from the Company's web site (<http://jemalongirrigation.com.au>) or obtained at the Company's office in Forbes.
- 13.3 Applications must be duly executed by:
- (1) if the Customer is the sole holder of the Irrigation Rights, the Customer; or
 - (2) if several Customers are joint holders of the Irrigation Rights, all the joint holders.
- 13.4 Applications must include the following:
- (1) the name and address of the Applicant;
 - (2) the Water Allocation Account number of the Applicant;
 - (3) the number and class of Irrigation Rights held by the Applicant;
 - (4) the number and class of Irrigation Rights the subject of the Application;

¹⁴ Subrules 7(6), (7) and (10) and 8(4), (5) and (6) of the Water Market Rules.

¹⁵ Paragraphs 15(1)(a) and (b) of the Water Market Rules.

- (5) if another person holds a legal or equitable interest in the Irrigation Rights the subject of the Application, confirmation that the person has given approval to the Transformation;
- (6) the name of the person who is to hold the Access Licence (or interstate equivalent) obtained as a result of the Transformation;
- (7) details of the Access Licence (or interstate equivalent) to which the entitlement that is sought is to be appended; and
- (8) any other information reasonably necessary for the purposes of the Application.

13.5 An Application must not specify an Access Licence held by the Company for the purposes of paragraph 13.4(7). The Company is not obliged to subdivide any of its Access Licences.

13.6 Applications:

- (1) must be accompanied by payment of the relevant Charge applicable to the Application;¹⁶
- (2) may be accompanied by an application, in accordance with the Charges Rules, for termination or surrender of any rights to have water delivered by the Company that the Applicant wishes to apply to terminate or surrender;
- (3) must be accompanied by the original certificates for the Irrigation Rights;
- (4) must be accompanied by all forms that will need to be submitted to a Government Agency to carry out the Transformation to which the Application relates, correctly completed and signed by all necessary signatories; and
- (5) may be submitted to the Company at any time.

13.7 Applications will be considered in the order of the sequence numbers they are allocated by the Company.

13.8 The Company will notify the Applicant if:

- (1) the Application is not complete or not in accordance with these Rules or the Water Market Rules;
- (2) the Application is not accompanied by payment of the relevant Charge applicable to the Application; or
- (3) there are outstanding Charges payable by the Applicant to the Company in respect of the Irrigation Right;

and specify the further information that is required, the Charge applicable to the Application or the outstanding Charges.¹⁷ The Application will not be allocated a sequence number until the Company receives the further information, payment of the Charge applicable to the Application, or payment of the outstanding Charges (or an agreement is made between the Company and the Applicant for the payment of the outstanding Charges).

¹⁶ Subrule 13(1) of the Water Market Rules.

¹⁷ Subrule 14(1) of the Water Market Rules.

14 Determination

- 14.1 The Company must determine each Application and either:
- (1) notify the Applicant that the Application is approved; or
 - (2) notify the Applicant and the ACCC that the Application has not been approved for one or more of the reasons referred to in rule 14.5. This includes notifying the Applicant that the ACCC has been notified.¹⁸
- 14.2 The Company must give notice under rule 14.1 within 25 Business Days after the later of:
- (1) receipt by the Company of the Application; and
 - (2) where the Company gives notice under rule 13.8, receipt by the Company of the further information, payment of the Charge applicable to the Application, or payment of the outstanding Charges (or an agreement being made between the Company and the Applicant for the payment of the outstanding Charges).¹⁹
- 14.3 The period referred to in rule 14.2 does not include:
- (1) where an Applicant requests details under rule 10.1 or gives notice under rule 11.1, any period before the Company and the Applicant agree as to the details of the Irrigation Right and as to the terms and conditions of the right to have water delivered, as the case requires; or
 - (2) the Business Days after steps have been taken:
 - (a) to obtain the approval of a person holding a legal or equitable interest in the Irrigation Right; or
 - (b) to satisfy a requirement under a law of a state;but before the approval is given or refused or the requirement satisfied, or advice received to the effect that it cannot be satisfied.²⁰
- 14.4 To the maximum extent permitted by law, the Company may, at its discretion, approve an Application (including by imposing conditions).
- 14.5 To the maximum extent permitted by law, the Company may, at its discretion, refuse an Application, including:
- (1) where the Application is incomplete or not in accordance with these Rules;²¹
 - (2) where the Application is not accompanied by payment of the relevant Charge applicable to the Application;²²
 - (3) where there are outstanding Charges payable by the Applicant to the Company;²³

¹⁸ Subrule 14(2) of the Water Market Rules.

¹⁹ Subrules 14(2) and (3) of the Water Market Rules.

²⁰ Subrule 14(3) of the Water Market Rules.

²¹ Paragraph 14(2)(b)(iii) of the Water Market Rules.

²² Paragraph 14(2)(b)(iii) of the Water Market Rules.

²³ Paragraph 14(2)(b)(iii) of the Water Market Rules.

- (4) where a person who holds a legal or equitable interest in the Irrigation Rights, Shares or rights to have water delivered by the Company the subject of the Application, has refused to give approval to the Transformation;^{24 25}
- (5) where the Applicant does not provide the security required under rule 16;²⁶
- (6) where a requirement of a law (including a requirement for approval by any relevant Government Agency) cannot be satisfied;²⁷
- (7) where the Transformation would, in the reasonable opinion of the Company, contravene the Company's obligations under a Legal Requirement;²⁸ or
- (8) where either the Applicant or the person who is to hold the Access Licence (or interstate equivalent) obtained as a result of the Transformation will, after Transformation, have a right to have water delivered by the Company but has not installed a Meter to measure the water delivered from the Company's Works.²⁹

15 Implementation

- 15.1 An approved Transformation takes effect on the date on which it is registered by the Company after it has been registered by the relevant Government Agencies.
- 15.2 In an approved Transformation, the Company must:
 - (1) cancel the relevant Irrigation Rights of the Applicant; and
 - (2) record the termination or surrender of any rights to have water delivered by the Company which the Applicant has terminated or surrendered in accordance with the Charges Rules.
- 15.3 Transformation does not affect Water Allocation already credited to a Water Allocation Account before the Transformation takes effect.

16 Security

- 16.1 Where an Applicant applies for Transformation and will, after Transformation, either:
 - (1) have a right to have water delivered by the Company but no Irrigation Rights; or
 - (2) have a right to have a volume of water delivered by the Company³⁰ in respect of the current financial year (disregarding any constraints on delivery) which is more than 5 times the volume of water that the Applicant is entitled to receive in respect of that year under the Irrigation Rights held by the Applicant;³¹

²⁴ Paragraph 14(2)(b)(i) of the Water Market Rules.

²⁵ Security interests in relation to arrangements made for the early release of water by Snowy Hydro Limited may be relevant.

²⁶ Paragraph 14(2)(b)(iii) of the Water Market Rules.

²⁷ Paragraph 14(2)(b)(ii) of the Water Market Rules.

²⁸ Paragraph 14(2)(b)(ii) of the Water Market Rules.

²⁹ Paragraph 20(2)(b) of the Water Market Rules.

³⁰ This will usually be equal to the number of Delivery Entitlements that the Applicant holds.

³¹ This refers to the situation where the Applicant will, after Transformation, hold at least 5 times more Delivery Entitlements than Water Entitlements.

the Company may, to the maximum extent permitted by law, require security to be given by the Applicant for the payment of Charges for access to the Company's Works for the delivery of water to the Applicant after Transformation.³²

- 16.2 The Company must not require security to be given by the Applicant under rule 16.1 in an amount that, at the time the security is given:
- (1) exceeds the amount that, under the *Water Charge (Termination Fees) Rules 2009* (Cth), would be payable to the Company for the termination of the water delivery rights held by the Applicant at that time;³³ or
 - (2) if there is no such amount, exceeds the amount of the "total network access charge" within the meaning of the *Water Charge (Termination Fees) Rules 2009* (Cth) payable to the Company in respect of the financial year in which the security is given.³⁴
- 16.3 The Company must not refuse to accept security required under rule 16.1 by reason only of the form in which it is offered if an Applicant offers it in one or more of the following forms:
- (1) a charge over an Irrigation Right that the Applicant continues to hold;
 - (2) a charge over an unencumbered Access Licence (or interstate equivalent), or an unencumbered part thereof, obtained by the Applicant as the result of the Transformation of part of an Irrigation Right;
 - (3) a charge over an unencumbered Access Licence (or interstate equivalent), or an unencumbered part thereof, held by the Applicant;
 - (4) a guarantee given by an authorised deposit-taking institution within the meaning of the *Banking Act 1959* (Cth) (**Bank Guarantee**);
 - (5) a deposit lodged with the Company (**Deposit**); or
 - (6) any other form of security agreed upon by the Company and the Applicant.³⁵
- 16.4 If the security given by the Applicant is a Bank Guarantee, the Bank Guarantee must:
- (1) be unconditional; and
 - (2) not have an expiry date.
- 16.5 If the security given by the Applicant is a Deposit, the Company must (and the Applicant authorises the Company to) deposit the Deposit in an interest-bearing cash management account at 24-hour call.
- 16.6 The Company must pay interest earned on the Deposit to the Applicant monthly.
- 16.7 The Applicant bears the risk of loss of the Deposit.
- 16.8 For the purposes of this clause 16, a reference to interest means interest actually earned on the Deposit less all duty, bank charges and any other money properly payable in respect of the investment of the Deposit.³⁶

³² Subrule 10(1) of the Water Market Rules.

³³ This will generally be the amount of the termination fee that would be payable to the Company for the termination of all of the water delivery rights held by the Applicant at that time.

³⁴ Subrule 10(2) of the Water Market Rules.

³⁵ Subrule 10(3) of the Water Market Rules.

³⁶ Subrule 13(2) of the Water Market Rules.

- 16.9 The Company may apply the security given by the Applicant in accordance with rule 16.1 to any outstanding Charges if they remain unpaid for 14 days after they fall due or upon termination of the Applicant's rights to have water delivered by the Company or the Contract.
- 16.10 Subject to rule 16.9, the Company must return any surplus of the security after deduction under rule 16.9 to the Applicant after 14 days have elapsed from the termination of the Applicant's rights to have water delivered by the Company or the Contract.

17 Delivery

- 17.1 The Company will not, as a condition of approving an Application, terminate, or require the Applicant to terminate, any rights to have water delivered by the Company.³⁷
- 17.2 The Applicant or the person who is to hold the Access Licence (or interstate equivalent) obtained as a result of the Transformation:
- (1) will, after Transformation, have no right to the delivery of any water unless he, she or it holds Delivery Entitlements; and
 - (2) is responsible for ensuring that he, she or it will, after Transformation, have sufficient Delivery Entitlements for the delivery of all of the Water Allocation which he, she or it wishes to have delivered.
- 17.3 A Customer who holds an Access Licence (or interstate equivalent) obtained as a result of Transformation must, if he, she or it wishes the Company to deliver Transformed Water Allocation to the Customer's Landholding, do an External Annual Transfer In.
- 17.4 If:
- (1) a Customer does an External Annual Transfer In under clause 17.3; and
 - (2) any of the relevant Water Allocation remains in a Water Allocation Account at the end of the Water Year;

it cannot be carried over to the next Water Year and it will be cancelled without compensation at the end of the Water Year. To avoid cancellation, the Customer must complete an External Annual Transfer Out of the relevant Water Allocation before the end of the Water Year.

18 Tagging

- 18.1 Where the person who is to hold the Access Licence (or interstate equivalent) obtained as a result of the Transformation obtains approval to nominate a water supply work (as defined in the Act) which is not in the same NSW water tagging zone (as defined in subsection 71W(4) of the Act) as the Access Licence held by the Company whose share component was reduced by the Transformation, the person's Access Licence (or interstate equivalent) will be tagged. This means that the Access Licence (or interstate equivalent) will retain the characteristics of Access Licences that are subject to the Water Sharing Plan, rather than being converted into any other form.³⁸

³⁷ Rule 19 of the Water Market Rules.

³⁸ Section 71W of the Act and clause 21 and schedule 1 of the Access Licence Dealing Principles.

