

Controlled allocation of access licences – Surat, Warrego and Central groundwater sources in the NSW Great Artesian Basin

Auction terms



NSW Government
Department of Water & Energy

Publisher

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Controlled allocation of access licences – Surat, Warrego and Central groundwater sources in the NSW Great Artesian Basin – Auction terms

May 2009

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DWE 09_082

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Introduction

On 30 January 2009, the Minister for Water (“the Minister”) made a controlled allocation order (“the Order”) under section 65 of the *Water Management Act 2000* (“the Act”). The controlled allocation order provides for the sale by auction of the right to apply for 24 water access licences from the Surat, Warrego and Central groundwater sources.

Each licence, if granted, shall entitle the holder to an allocation of up to 50 megalitres per annum.

An *Information for potential buyers* brochure was issued by the Minister on 14 May 2009 (“the Brochure”) summarising the effect of the controlled allocation order. The Brochure states that the auction shall be conducted on the basis of terms determined by the Director-General of the Department of Water and Energy (“the Department”). A copy of the Brochure is attached to these Terms as Annexure A.

This Auction terms document sets out the terms and conditions upon which the auction is to be conducted, and sets out the rights and obligations of each bidder. By signing the acknowledgement and agreement set out at the end of this document, you agree that you have **immediately entered into a binding legal agreement** with the State of New South Wales to observe the terms and conditions.

Important note

The right that is the subject of this auction is the right to apply for a water access licence. This does not necessarily mean that a licence will be granted when it is applied for. The successful bidder’s licence application will be assessed and determined on its merits consistent with the requirements of the *Water Sharing Plan for the NSW Great Artesian Basin Groundwater Sources 2008* (“the Plan”) and the Act.

The successful bidder’s licence application will also be conditional upon the successful bidder complying with these Auction terms.

The successful bidder may be required to obtain further approvals in order to access and use the water that is the subject of the water access licence.

1. Terms of bidding

- 1.1 The auction will be conducted by Dianne Kelly, of Kelly's Property Sales Pty Ltd, Walgett and Paul Kelly of Moree Real Estate ("the Auctioneers").
- 1.2 The Auctioneers will maintain a Bidders Record in a format consistent with that set out under section 68 of the *Property, Stock and Business Agents Act 2002*.
- 1.3 All bidders must be registered in the Bidders Record and display an identifying number when making a bid.
- 1.4 As a condition of being registered in the Bidders Record, each bidder must sign the acknowledgement and agreement set out at the end of these terms and conditions.
- 1.5 Any person wishing to appoint an agent to bid on his or her behalf must at least two business days before the date of the auction, and
 - (a) arrange to be registered in the Bidders Record including signing the acknowledgement and agreement set out at the end of these terms and conditions; and
 - (b) notify the Auctioneers in writing of his or her intention to appoint an agent to bid on their behalf.
- 1.6 A bidder is taken to be a principal unless the bidder has complied with the procedures set out in clause 1.5 above.
- 1.7 The Auctioneers may make a vendor's bid on behalf of the Minister, but must disclose that it is a vendor's bid.
- 1.8 The highest bidder is the successful bidder.
- 1.9 In the event of a disputed bid, the Auctioneers are the sole arbitrators and the Auctioneers' decision is final.
- 1.10 A bid cannot be made or accepted after the fall of the hammer.
- 1.11 A register of unsuccessful bidders will be created following the auction.

2. Rights and obligations of the successful bidder

- 2.1 Upon the fall of the hammer, the successful bidder must pay a deposit equal to 5 per cent of the purchase price. The deposit can be paid in cash, or by bank or personal cheque made out to Kelly's Property Sales.
- 2.2 Subject to payment of the deposit, the successful bidder shall be entitled to apply for a water access licence as set out in the relevant completed Certificate ("the Licence"). A blank form of Certificate is attached to these terms and conditions as Annexure B.
- 2.3 The successful bidder must lodge an application for the Licence within 28 days of the date of the auction. If the successful bidder is unable to lodge an application within this period due to genuine exceptional circumstances that are beyond his or her control, the Department may grant an extension of time provided the successful bidder applies for an extension in writing before the expiry of the 28 days including all relevant facts and supporting documentation.
- 2.4 The successful bidder's application will be assessed and determined by the Department on its merits consistent with the requirements of the *Water Sharing Plan for the NSW Great Artesian Basin Groundwater Sources 2008* ("the Plan") and the Act and according to the Department's established criteria and procedures. The successful bidder will be notified in writing of the result of the application.
- 2.5 If, after 90 days from the date of lodgement of the application for the Licence, the successful bidder has not received written notification of the result of the application from the Department, the successful bidder may notify the Department that they wish to withdraw their Licence application. Such notification must be in writing. On receiving written notification of the successful bidder's intention to withdraw the licence application, the Department must either:
- (a) determine the licence application within five working days, or
 - (b) refund the 5 per cent deposit to the successful bidder.

The withdrawal of a licence application by a successful bidder will not constitute a default under these Terms.

- 2.6 If the application is successful, the successful bidder must pay the 95 per cent balance of the purchase price within 14 days of notification directly to the Department of Water and Energy by bank cheque, personal cheque or cash. This amount is in **addition** to the licence fees specified in the Certificate. The Department will grant the Licence within a further 14 days from receipt of cleared funds.
- 2.7 If the application is unsuccessful, the Department will refund the 5 per cent deposit to the successful bidder at the time of notification of the result of the application.

3. Default

3. The following situations will constitute a default under these Auction terms:

- (a) The successful bidder fails to pay the 5 per cent deposit or the 95 per cent balance within the required timeframes. A dishonoured cheque will be considered failure to pay
- (b) The successful bidder fails to lodge a complete Licence application together with payment of all relevant fees within 28 days of the date of the auction, or any later extension date that the Department has agreed to in writing
- (c) The successful bidder has made a misrepresentation to the Department or the Auctioneers in the course of registering to bid, placing a bid, or generally in applying for the Licence.

In the event of a default:

- (a) the successful bidder will forfeit to the Department any deposit paid previously
- (b) the successful bidder will not be entitled to apply for the Licence and the Minister shall not be bound by any Certificate that has issued
- (c) unless (d) applies, the successful bidder, and any individuals or companies related¹ to the successful bidder, will not be entitled to participate in any further auction or other process to apply for the Licence under the Order for a period of two years from the date of the auction
- (d) if there are genuine exceptional circumstances such that the two year exclusion period referred to in paragraph (c) above would cause hardship to the successful bidder, or any individuals or companies related to the successful bidder, the Director-General may approve the participation of the successful bidder, or any individuals or companies related to the successful bidder, within the two year period, provided that written application is made to the Director-General including all relevant facts and supporting documentation.

¹ A person and a company are taken to be related to each other if the relevant entities are “related parties” as defined in the *Corporations Act 2001* (Cth). Two or more persons are taken to be related to each other if one is parent, spouse (married or de facto), sibling, grandparent/grandchild, aunt/uncle, cousin, niece or nephew to the other.

4. Future action

4.1 If any of the following occur:

- (a) not all lots are sold at auction
- (b) there is an event of default under clause 3.1
- (c) a licence application is refused

the Department reserves its rights to deal with those lots and may take action including:

- (d) negotiating with an unsuccessful bidder listed on the register referred to in clause 1.11 above
- (e) withholding the lots for a period of time
- (f) conducting a future auction

or may take no action.

Acknowledgement and Agreement

I hereby acknowledge and agree:

1. I have read and fully understand these terms and conditions.
2. I have read and fully understand the attached Brochure.
3. I have read and fully understand the attached blank Certificate.
4. In particular, I understand that:
 - (a) If I am the successful bidder, I will have the right to apply for the Licence but the outcome of my Licence application is subject to the Department's usual criteria and procedures
 - (b) If my Licence application is granted, I may still require further approvals before I am able to access or use the water that is the subject of the Licence.
5. I have obtained all necessary legal, financial and technical advice that I will require in order to bid under these terms and conditions.
6. By signing this acknowledgement and agreement, I am agreeing to be immediately legally bound by these terms and conditions.

.....
Signature

.....
Print name

.....
Date

Certificate of right to apply for an access licence

Controlled allocation of access licences under section 65 of the *Water Management Act 2000* – Surat, Warrego and Central groundwater sources in the Great Artesian Basin

Water Sharing Plan for the NSW Great Artesian Basin Water Sources 2008

On 30 January 2009 an Order was made by the Minister for Water (“the Order”) under section 65 of the *Water Management Act 2000* declaring that the right to apply for access licences under the *Water Sharing Plan for the NSW Great Artesian Basin Water Sources 2008* (“the Plan”) is to be acquired by an auction conducted on the basis of Auction terms determined by the Director-General of the Department of Water and Energy (“the Terms”).

On 21 July 2009 an auction was conducted pursuant to the Order and the Terms determined by the Director-General and the person specified in Schedule 1 of this Certificate was the successful bidder (“the Applicant”).

I certify that the Applicant has acquired the right to apply, under section 61(1)(c) and section 65 of the *Water Management Act 2000*, for a water access licence as specified in Schedule 2.

Executed:

George Gates
Manager, Groundwater Management
on behalf of the NSW Department of Water and Energy

Important note

This right is subject to the following qualifications:

- (a) the right that is granted by this Certificate is the right to apply for a water access licence. This does not necessarily mean that a licence will be granted when it is applied for. The Applicant’s licence application will be assessed and determined on its merits consistent with the requirements of the Plan and the *Water Management Act 2000*
- (b) the Applicant may be required to obtain further approvals in order to access and use the water that is the subject of the water access licence
- (c) a licence that is granted will specify any particular work through which water may be taken
- (d) the Applicant’s licence application will also be conditional upon the Applicant complying with the Terms
- (e) In particular, this right is conditional on the Applicant:
 - i. lodging a licence application, and
 - ii. paying the fees within the time period set out in the Terms.

Schedule 1

Name of Applicant

Schedule 2

Lot No	
Water Source	The Surat, Warrego and Central groundwater sources as defined in Water Sharing Plan for the NSW Great Artesian Basin Groundwater Sources 2008
Category or subcategory of access licence (if granted)	Aquifer access
Share component of licence (if granted)	50 ML

Controlled allocation of access licences – Surat, Warrego and Central groundwater sources in the NSW Great Artesian Basin

Annexure A

Information for buyers



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Department of Water & Energy

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Controlled allocation of access licences – Surat, Warrego and Central groundwater sources in the NSW Great Artesian Basin – Annexure A – Information for buyers

May 2009

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Minister's message

The Cap & Pipe the Bores Program was introduced in 1990 by the NSW Government to replace wasteful artesian bore drains in the Great Artesian Basin (GAB). In 1999 the Commonwealth and States overlying the Basin entered into a joint program titled the Great Artesian Basin Sustainability Initiative (GABSI) to accelerate the rate of capping and piping of free flowing bores.

Many bore drains have now been replaced with efficient piped systems so that water can be controlled and used only when and where required. The program has reduced waste, increased artesian pressures, improved water use efficiency, decreased salinity, conserved biodiversity, controlled feral animals and encouraged sustainable land and stock management practices.

The first phase of the Cap & Pipe the Bores Program operated between 1990 and 1999 and saved approximately 8,600 megalitres (ML) of water, which was retained in the aquifers of the Basin to improve pressures and provide for groundwater dependent ecosystems. Under the GABSI initiative, 1999–2014, it is anticipated that the Cap & Pipe the Bores Program will save approximately 47,000 ML of water. Under the *Water Sharing Plan for the NSW Great Artesian Basin Groundwater Sources 2008* (the Plan), 70 per cent of the water savings made since 1999 shall be retained in the aquifers of the Basin to improve pressures and provide for groundwater dependent ecosystems such as the unique mound springs of NSW. The remaining 30 per cent of the water savings may be released to extractive users over the term of the Plan to facilitate the continued economic and social development of regional western NSW.

I am pleased to make this first release of these water savings through a controlled allocation order in the Surat, Warrego and Central groundwater sources.

The Hon Phillip Costa MP

Minister for Water
Minister for Rural Affairs

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Introduction

The *Water Management Act 2000* enables the Minister to declare that the right to apply for an access licence for a specified water source can be acquired, as set out in the order. This is known as a controlled allocation order.

Under the controlled allocation order for the NSW Great Artesian Basin in the Central, Warrego and Surat groundwater sources, interested parties will have the right to apply for the acquisition of 24 access licences each with a share component of 50 units. The sale of the licences will be by auction conducted on the basis of terms determined by the Director-General of the Department of Water and Energy.

The right to apply for a licence does not mean that a licence will be granted when it is applied for. Any application for a licence which is made on the basis that the right to apply for the licence has been obtained consistent with this order, will be assessed and determined on its merits consistent with the requirements of the *Water Sharing Plan for the NSW Great Artesian Basin Water Sources 2008* (the Plan) and the *Water Management Act 2000*.

Details of the water release

Water savings in the NSW Great Artesian Basin

Water savings are being released in the Central, Warrego and Surat groundwater sources of the NSW Great Artesian Basin.

Volume of water available

During the period 1999 to 2014 it is estimated that there will be 47,000 megalitres (ML) of water saved in the Central, Warrego and Surat groundwater sources as a direct result of the Great Artesian Basin Sustainability Initiative. Under the Plan, 70 per cent of the water savings made since 1999 shall be retained in the aquifers of the Basin to improve pressures and provide for groundwater dependent ecosystems such as the unique mound springs of NSW. The remaining 30 per cent of the water savings may be released to extractive users over the life of the Plan.

Water release schedule

It is anticipated that water savings accrued in the Central, Warrego and Surat groundwater sources will be made available through controlled allocation orders as follows.

Water release schedule

Water Year	Share units
2008-2009	1200
2009-2010	1400
2010-2011	1400
2011-2012 to 2017-2018	Balance of Savings

Yearly volumes released may be amended as a result of market demand or refinements in resource assessment.

There will be a potential for 14,000 units to be released to extractive users over the period 2008 to 2018.

Water management and sharing in the NSW Great Artesian Basin

Extraction of water from the NSW Great Artesian Basin is governed by the Plan.

This Plan is available online at www.legislation.nsw.gov.au.

Licence types

Generally, all water extraction, except for basic landholder rights, must be authorised under a water access licence. There are a number of different categories of water access licence including:

- local water utility access licences for town water supply
- aquifer access licences
- domestic and stock (conveyance) access licences where water for domestic and stock consumption is not being taken through an efficient water distribution system (the requirement to have such a licence will be introduced on 1 July 2013)
- aquifer (interference) access licences where the aquifer is penetrated or water flow obstructed during a specific activity at a specific location (such as mining)
- supplementary water access licences.

It is not necessary to own or be the lawful occupier of land to hold an aquifer access licence.

Current licences and allocations

The following table provides a summary of the current number of aquifer access licences, including local water utility access licences, and their share component in the Surat, Central and Warrego groundwater sources.

Licence type, number of licences and entitlement in the Surat, Central and Warrego groundwater sources

Water source	Licence type	Number of licences	Entitlement (share units)
Surat	Aquifer	23	3665
	Local Water Utility	10	2416
Central	Aquifer	3	12
Warrego	Aquifer	4	346
	Local Water Utility	2	152

Trading provisions

Under existing water entitlements, any entitlement purchased under the controlled allocations of savings and any water allocated to water accounts may be traded under the dealing provisions of the *Water Management Act 2000*.

Water dealings can involve buying or selling water access licences or part thereof, buying or selling water that is allocated in a particular year to a water access licence, changing the location where water under a licence can be extracted and subdividing and consolidating licences. The following dealings are generally permitted under the Water Sharing Plan for the NSW Great Artesian Basin groundwater sources:

- transfer of access licences between the Surat, Central and Warrego groundwater sources subject to Plan's limits
- transfer of access licences within the Surat, Central and Warrego groundwater sources
- transfer of water allocation assignments between the Surat, Central and Warrego groundwater sources
- transfer of water allocation assignments within the Surat, Central and Warrego groundwater sources.

Managing water accounts

Water allocation accounts have been established for all existing licences and will be established for any new access licence.

A water allocation account is similar to a bank account and is a ledger of how much water is credited to and extracted from the account. Generally, licence holders may extract water that is in their water allocation account at any time. In some cases extraction may be restricted by, for example, specific conditions on a licence or works approval.

The account balance varies throughout the year depending on credits and debits to the account. Each account is usually credited early in the water year (1 July–30 June) with a volume of water which is based on:

- the share component (licensed volume on your licence)
- the available water determination.

For example, if the share component is 150 units and the available water determination for a category of licence is 1 ML per share unit, 150 ML will be credited to the water account. When water is extracted, the amount extracted is debited from the account. Initially available water determinations for the Central, Warrego and Surat groundwater sources of the NSW Great Artesian Basin will be 1 ML per share unit.

Water may also be credited to an account by the purchase of water from another licence holder's water account.

To provide flexibility to water users, the Plan allows unused water in a water allocation account for an aquifer access licence to be carried over from one water year to the next, provided that it does not result in the account exceeding an amount that is equal to the share component multiplied by 1.6 ML. For example, if a licence share component is 100 units then the maximum amount of water that can be held in the water account at any one time is 160 ML.

Water allocation accounts for aquifer access licences also have an annual usage limit. The total amount of water that can be extracted or transferred out of an account in any one water year generally is equal to the share component multiplied by 1.3 ML. For example, if a licence share component is 100 units then the maximum amount of water that can be extracted or transferred out in a single water year is 130 ML.

Works and use approvals

A works approval is required to construct and operate a bore in the NSW Great Artesian Basin. This is to ensure that any impacts on the environment and other water users are minimised.

A use approval may also be required. In general, if a development requires approval from another agency, for example, local government, a use approval will not be required. Where this is not the case, for example, an irrigation development, a use approval will be required.

The Plan specifies the requirements for the issue of works and use approvals and mandatory conditions that will apply to each approval.

Works approvals or, if applicable, combined works and use approvals have been issued for licensed bores when the Plan commenced on 1 July 2008.

A works approval may cover more than one bore. A combined water supply works and use approval may also be issued.

Landholders can apply for a water supply works approval or water use approval at a Department of Water and Energy (DWE) office or on the Department's website www.dwe.nsw.gov.au. It is recommended that prior to making an application you discuss the application with a Departmental officer.

There are various application fees for water supply works and water use approvals.

Applications received by DWE will be assessed according to the Department's assessment procedures and guidelines. Applications for a water supply works and water use approvals in the NSW Great Artesian Basin may need to be advertised for a period of 28 days. Once this period has closed, DWE will assess any objections to the application and determine the appropriate conditions.

The applicant will be advised in writing of the determination and, if granted a water supply works approval, a water use statement will also be issued. This process may take up to 90 days to complete.

A water supply works approval may not be granted or amended if the water bore is located within:

- 50 km of a high priority groundwater dependent ecosystem
- 500 m of an approved water supply work which may extract 20 ML/year under basic landholder rights
- 100 m of an approved water supply work which may not extract 20ML/year under basic landholder rights
- 500 m of a contamination source
- 200 m of the applicant's landholding boundary.

This means an approval may not be granted unless it can be demonstrated that there is minimal potential impact on the environment, other users or the aquifer from the operation of the bore. Further details are contained in Clause 29 of the Plan.

Licences with an existing works approval or combined works and use approval who purchase entitlement under the controlled allocation of savings and who wish to:

1. extract entitlement from a bore listed on the works approval, and/or
 2. where applicable, use the entitlement in accordance with a combined works and use approval
- do not need to obtain a new or amend an existing works or combined works and use approval.

In all other cases it will be necessary for anyone purchasing entitlement under the controlled allocation of savings to obtain a works or combined works and use approval prior to extracting the entitlement.

The Independent Regulatory and Pricing Tribunal has determined the following application fees for new or amending works or combined works and use approvals:

Application fees for approvals

	Fee
Administration	\$112.35
Advertising	\$511.05
Basic Assessment	\$356.92
Special Assessment – Irrigation greater than 10Ha	\$8.50 per hectare

Auction details

Venue Walgett District Sporting Club
Cnr Fox and Montkeila Streets
Walgett NSW 2832

Date Tuesday 21 July 2009

Time 11.00am

Lot sizes

There will be 24 “lots” offered at auction. Each lot will have a share component of 50 megalitres.

Deposit requirements

On the fall of the hammer a deposit of 5 per cent of the purchase price will be required.

The deposit will be refunded if the subsequent application for an access licence is not approved or if a works/use approval application is received by the Department within ten days of the auction and is not approved.

Contacts

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