

Commonwealth Environmental Water Holder Submission to the Review of the Water NSW Operating Licences

Background and context

The Commonwealth Environmental Water Holder (CEWH) is a statutory position established under the *Water Act 2007* (the Water Act). The CEWH is responsible for managing the Commonwealth's environmental water holdings to protect and restore environmental assets in the Murray-Darling Basin, in accordance with the *Basin Plan 2012* (the Basin Plan) environmental watering plan and Basin-wide environmental watering strategy.

The holdings are actively managed by delivering water to environmental assets, carrying water over for use in the next water year, or trade (sale or purchase). As at 31 July 2016, the holdings provide 1,699 GL of water per year as a long term average. The holdings will grow until at least 2019 and possibly until 2024.

Commonwealth water has contributed towards achieving a range of environmental objectives including:

- providing river flows that support good water quality for the environment and water users
- connecting rivers to floodplains to maintain food chains and support fish movement
- filling wetlands that support native fish, birds and other native animals
- supporting the recovery of the environment following the drought, and building resilience in preparation for the next drought.

NSW and the other Basin States agreed to use their best endeavours to implement the Basin Plan and associated measures under the 2013 *Intergovernmental Agreement on Implementing Water Reform in the Murray Darling Basin* (the IGA). Under the IGA, Basin States also agreed that the characteristics of licensed entitlements held for environmental use will not be enhanced or diminished relative to like entitlements held and used for other purposes, except by agreement to facilitate improved environmental watering. This includes that they will be subject to no less favourable conditions, including with respect to fees and charges, access to allocations, capacity to use, trade, and carryover, than like entitlements held for other purposes.

Environmental watering is a key element of restoring a sustainable working Basin under the Water Act and Basin Plan. Monitoring of outcomes from the use of Commonwealth environmental water to date has already shown significant results for fish, birds and native vegetation. Building on these outcomes and achieving the full intended benefits of the Basin Plan relies on:

- entitlements held by the CEWH being subject to no less favourable conditions than like entitlements held for other purposes, consistent with the 2013 IGA; and
- the implementation of commitments under the Basin Plan, including the assumptions used in calculating the volume of environmental water required to meet the Basin Plan targets and objectives.

As noted in Chapter 5 of the IPART *Review of the WaterNSW Operating Licences* Issues Paper, when the Basin Plan has been implemented in NSW, WaterNSW's activities for releasing water to

customers within the Basin will be regulated under the Water Act 2007 and WaterNSW will be required to comply with the requirements of the relevant water resource plans and any other plans and/or approvals supporting the Basin Plan.

Achieving Basin Plan objectives and targets

Shepherding, loss rates and inter-valley transfers

Underlying assumptions in the Basin Plan and commitments by State Governments support the need for the protection of environmental water to ensure system wide environmental benefits. The Basin Plan (s7.15) refers to anticipated measures (called 'unimplemented policy measures') which consist of a policy to:

- a) credit environmental return flows for downstream environmental use; or
- b) allow the call of held environmental water from storage during un-regulated flow events.

As with entitlements held for consumptive use, Commonwealth environmental water should be protected from extraction by other users. Before these entitlements were recovered under the Basin Plan, they were owned by consumptive users and the water was not available for extraction by others, and it should not be available now. Protection and re-use of environmental water is necessary to realise the full asset value of Commonwealth environmental water and its full environmental benefits, and to achieve Basin Plan objectives that were set on the basis that arrangements would be in place to protect and enable the re-use of environmental water.

Scenarios that involve return flows or a risk of extraction include where environmental water:

- is used to water a wetland or floodplain and a proportion of the water (return flows) then flows back into the river;
- is left in the river to provide in-stream environmental benefits; and
- crosses a water resource area boundary or state boundary.
- enters a water storage such as a dam.

If Commonwealth environmental water is not protected from extraction or is not able to be re-used throughout the system, a greater volume of environmental water would be needed to achieve the Basin Plan objectives. A failure to deal with legal over-extraction also undermines public confidence that existing State Government rules and regulations will protect water recovered for the environment. Moreover, under the Basin Plan (s7.15), if these arrangements are not implemented by June 2019, this would limit the scope of potential sustainable diversion limit adjustments. There is also a need to account for Commonwealth environmental water in the system to enable transparent management of the water as a public asset. Accurate accounting also supports adaptive management and monitoring of the outcomes of environmental water.

As part of protecting environmental watering and crediting return flows, it is important that water 'lost' along the way (e.g. water absorbed by a wetland) is accurately accounted for. Loss rates should be set at realistic levels based on the best available science to avoid diminishing the security of supply for any users including irrigators and the environment. Where water for the environment and water for irrigation travel along the same channel, the water lost through evaporation and

absorption should be shared, as it would have been when the entitlements now owned by the CEWH were owned by other water users and utilised for irrigation.

Planned Environmental Water under Water Resource Plans

The majority of environmental water in the Basin is not held entitlements such as the Commonwealth environmental water holdings, but rather planned environmental water under Water Resource Plans for each valley. Both sources of environmental water are important, with planned environmental water being a critical component for the Basin Plan benchmark modelling. Commonwealth environmental water deliveries are coordinated with other water in the system, including planned environmental water, to achieve the best environmental outcomes.

Planned environmental water is particularly important for river operations, allowing for the management of storage airspace and flood mitigation, and delivering critical in-stream flows that are necessary for riverine ecosystems which have been affected by river regulation. It also provides more natural flow variability, which is important for stimulating primary production and providing chemical cues crucial for biota.

Capture, store and release of water

Chapter 5 of the Issues Paper discusses WaterNSW's functions to capture, store and release water and its obligations to take reasonable steps to ensure prompt release and timely delivery of water to the customers in rural NSW. Commonwealth environmental water entitlements are subject to the same rules as equivalent entitlements held by other water users. These rules determine the utility and value of the Commonwealth environmental water holdings and the environmental outcomes that can be achieved.

The holdings are a significant Commonwealth asset, paid for by taxpayers, and currently worth over \$2.9 billion. Any changes to the WaterNSW operating licence(s) that disadvantage the Commonwealth's holdings compared to equivalent entitlements held by other users could devalue this public asset and would be contrary to Basin States' commitments under the IGA. It could also detrimentally impact the CEWH's ability to effectively manage its water resources, compromising environmental outcomes and necessitating further water recovery to meet Basin Plan objectives.

Conclusion

The CEWH is not advocating for any changes to the configuration of WaterNSW operating licences or to the functions of WaterNSW. The expectation of the CEWH is that irrespective of the structure of WaterNSW's operating licence(s), licensed entitlements held for environmental use will not be enhanced or diminished relative to like entitlements held and used for other purposes, except by agreement to facilitate improved environmental watering. This includes that they will be subject to no less favourable conditions, including with respect to fees and charges, access to allocations, capacity to use, trade, and carryover, than like entitlements held for other purposes.

The CEWH has a strong working relationship with WaterNSW and will continue to engage with WaterNSW on issues that may impact on the management of Commonwealth environmental water holdings.