

## **Commonwealth Environmental Water Holder**

### **Submission to the Inquiry into the Integrity of the Water Market in the Murray Darling Basin**

#### **Introduction**

The Commonwealth Environmental Water Holder (CEWH) is responding to one element of the Terms of Reference for the inquiry integrity of the water market in the Murray-Darling Basin:

- *the use of Commonwealth-owned environmental water for irrigation purposes, and the impact on Basin communities and the environment.*

#### **Background and context**

The CEWH is established under the *Water Act 2007* to manage the Commonwealth's environmental water holdings to protect and restore environmental assets of the Murray-Darling Basin.

The CEWH is governed by the requirements of the *Water Act 2007*, including managing the Commonwealth environmental water holdings in accordance with the Murray-Darling Basin environmental water plan (Chapter 8 of the Basin Plan).

The Murray-Darling Basin Plan (the Basin Plan) requires the CEWH to perform its functions and exercise its powers in a way that is consistent with the Basin-wide environmental watering strategy and have regard to the Basin annual environmental watering priorities. In addition, the CEWH must comply with other relevant Commonwealth legal, policy and environmental legislation and frameworks, including the *Public Governance, Performance and Accountability Act 2013* and the *Environment Protection and Biodiversity Conservation Act 1999*.

#### **Introduction**

Looking after the Murray-Darling Basin river system benefits communities, economies and the environment. Environmental water is managed by the CEWH, on behalf of the Australian people, to improve the health of rivers, floodplains and wetlands. Ecological monitoring is indicating that we are achieving real results from the strategic use of environmental water. Commonwealth water is contributing towards a range of environmental objectives including:

- providing river flows that support improved 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.

All elements of the Basin Plan are needed to support the plan's multiple objectives: environmental, social and economic. Establishing appropriate water management rules and compliance with those rules, as agreed by all Basin governments, is integral to a healthy working basin.

## **Protecting environmental water**

Of key concern to the CEWH is the protection and use of environmental flows. Unfortunately there are some state government policies in place which limit the protection and use of environmental water. These policies exist in spite of commitments made by Basin state governments to maximise the utility of environmental water, including mechanisms for the protection of environmental water. Specifically, the Basin Plan (section 7.15) 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. The protection of water rights should not be diminished on the basis of its new purpose.

There are no rules in place in some states, such as NSW, for the crediting of return flows. Consequently, environmental water that flows from one catchment into another becomes available for legal extraction by other water licence holders or re-regulated by river operators. Whilst this leads to an increase in the reliability of water licences, there is a direct impact on the CEWH's ability to achieve its environmental objectives and an erosion of the potential benefits attributable to environmental water management. This has been made evident recently in the Northern Basin regarding access licences for unregulated flow.

If environmental water is allowed to be extracted by consumptive users it would represent a significant third-party gain at the expense of the Australian tax payer. While a major focus of NSW government water resource management is the mitigation of third-party impacts from environmental watering, facilitating a third-party benefit for some irrigators at the expense of the environment and other water users is not appropriate.

It is important to note that in catchments where environmental water is protected from extraction for consumptive purposes, there remain other benefits to third-parties that are a direct result of environmental watering. For example, environmental water being delivered can 'wet up' a system following a dry period which reduces conveyance losses in the supply of irrigation water. Environmental water is generally provided outside periods of peak irrigation demand, benefiting irrigators by freeing up limited channel capacity and reduce supply risks. The full extent of the benefits that may be attained from environmental water management will only become fully evident over time.

Protection and re-use of environmental water is necessary to realise the full asset value of Commonwealth environmental water and the investment of public funds. It is essential to optimise environmental benefits in order to achieve the Basin Plan objectives that were established on the basis that arrangements would be in place to protect and enable the re-use of environmental water.

If Commonwealth environmental water is not protected from extraction, or cannot be re-used throughout the river system, a greater volume of environmental water would be required to achieve the equivalent Basin Plan objectives. Failure to deal with over-extraction undermines

public confidence in the state government rules and regulations to protect water recovered for the environment; as has been highlighted by recent media controversies.

### **Accountability for environmental water use**

Discharging the CEWH's statutory responsibilities for public accountability requires high standards in water accounting and reporting. Reporting on the use of Commonwealth environmental water must be accurate and reliable, and demonstrate its contribution to a specific environmental purpose consistent with the objectives of the *Water Act 2007* and the Basin Plan.

Accurate accounting and reporting provides transparency in the management of the public asset while supporting adaptive management and the monitoring of the outcomes of environmental water. On-going improvement in the practices for deriving water accounting information and its reporting to water licence holders is necessary to meet the high standards of public accountability required by all parties involved in environmental water management.

Protecting environmental watering without impacting other water licence holders requires the water used by the environment to be accounted for (e.g. increased conveyance losses, water absorbed by a wetland). Determining the volume of environmental water use remains subject to multi-jurisdictional efforts, particularly within the southern connected basin, and presents challenges that reflect the changing nature for which water recovered for the environment is being used. Determining environmental water use for accounting purposes should be based on best available information and be fair and reasonable to reflect equitable treatment for all water licence holders.

Where water for the environment and water for irrigation travel along the same channel the water lost through evaporation and absorption should be shared consistent with conventional practice, avoiding any discriminatory treatment of water holders on the basis of the purpose of water use.

### **Environmental watering in the Barwon-Darling**

The Barwon-Darling system provides an example of the importance of state regulations and compliance regimes. Low flows in the Barwon-Darling rivers are critically important ecologically for functions such as connectivity, replenishment of waterholes, and algal suppression. The CEWH's Portfolio Management Plan for the Barwon-Darling for 2017-18 includes indicators that reflect the ecological significance of low flows.

As a result of water recovery under the Basin Plan, more than 150 GL of additional water on average is expected to flow from northern basin tributaries into the Barwon-Darling system (based on a modelling undertaken by the Murray-Darling Basin Authority). Much of this additional water is expected to flow into the Barwon-Darling rivers in low flow events.

Under current water sharing plan rules, when water passes from a tributary into the Barwon-Darling rivers it is available for diversion by irrigators. Such diversion is subject to NSW regulations, and compliance is overseen by NSW. There have been issues regarding Cap compliance in the Barwon-Darling rivers in the past, and recent media has focussed on whether metering is adequate to quantify the take by irrigators and support the compliance regime.

In 2012, the Barwon-Darling Water Sharing Plan was changed to enable some irrigators to divert more water from low flow events. Whilst Individual Daily Extraction Limits are enabled by

the Barwon-Darling Water Sharing Plan, NSW has not implemented these limits. Some flow events since 2012 have been significantly reduced by water extraction.

The environmental impacts of the Water Sharing Plan rule changes in 2012 are of significant concern to the CEWH, warranting further investigation into the impacts of water management on river hydrology (particularly low flows) and the ecological values of the Barwon-Darling river system. A Long-Term Environmental Watering Plan for the Barwon Darling system is currently being developed under the Basin Plan that is expected to include indicators relevant to low flows. The extent to which the State's water resource plans give effect to supporting the environmental watering plan and mitigating risks to low river flows is yet to be seen.

## **Conclusion**

Basin governments set regulations covering water resource management and are responsible for ensuring compliance with these regulations. The effective and efficient use of Commonwealth environmental water is dependent of the appropriateness of these regulations and the functions of the responsible State government agencies.

Environmental watering involves a highly coordinated, planned and managed program of activities in partnership with State agencies and communities. The CEWH intends to continue to work with all governments, and with people across the Basin, to obtain the best outcomes from the water that has been made available to the environment.