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Notes on the Water Amendment Bill 2015 for the 1500GL cap on buy backs under the Basin Plan (v2)

How will the cap work?

- The Commonwealth (Cth) will be prevented from entering into a new contract to buy water if the amount of water purchased, combined with the total amount of water purchased by the Commonwealth since 2008, exceeds 1500GL. (s85C)
- It only applies to surface water in the Basin.
- The actual amount of water the Cth will use to calculate the figures is the 'long term annual average quantity of water that can be accessed' under the entitlement.
- How the 'long term annual average' will be calculated is not defined in the Bill. The DoE website that reports on the recovery of water for the MDB says that those figures "are calculated using the Department's estimates of long term average annual yield, as advised in the Murray-Darling Basin Ministers' Communiqué of 4 November 2011¹." I presume the Cth will use the same method for the cap, although because its not defined in the Act they can calculate it any way they want. So the volumes may be uncertain.
- It includes all contracts the Cth has entered into to purchase water for any purpose in the Basin from 2 Feb 2008 to 23 Nov 2012. And it covers contracts after 24 Nov 2012 if it was for the purpose of achieving the Cth's share of the reduction needed for the SDL. It is worth checking whether the Cth did purchase any water between 2008 to 2012 other than for the environment, as this will count towards the cap.
- Also note that if the Cth buys water in the future for the environment, but not for the purposes of meeting the SDLs, it will not count towards the cap.

Issues with this provision –

- Under this definition, it is not known how much water has already been recovered. Is it the 1162GL listed on the DoE website? Or another figure? Possibly if this definition re-defines what is considered buy back water, the cap could have already been reached and any further buy backs will be banned. I would caution against supporting the Bill until the govt puts this figure on record.

Exceptions to the buy back cap

- The Bill lists some specific exceptions to what is considered a buy back for the purposes of the cap. They are:
 - a) If a buy back is made in conjunction with a project where the Cth gave financial assistance for the rationalisation or reconfiguration of an irrigation network; AND the contract was entered into after the commencement of the Bill. (s85C(4)(a))
 - o Therefore any buy backs associated with infrastructure projects before this Bill count towards the amount already bought under the cap.
 - b) The Cth buys a water access entitlement from a Basin State; AND the contract was entered into after commencement of this section. (s85C(4)(b))
 - c) The buy back was part of a project where the Cth provided financial assistance for activities related to water infrastructure (apart from projects in (a) above). (s85C(4)(c))
 - o The explanatory memorandum gives the Sustainable Rural Water Use and Infrastructure Program as an example here.
 - o There is no requirement that the buy back was done after this Bill commences for this section

¹ <http://environment.gov.au/water/rural-water/restoring-balance-murray-darling-basin/progress-water-recovery>

- d) All water purchased by the CEWH under Part 6 of the Water Act is exempt. (s85C(4)(d))
- e) If the funds for buy back came from the Water for the Env Special Account (ie the 450GL efficiency measures) it is exempt. (s85C(4)(e))
 - o Although note that this has limited relevance because the Basin Plan cl7.17 doesn't allow the Cth to achieve the 450GL efficiency measures through buy backs anyway. This provision may cover situations where the Special Account is used to fund purchases as part of an infrastructure efficiency project.

When does the buy back cap end?

- The 1500GL buy back cap ends when the Basin Plan is next reviewed by the MDBA under s50 of the Act. This is either the statutory 10 year review (which will be in 2022 unless the Act is changed to 2026 as has been floated) or the forced review by the Federal Minister or all Basin States – whichever happens earlier. (The Minister/States can't force a review until at least 5 years after the Basin Plan came into force.) The cap will cease when the review report is given to the Federal Minister at the end of the review.

Amendment to Basin Plan

- The Bill will also directly amend the Basin Plan in relation to efficiency measures (the 450GL). In effect, it will mean that the 450GL can now also be recovered from projects where consumptive water users participate in projects that recover water through off-farm efficiency projects.
- Ie - this will be an additional 'proof of neutral or positive socio economic outcomes' that is required for efficiency measures. Previously anything apart from on-farm measures had to be proposed by a Basin State. The amendment means that the 450GL can also be recovered via off farm projects even without a sponsoring state.

Other concerns

- An overarching concern is that because this cap is in the Water Act is that if there is any inconsistency between the cap and the Basin Plan, the cap will override anything in the Basin Plan including the SDLs. I.e. as the Commonwealth is 100% responsible for achieving the SDLs under this Basin Plan, if it finds it can't meet them via infrastructure upgrades etc (or they get prohibitively expensive), it will not be able to use buy backs, even if this means the SDLs are not met. This cap could therefore prevent the SDLs from being achieved.

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