



# Summary of Regulatory Impact Statement

Goulburn to Murray Trade Review – assessing changes to  
trade, tagging and operating arrangements

March 2021



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Environment,  
Land, Water  
and Planning

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Front cover image courtesy of Andrea Sparks. Goulburn Weir, July 2019.

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We acknowledge and respect Victorian Traditional Owners as the original custodians of Victoria's land and waters, their unique ability to care for Country and deep spiritual connection to it. We honour Elders past and present whose knowledge and wisdom has ensured the continuation of culture and traditional practices.

We are committed to genuinely partner, and meaningfully engage, with Victoria's Traditional Owners and Aboriginal communities to support the protection of Country, the maintenance of spiritual and cultural practices and their broader aspirations in the 21st century and beyond.



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## Why is this Review needed?

The Victorian Government is reviewing rules governing the trade and delivery of water from the Goulburn River to the Murray River to avoid further environmental damage from sustained high flows during summer and autumn, when the lower Goulburn River would naturally be lowest.

There have been significant changes in the southern connected Murray-Darling Basin over the past 20 years. Changes in both demand (more water being delivered to the Murray downstream of Barmah Choke) and supply (reduced capacity of Barmah Choke and decreased inflows from the Menindee Lakes) have increased the challenge of delivering water to Murray users where and when it is needed. Climate change will likely further decrease supply due to less rainfall and increase demand in warmer weather – this is expected to further exacerbate delivery risks in the Murray downstream of Barmah Choke.

While delivery risks have been increasing, water continues to be moved from the Goulburn to the Murray because:

- Each year, water known as ‘legacy commitments’, which were made under historical decisions<sup>1</sup>, mean 140 GL of water is owed to Murray entitlement holders that must be delivered from the Goulburn,
- Water allocation is traded to Murray irrigators to meet annual demands over summer and autumn,
- Water held by some entitlement holders in eligible tagged water accounts, is moved as a standing trade arrangement so their Goulburn water allocations can be used in the Murray.

From 2017-2019 record volumes of water were traded from the Goulburn River to the Murray. The delivery of traded water, including tagged water, has kept river flows in the lower Goulburn River (the part of the Goulburn River below the Goulburn Weir to the junction with the Murray River) consistently high in recent years.

From 2008-09 to 2016-17, the volume of net allocation trade (including tagged use) from the Goulburn to the Murray was between -40 GL and +80 GL per year. In 2017-18 and 2018-19, this net volume grew to 250 GL and 230 GL respectively.

Sustained high flows during times when flows would be naturally low (i.e. over summer and autumn), together with limited variability of flow rates, has seriously damaged the lower Goulburn River, causing considerable concern for Aboriginal Victorians, recreational river users and environmental water managers. These unseasonal high flows have prevented plants from growing along the river’s edges and banks, causing significant riverbank erosion and reducing habitat for native fish and animals.

It is clear that the delivery of traded water is exceeding the ecological tolerances of the Goulburn River. The Department of Environment, Land, Water and Planning (DELWP) is reviewing Goulburn to Murray trade rules and regulation of tagged water, and also proposing new operating rules for how this water should be delivered. This is being done to help protect the health of the lower Goulburn River, without increasing water delivery risks in the Murray, and while enabling opportunities for water trading.

## What is the purpose of this Review?

The Victorian Government is considering changing the rules governing the trade and delivery of water from the Goulburn River to the Murray River to avoid further environmental damage by sustained high flows during summer and autumn, when the lower Goulburn River would naturally be lowest.

The Victorian Government is proposing to change trade rules so that irrigators and businesses can still trade water according to Basin Plan trade objectives, without escalating damage to our waterways. Irrigators and other water entitlement holders have become increasingly reliant on trade from the Goulburn River to meet

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<sup>1</sup> ‘Legacy’ Goulburn water consists of 100 GL of water shares issued pre-2007 to the Murray, including some to South Australia, and 40 GL of water recovered pre-2012 for environmental flows in the Snowy and Murray rivers. This water needs to be delivered each year to support the reliability of existing Victorian Murray entitlements.

their water needs and any reduction in trade opportunity will have economic impacts – it is likely that water will need to be sourced elsewhere (for example, from other tributaries) to meet sustained demands.

There are currently no formal operating rules for summer and autumn that prescribe upper limits on the volume of water that can be delivered down the lower Goulburn River. Historically, flows have been kept below 3,000 ML per day during summer and autumn to prevent impacts to in-channel privately owned pumps in operation over that period, but this is still much higher than natural flows for this time of the year.

The current rule that manages trade from the Goulburn system to the Murray system does not reflect how much water can be delivered without seriously damaging the health of the river system over summer and autumn. The trade rule was historically set to manage the risk of storing large amounts of traded water in the upstream storage from one year to the next, as such traded water may spill if conditions turn very wet in winter and spring. Such a spill could negatively affect Victorian Murray entitlement holders, as the spilled water was being used to underpin their allocations.

To manage this spill risk, the current trade rule allows trade from the Goulburn to the Murray throughout the year, as long as the balance of the Inter-Valley Trade (IVT) account remains below 200 GL<sup>2</sup>. This means the more river operators draw water from the account, the greater the opportunity for trade and the greater the volume of annual delivery to the Murray. The significant demand for water delivered out of the Goulburn system in 2017-18 and 2018-19 made it clear that managing the risks associated with the delivery of water, particularly environmental damage, must also be taken into account in the trade rule.

Until December 2019, when interim measures were brought in, there were also no restrictions on the use of water in tagged accounts, which added to the volume of water river operators had to deliver throughout the year. Historically, tagged arrangements were treated differently than allocation trade as the two types of trade posed different risks to the system. Until recently, use from tagged accounts was also small, averaging 25 GL between 2007-08 and 2016-17. However, the volume of tagged water use has increased significantly in recent years, up to about 120 GL in 2017-18 and 75 GL in 2018-19.

In 2017-18, market pressures caused allocation trade under the current trade rule to remain mostly closed – in response irrigators used substantial volumes of water through tagged accounts. This further contributed to environmental damage in the lower Goulburn, highlighting the need for some controls on the use of tagging arrangements.

## **Purpose of the RIS**

As part of this review DELWP has prepared a regulatory impact statement (RIS) for consultation on long-term options to improve Goulburn to Murray trade rules, regulation of tagged water and propose new operating arrangements. This is a combined RIS for both the proposed changes to the Goulburn to Murray trade rule and the proposed enduring regulation of tagged water, due to their inter-related nature. While operating rules are not a legislative instrument and therefore not formally subject to the RIS process, the various flow options under consideration have been included in this RIS analysis in order to openly consult on all the tools being used to address threats to the health of the lower Goulburn River. The flow rules also have a direct link in determining what is feasible for a trade rule – trade opportunity should only be made available if it can be sustainably delivered.

This RIS sets out a preferred option and makes the case for regulatory change to address issues on the lower Goulburn River. As part of this process, DELWP is seeking feedback on the RIS from all interested stakeholders, which will help to inform a Victorian Government decision on long-term Goulburn to Murray trade and operating rules that will start to come into effect from 1 July 2021 over a one-year transitional period, with long-term arrangements fully in place by 1 July 2022.

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The purpose of the Regulatory Impact Statement is to assess and seek comment on long-term options for trade, tagging and operating rules in the Goulburn River and the possible economic, environmental, Aboriginal cultural and recreational impacts these changes could have.

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<sup>2</sup> The IVT account tracks how much water is 'owed' from one river system to another. For example, water that has been traded from the Goulburn to the Murray is recorded as a debt of water owed that must be delivered from the Goulburn system to the Murray system when river operators deliver water from the account to meet downstream demands in the Murray.

## What options did we assess?

In the RIS, DELWP has assessed four options for Goulburn to Murray trade and operating rules against a base case (or do nothing) scenario for comparison:

- **The base case option (do nothing) – flows around 2,700 ML per day over summer and autumn.** This option considers the scenario that the existing interim operating arrangements and interim restrictions on tagged allocation use both expire, leaving tagged use unrestricted, operating rules unchanged and the existing Goulburn to Murray trade rule. Under the base case option, around 80 GL per month would likely be delivered.
- **Option 1 (best-possible outcome for the environment) – variable base flows around 940 ML per day over summer and autumn.** This option involves operating rules based on a flow regime recommended by a scientific panel assessment and the two-part trade rule to match<sup>3</sup>. Like the preferred option (Option 2 below), it includes a two-part water allocation trade rule and restricts tagged water use in line with this rule. The key difference is that from mid-December to June, it allows less water to be delivered to the Murray (around 28 GL per month plus a single pulse of up to 5 GL per day in May<sup>4</sup>).
- **Option 2 (long-term environmental recovery, low risk of further environmental damage) – variable base flows around 1,100 ML per day over summer and autumn.** This is the preferred option, as described earlier and includes three pulses of up to 3,000 ML per day over summer and autumn with extended periods of lower 1,100 ML per day variable base flows between each pulse. The proposed operating rule was developed based on the findings of the scientific panel. As with Options 1 and 3, the proposed two-part trade rule (with tagging restricted in line with trade) was refined based on initial community consultation undertaken in early 2020. From mid-December to June, it allows more water to be delivered to the Murray than Option 2, but less than Option 3 (around 33 GL per month plus 39 GL in pulses).
- **Option 3 (limited long-term environmental recovery, high risk of further environmental damage) – variable base flows around 1,300 ML per day over summer and autumn.** This option poses greater risk to the environment over the long-term, with higher base flows of 1,300 ML per day and monthly pulses of up to 3,000 ML per day over summer and autumn. Like Options 1 and 2, this option includes a two-part water allocation trade rule and restricts tagged water use in line with this rule. The key difference is that from mid-December to June, it allows more water to be delivered to the Murray (around 40 GL per month, plus an additional 70 GL in pulses).
- **Option 4 (same operating rules as Option 2, but with unlimited early season tagging and less allocation trade opportunity) – flows around 1,100 ML per day over summer and autumn.** This option has the same operating rules as Option 2 (flows of up to 1,100 ML per day and three pulses), but with different trade and tagging arrangements. Environmental outcomes are therefore expected to be the same as Option 2, however total trade opportunity is greater. From July through to October tagged use is unlimited and allocation trade would be subject to an annual limit, based on what can be delivered from November to April under the operating rule. From November to June the annual trade limit is applied for both tagged allocation use and allocation trade. This option means essentially unlimited use from tagged accounts could occur for the first part of the year. There was significant community interest in this option during initial consultation, but further analysis has shown that this option presents unacceptable third-party impacts through increased delivery shortfall risks in the lower Murray during the peak summer demand period.

The RIS also includes a review of engineering alternatives to regulatory change such as environmental remediation works (e.g. armouring of the waterway banks using rock beaching to prevent further erosion) and infrastructure solutions (e.g. bypasses, moving in-channel pumps to the top of the bank). During our initial community consultation, some stakeholders indicated support for larger infrastructure options such as bypassing the Goulburn River, to allow higher volumes of water to be delivered from the Goulburn to the Murray without impacting the lower Goulburn.

Our initial review indicates that, at best, large-scale infrastructure options would provide a partial solution to the problem, would be costly, could have significant impacts to local Aboriginal cultural, social and

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<sup>3</sup> The scientific panel was formed to provide advice to Goulburn-Murray Water, Goulburn Broken Catchment Management Authority, and DELWP on the expected environmental and river health outcomes of a series of flow scenarios. The panel's work also informed the development of the operational flow scenario used in Options 2 to 4.

<sup>4</sup> The timing of this May pulse – late in the water year – means that this does not increase delivery of IVT over the peak period.

environmental values and would take many years to implement. However, a smaller infrastructure project to move in-channel pumps to the top of the bank, pending negotiation with pump owners, could improve outcomes in future under the preferred option.

## What is the preferred option?

The Goulburn to Murray Trade Review RIS looks at options for:

- Operating rules – to set flow regimes, which have been chosen based on scientific evaluation, and mean delivery of water out of the Goulburn River is closer to natural variability and lower over summer and autumn; and
- Trade rules – to enable trade to occur in line with what can actually be delivered under new operating rules, so that traded water can be delivered within the same year and without increasing delivery risks; and
- Tagging regulations – to ensure the risks of tagged water use are managed consistently.

Infrastructure options have also been assessed, but do not present an alternative to pursuing new operating rules, trade rules and tagging regulations.

The RIS also looks at long-term arrangements for the Lower Broken Creek so that any changes to the above consider impacts this could have on existing entitlement holders, and don't simply shift environmental issues elsewhere.

The preferred option is Option 2 in the RIS, which has components as described below.

### OPERATING RULES

- Variable base flows averaging 1,100 ML/day over summer and autumn
- Up to three separate 3 GL pulses

### TRADE RULE & TAGGED USE

- Two-part trade rule that matches seasonal opportunities to deliver water
- Tagged use restricted in line with trade rule

### INFRASTRUCTURE

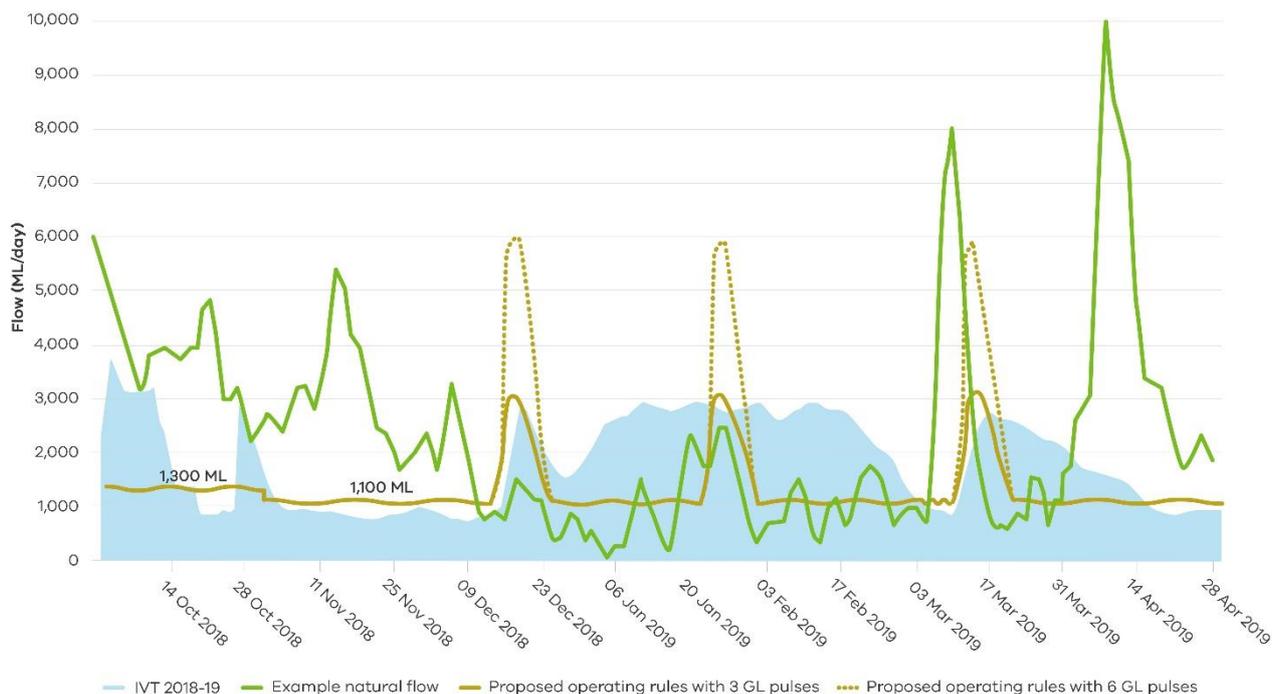
- Further investigate moving in-channel privately owned pumps in the lower Goulburn River to enable three separate 6,000 ML/day pulses (rather than limited to 3,000 ML/day)

### Preferred operating rules

The preferred option is to set **operating rules that prescribe variable base flows that provide an average monthly flow of 1,100 ML per day over summer and autumn, and enable three additional short pulses of water** between 3,000 ML per day and 6,000 ML per day within prescribed rates of rise and fall for the changing water level.

To enable pulses of up to 6,000 ML, it is recommended that further investigation of moving in-channel, privately owned pumps in the lower Goulburn is pursued.

Figure 1: Example of natural variable flows compared to proposed base flow and pulses from October to April



The preferred option will help to prevent further riverbank erosion and other environmental damage from unseasonal high flows. This more closely aligns with the natural flow variability of the river over summer and autumn and is much lower than the base case (no regulatory change), which has seen base flows held at around 2,700 ML per day over this high environmental risk period. These flows would be measured at McCoy's Bridge<sup>5</sup> in the lower Goulburn River.

### Preferred trade rule and tagging restrictions

The preferred option will also introduce a **two-part allocation trade rule**,<sup>6</sup> and restrict tagged water use in line with this rule. This would mean that:

- **A rolling winter-spring limit applies (July to mid-December)** – this allows trade to open up from the Goulburn to the Murray whenever the balance in the IVT account is below 190 GL. During this period the more water that is delivered from the IVT account, the greater the opportunity for trade. This reflects the ability to deliver more water in winter and spring when the river is naturally highest.
- **A fixed summer-autumn limit applies (mid-December to June)** – this effectively caps trade opportunity for the rest of the year to ensure all traded water can be delivered according to the preferred operating rules for the lower Goulburn River.
- **Tagged water use is restricted in line with trade limits** – this means tagged water use is only possible when allocation trade is possible. The rule would allow water made under 'grandfathered' tagged entitlements to retain a transitional exemption, while clarifying which change of ownership approvals would result in these tags being restricted in Victoria. Over time, these grandfathered tags would become subject to restrictions as they changed status through changes in volume, place of take, change of ownership, or change in source.

Note that an alternative tagged use option enabling a faster transition to restricting grandfathered tags is also assessed in the RIS to seek community feedback on this alternative approach, and to further support why Victoria is advocating for changes to Basin Plan section 12.23<sup>7</sup>.

<sup>5</sup> Measured at gauging station 405232

<sup>6</sup> The two-part water trade rule was referred to as the 'dynamic rule' in previous public consultations.

<sup>7</sup> MDBA's [Guideline for section 12.23](#), indicates the purpose of this section is to ensure that water made available through a tagged arrangement does not receive different treatment than water made available through allocation trade.

## Preferred infrastructure option

The preferred option is to pursue further investigation of moving in-channel privately owned pumps in the lower Goulburn to the top of the bank to enable pulse flows of up to 6,000 ML per day, in line with the preferred option for operating rules. This would facilitate minimising environmental damage from the delivery of traded water over summer and autumn and would maximise the benefits from flows of environmental water in winter and spring.

While this option would not provide an alternative to any changes to rules or regulations, it offers additional operational flexibility to sustainably deliver additional volumes of IVT to meet traded demands and is recommended for further investigation.

## Preferred option for Lower Broken Creek

A preferred option has also been developed for managing trade between the Goulburn and the Lower Broken Creek. As the Lower Broken Creek is used as an alternative pathway for delivering some water from the Goulburn IVT account without damage to the lower Goulburn River, this option needs to consider any significant impact on the opportunity to continue this during the peak demand period, without causing delivery shortfall risk to the Murray system and within ecological tolerances of the Lower Broken Creek. Without any special management of the Lower Broken Creek, interim exemptions from tagging regulations will expire and the Lower Broken Creek entitlement holders<sup>8</sup> will be restricted more than is necessary to protect the health of the lower Goulburn River and manage delivery risks in the Murray.

The preferred option for the Lower Broken Creek is to:

- **have the same rules for allocation trade from the Goulburn** as the rest of the Murray, **and**
- **give all eligible entitlement holders with Goulburn entitlements the option to exchange them for local Murray entitlements** (recognising the unique arrangements in place since 2007) so that these users can always use their entitlements in the local Murray trading zone (6B), **and**
- **have a seasonal tagging rule specific to the Lower Broken Creek** that allows unlimited tagged use during winter and spring, and then restricts tagged use in line with allocation trade from summer onwards. This recognises that some exemption from restrictions on tagged use better reflects the risks posed by this type of use in the Lower Broken Creek.

## Why do we prefer Option 2?

The broad objectives of this review are to within ecological tolerances, maximise trade opportunity without creating increasing delivery risks. To identify a recommended option, we assessed the four options compared to the base case by analysing their impacts (costs and benefits) and considering how each option performs against the objectives below. Our analysis indicates that Option 2 best balances these objectives.

### Objectives for changes to the Goulburn to Murray trade rules, tagging restrictions and operating arrangements

This review aims to recommend changes to the trade, tagging and operational rules that strike the best balance between the following seven objectives:

1. **Support lower Goulburn environmental values** – in particular, the changes should minimise the risk of further environmental damage and enable the environmental condition of the lower Goulburn River to recover from the damage caused in 2017-18 and 2018-19 from sustained high summer and autumn flows
2. **Provide as much opportunity as possible for water trade from the Goulburn to the Murray based on what can sustainably be delivered** – at a minimum, the changes should ensure the legacy commitments of up to 140 GL per year can be delivered to the Murray and, where possible, enable trade opportunity on top of these commitments
3. **Prevent trade from being unnecessarily restricted** – consistent with Basin Plan water trading rules, trade should only be restricted when it is necessary<sup>9</sup>, for example to manage connectivity of the systems, protect the environment

<sup>8</sup> In 2007, when water entitlements were unbundled from land, entitlement holders in the Lower Broken Creek were given a choice to convert entitlements into Murray or Goulburn water shares – most chose Murray water shares, though some chose Goulburn water shares tagged for use in the Lower Broken Creek.

<sup>9</sup> sections 12.16 and 12.18 of the Basin Plan water trading rules outlines allowable reasons for restricting trade – see **Error! Reference source not found.** of this RIS for more information.

or prevent impact to other entitlement holders. Trade rules should appropriately reflect the risk trade may have on the system.

4. **Prevent delivery risks in the Murray from increasing as a result of trade that occurs from the Goulburn** – the changes should not increase the risk of river operators being unable to deliver traded water to meet the demand of entitlement holders on the Murray below the Barmah Choke, compared to if the trade did not occur
5. **Support lower Goulburn Aboriginal cultural values** – the changes should protect Aboriginal cultural values, including cultural sites and Traditional Owners’ connection with and care for Country, from adverse impacts of traded water over summer and autumn
6. **Support lower Goulburn recreational values** – the changes should maintain or improve the outcomes for people using the lower Goulburn River for camping, fishing and other recreational activities in summer and other peak periods
7. **Support environmental objectives in the Goulburn and Murray systems** – the changes should enable current environmental outcomes to continue to be achieved and prevent environmental problems from shifting elsewhere in the Goulburn and Murray systems.

In addition, any changes to trade and operational rules must comply with the broader regulatory framework, including Basin Plan water trading rules, the Objectives and Outcomes for River Murray Operations, the objectives of the *Water Act 1989* (Vic), and the Victorian Government’s water management policies.

### Protecting the lower Goulburn River from further damage

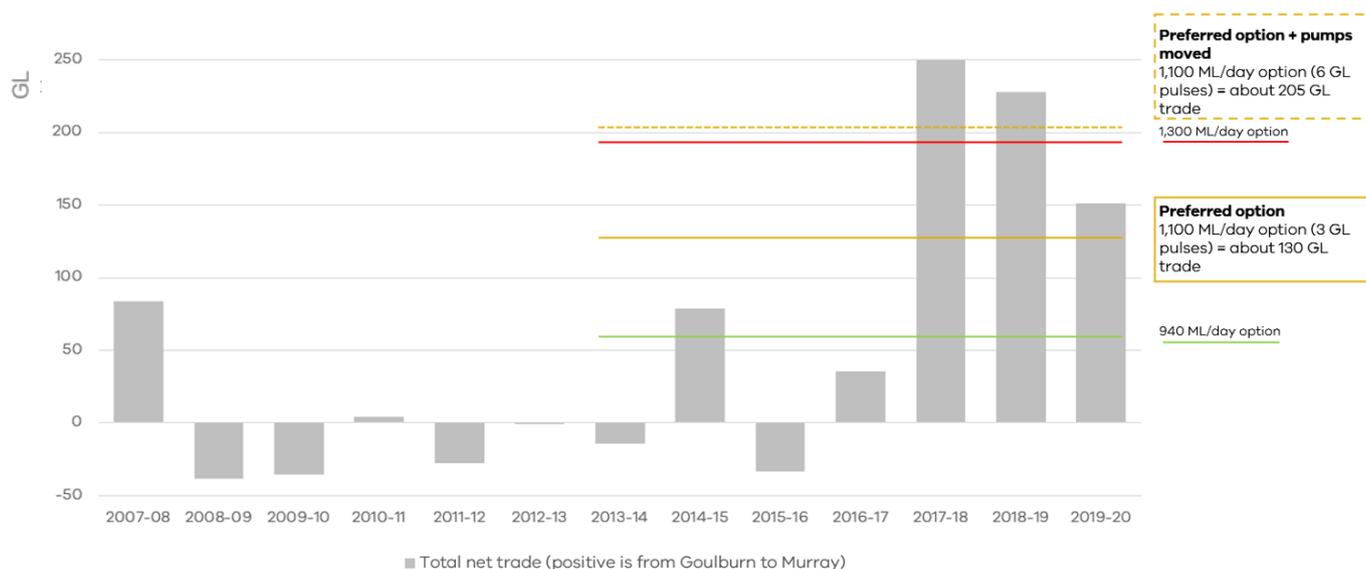
While the environmental outcomes would be better under Option 1, Option 2 will still lead to environmental improvements compared to the base case option. The scientific panel noted that the proposed flow regime under Option 2 would avoid further damage of the kind caused in 2017-18 and 2018-19, and is likely to allow the condition of the river to recover over time (alongside continued environmental flow management through winter and spring).

Option 2 is preferred over Option 3 to protect Aboriginal cultural values from further damage over summer and autumn, and maintain or improve the outcomes for recreational values. It also provides more likelihood of environmental recovery over time, whereas Option 3 risks further damage.

### Enabling inter-valley trade

Option 2 would also provide greater opportunities for water trade than Option 1. It is estimated that the preferred option would enable new trade opportunity each year of up to around 130 GL (with three separate 3,000 ML per day pulses), or if in-channel pumps were moved to the top of the bank, above 200 GL (with three separate 6,000 ML per day pulses), on top of 140 GL of annual legacy commitments<sup>10</sup> from Goulburn water entitlements that are owned by the Murray system. With 3,000 ML per day pulses (possible without moving in-channel privately owned pumps), this option provides almost twice the volume of additional trade than Option 1. This trade opportunity is of significant value to irrigators and other water users.

Figure 2: Net trade opportunity under options assessed



There is inherent value associated with being able to trade water – people have flexibility to trade and use water to support what is most valuable to them. People will buy and sell water, in this case between the Goulburn and Murray systems, in ways that help them get the most value out of their water. For example, for environmental water holders to support environmental outcomes, and for farmers to support different types of farming.

More broadly than individual decisions for how best to use water for their businesses, the productive value associated with trade that supports water use in different regions is dependent on what people choose to farm and commodity prices for their product. Currently in the Murray system, traded water is generally used to support irrigation of horticultural crops in the lower Murray, while water use in the Goulburn system more often supports dairy, pasture or cropping which are currently typical in this system.

Water market prices reflect the relative availability of water in both systems, commodity prices and seasonal conditions. Further, if a given volume of water cannot be traded to the Murray due to trade being closed, it will still be available for use in the Goulburn system, but the associated productive value of that extra water use may be less in the Goulburn than in the Murray.

### **Preventing delivery risks increasing from trade**

Unlike Option 4, Option 2 would minimise the impacts of trade on delivery risks in the Murray and is consistent with the Basin Trading Rule<sup>11</sup> that requires allocation trade and tagged water use to be treated in the same way.

Option 4 proposes a different trade rule that would enable unlimited seasonal tagging. This option is not preferred as it could create unacceptable delivery risks in the Murray by allowing Murray water users to meet all their winter and spring demands with water traded from the Goulburn, and then concentrate higher use of their Murray entitlements in summer and autumn. This would put additional pressure on moving water downstream of the Barmah Choke when delivery risks in the Murray are highest.

### **Conclusion**

In summary, implementing the preferred option will mean that the environmental condition of the lower Goulburn is expected to recover over time while minimising the risk of further immediate environmental damage, protecting Aboriginal cultural sites from damage from unseasonal high flows over summer and autumn, and maintaining or improving outcomes for recreational river users. In order to achieve up to 6,000 ML per day pulses in future (rather than limited to 3,000 ML per day pulses), existing in-channel privately owned pumps in the lower Goulburn River would need to be moved up on to the riverbank – the feasibility of which will be investigated in consultation with pump owners.

## **Making a submission**

Stakeholders are invited to make formal submissions or comments on the RIS and the proposed operating rules, trade rule and tagged use regulations. Submissions may present analysis of alternative options and recommend changes to the proposed rules and regulations.

Submissions are required to be made in writing and submitted no later than **5pm on 30 April 2021** via the **Engage Victoria website**:

**<https://engage.vic.gov.au/goulburn-murray-trade-rule-review>**

All submissions will be treated as public documents and published on the Engage Victoria website unless they are marked as confidential.

After the consultation period, the Department will consider all feedback received from stakeholders and the community and consider whether any changes to the proposed operating rules, trade rule and tagged use regulations are required. The Department will make recommendations to the Minister for Water about the final form and content of these rules and regulations for the Minister to make the final decision.

A public notice on the Victorian Government's decision will be made, with the new trade rule and tagged use regulations proposed to start to come into effect from 1 July 2021.

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<sup>11</sup> Basin Plan section 12.23 is within scope of the Australian Competition and Consumer Commission (ACCC's) Murray-Darling Basin water markets inquiry. The ACCC's findings may influence the long-term approach to applying Basin Plan section 12.23.

Once the trade rule and tagged use regulations are made, copies of all submissions will be provided to the Parliament's Scrutiny of Acts and Regulations Committee. This committee examines these submissions to ensure that the Department has considered the views of all stakeholders.