



## **CEWH SUBMISSION: VICTORIA'S NORTH AND MURRAY WATER RESOURCE PLAN**

### **Context**

The Commonwealth Environmental Water Holder (CEWH) appreciates the opportunity to provide a submission on the draft Victoria's North and Murray Water Resource Plan (draft WRP). This submission is made in the context of the CEWH's statutory responsibilities, and proposes strategies to mitigate potential risks consistent with the risk-based approach embedded within the Basin Plan (Chapter 10, Part 9). The statutory responsibilities of the CEWH and Commonwealth environment portfolio regarded in formulating this submission include:

- the Commonwealth *Water Act 2007* and Basin Plan 2012, to protect and restore priority environmental assets and ecosystem functions of the Murray-Darling Basin;
- the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), to ensure the efficient and effective use of Commonwealth resources (held environmental water); and
- Matters of National Environmental Significance protected under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), including wetlands of international importance (Ramsar wetlands), listed threatened species and ecological communities, and migratory species protected under international agreements (Bonn Convention, CAMBA, JAMBA or ROKAMBA).

The Commonwealth Environmental Water Office (CEWO) is grateful for opportunities to engage with officials from Department of Environment, Land, Water and Planning (DELWP) to discuss the WRP approach to issues such as planned environmental water. The CEWH seeks assurance that the WRP will not compromise the statutory responsibilities of the CEWH or the delivery of watering requirements of priority environmental assets (Basin Plan s10.17).

Based on the information available, the CEWH considers a number of residual risks exist and recommends possible treatments to limit any unintended consequences.

### ***Structure of the submission***

#### **Part A: Catchment specific issues**

1. Planned environmental water
2. Operational strategies and transparency

#### **Part B: State-wide issues**

3. Public assurance of best available information
4. Monitoring, reporting and accounting
5. Extreme events
6. Water quality
7. Constraints management
8. Pre-requisite Policy Measures

#### **Part C: Clarifications and corrections**

## **PART A: CATCHMENT SPECIFIC ISSUES**

### **1. Planned environmental water**

Planned environmental water (PEW) represents the volume and flow characteristics that existed at the establishment of the Basin Plan settings for the Sustainable Diversion Limits (SDLs) and water recovery for the environment. The efficient and effective use of the Commonwealth water holdings are predicated on the baseline flow conditions (PEW, above cap water, system water or other related planning assumptions) being preserved as per the intention of the Basin Plan (s10.28) and the Commonwealth Water Act (s6). Any changes which reduce the baseline flow conditions could increase risks of Commonwealth environmental water being used to substitute for PEW to achieve the same level of environmental outcomes for priority environmental assets or priority ecosystem functions, and the capacity of the CEWH to fulfil its statutory responsibilities to support healthy river systems in Victoria and within the connected water resource areas.

#### ***PEW in Victoria***

Victoria has identified limited instances in Victoria's North and Murray WRP area where the state instruments meet the Basin Plan definition of PEW (Broken, Ovens and Upper Ovens catchments).<sup>1</sup> All other water that is described in the bulk entitlements which is not specifically for environmental (defined as held environmental water) or consumptive use is classified as 'system water'. 'Above cap' water is also identified as supporting environmental outcomes and preserved through the Victorian entitlement framework.

The CEWH's holdings in Victoria constitute a small fraction of the total water available that contributes to Basin Plan environmental outcomes. If the water contributing to the baseline flow conditions (i.e. passing flows, system water and above cap water) are not formally recognised as PEW with the same protections, then the ability to meet the environmental watering requirements of the Basin Plan (s10.17), including Ramsar sites, may be compromised. This may occur as water which previously could only be used for environmental outcomes could potentially be diverted for broader social or cultural purposes which may not align with environmental outcomes.

Based on the interpretation of PEW being applied within Victoria, the CEWH is seeking the inclusion/amendment of accredited text in the WRP to provide confidence in the long-term preservation of the baseline flow conditions within the Victorian water resource areas.

#### ***Protection of system water***

System water provides an important baseflow that environmental water managers build on to deliver environmental outcomes, and the draft WRP acknowledges the environmental benefit<sup>2</sup> of system water. The bulk entitlements outline the operational rules for the management of system water including passing flows. However, the state entitlement framework does not currently form part of the accredited text in the draft WRP and is therefore subject to change. As a recent example, in 2017 there was an amendment to the *Broken System Bulk Entitlement Conversion Order 2004* to allow operational discretion in reducing minimum flows and passing flows during extreme dry conditions. While this change

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<sup>1</sup> Draft WRP – s12.2.2.2, p. 12

<sup>2</sup> Including providing minimum passing flows or being used to mitigate water quality impacts.

may provide for improved water management during extreme dry periods, the change occurred without consultation with all stakeholders, including the CEWH as a water entitlement holder within the resource area. In the absence of the state framework being described within the accredited text, as a means of preserving system water, the potential for repurposing and eroding the baseline flow conditions without proper consultation and reference to the underlying principles of the Basin Plan in protecting the level of water previously dedicated to support base river health remains a future risk.

Based on the interpretation of PEW being applied within Victoria, and the importance of system water for the efficient and effective use of environmental water, the CEWH is seeking assurance that any changes made to the bulk entitlements will not compromise the meeting of environmental watering requirements (Basin Plan s10.17), particularly the Ramsar sites within the WRP areas and other sites of environmental significance.

We would suggest that the following amendments be made to the accredited text of the WRP to provide assurance that WRP implementation in the future does not erode base system environmental health, or require substitution of Commonwealth environmental water to achieve outcomes:

- new accredited text is included with respect to s10.17 of the Basin Plan, such as—The Victorian entitlement framework sets out the management requirements for Victoria’s water resources and provides for the protection of system water. This framework provides the basis for ensuring that the operation of the WRP will not compromise the meeting of environmental watering requirements of priority environmental assets and priority ecosystem functions;
- include supporting text within s12.7.1 (related to 10.17 of the Basin Plan) noting the role of the long term water resources assessment (Victorian *Water Act 1989*) in monitoring risks for priority environmental assets, and determining whether any deterioration in waterway health has occurred related to changes in flow;
- in relation to the accredited text for s10.26(1)(d) of the draft WRP<sup>3</sup>, minor text amendment is made requiring: an assessment of environmental impacts, in addition to third party impacts; and consultation to occur with water entitlement holders, including the CEWH, with outcomes from assessments to be made public;
- amendment to existing accredited text with respect to s10.28<sup>4</sup> of the Basin Plan to the effect: (a) acknowledging the contribution of system water to achieving the environmental watering requirements of priority environmental assets; (b) noting the reporting of PEW in the state’s annual reporting under s10.46 and Schedule 12 (matter 9.2) of the Basin Plan; and (c) identifying the Victorian Water Accounts as providing detailed reporting on the management of the State’s water resources, including quantifying systems water provided under existing bulk entitlements, and
- the system water should be characterised in the planning assumptions for the WRP areas (volume, rules, etc.); i.e. what is assumed in the BDL and SDL models.

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<sup>3</sup> Draft WRP – s12.4 (accredited text), p. 414

<sup>4</sup> Draft WRP - s12.2.2.3 (accredited text), p. 403

## 2. Operational strategies and transparency

### ***Environmental watering between connected water resources***

The draft WRP outlines the arrangements to facilitate environmental watering between connected water sources in the southern connected basin.<sup>5</sup> To ensure the most efficient and effective use of environmental water across the southern connected basin, it is important that environmental watering actions occurring within individual jurisdictions are coordinated to contribute to the overall outcomes of the Basin-wide environmental watering strategy, to reflect the obligations of the CEWH. To support basin-wide responsibilities, the CEWH requests that the accredited text describing the coordination of environmental watering to meet Victorian WRP area objectives is broadened to recognise the importance of inter-jurisdictional coordination to meeting the objectives of the Basin Plan.

To support the coordination of environmental watering across the southern connected basin, we request a minor amendment to the accredited text provided in section 12.6.4 of the WRP<sup>6</sup> to be broadened to ensure environmental watering may be coordinated to meet the objectives of the Basin Plan, rather than just the objectives of the Murray and Northern Victoria WRP plan areas.

### ***Inter-Valley Transfers, tagged trade***

The volume of Inter-Valley Transfer (IVT) water being delivered from the Goulburn system to downstream Murray River users has progressively increased over the last several years. The IVT deliveries have exceeded the Victorian environmental flow recommendations for the Goulburn River across summer and autumn and have led to measurable negative impacts to the condition of riparian vegetation along the Goulburn River channel—a priority environmental asset and a targeted outcome of successive environmental watering activities—undermining the use of environmental water in previous years to support vegetation recovery.<sup>7</sup>

There is no explicit mention of IVT as a risk within the draft WRP. CEWH understands from discussions with DELWP that the future risk of IVT deliveries is considered under the risk heading *Changes to the timing and location of demands*. However, given the significant residual risk evident with existing management arrangements, additional detail describing this risk (s10.41) and mitigation strategies (s10.42) are considered warranted. The WRP (risk assessment) should explicitly outline the factors impacting on IVT balances, including allocations accrued through the Snowy Scheme, historically traded entitlements and tagged trades. Evidence collated through the CEWO's Long Term Intervention Monitoring Project<sup>8</sup> highlights the need for additional rules to manage these risks consistent with the requirements of sections 10.17 and 10.43 of the Basin Plan.

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<sup>5</sup> Draft WRP – s12.6.4, p. 424-429

<sup>6</sup> Draft WRP – s12.6.4 (accredited text), p. 429

<sup>7</sup> CEWO Long Term Intervention Monitoring Project Goulburn River Selected Area: Summary Report 2017–18

<sup>8</sup> CEWO Long Term Intervention Monitoring Project Goulburn River Selected Area: Summary Report 2017–18

The CEWH understands that the trade of tagged licenses across northern Victoria are not subject to the same allocation trade limitations as other licence types. For the purposes of transparency, the CEWH recommends identifying the volume of entitlements within the WRP areas which are tagged, and that any further tagging of licences be subject to the assessment of environmental impacts consistent with s12.18(s) of the Basin Plan (water trading rules).

There is evidence that current arrangements for the delivery of IVT, and delivery of tagged trades, is leading to increased risks to priority environmental assets in Northern Victoria and the outcomes of environmental watering actions.

The CEWH requests that a section is included in the draft WRP discussing the challenges and risks associated with IVT delivery, that IVT demand is explicitly identified in the description of threats and risks in Table 5-2<sup>9</sup>, and that additional strategies (including the application of the Basin Plan water trading rules) are provided to mitigate this medium to high risk.

It is further recommended that the volume of tagged entitlements are identified within Chapter 7 of the WRP along with the acknowledgement of any difference to the trading rules applicable to tagged trades.

### ***Supply Shortfalls***

There are several physical and operational constraints within northern Victoria which can lead to channel capacity congestion during periods of peak demand (e.g. Barmah Choke). This in turn may lead to shortfalls in water supply that can affect consumptive and environmental water delivery, and the ability for the CEWH to contribute to the Basin Plan objectives, as particularly evident during 2018-19.

There does not appear to be any description of supply shortfall risks within the draft WRP with respect to s10.41 of the Basin Plan. The CEWH requests further details on this risk to be included in the draft WRP, including links to relevant policy on the management of congestion/shortfall risks in the short and medium term. Shortfall in water supply has been demonstrated to compromise environmental watering requirements that would justify the need for additional rules to be established within the WRP (s10.17).

The CEWH suggests the WRP includes further details on the risk of supply shortfalls, including rules/policy on the mitigation of these risks in the short and medium term.

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<sup>9</sup> Draft WRP – s5.2 (Table 5-2), p. 115-116

## **PART B: STATE-WIDE ISSUES**

### **3. Public assurance of best available information**

Hydrological models are a foundational tool for informing decision-making, and it is important that there is confidence in their use. Models can provide “best available” information, but quality assurance requires a transparent and independent process of evaluation. A public statement of assurance presenting an independent evaluation of the planning model (e.g. BDL, PBP, SDL model scenarios, cap factors) being used to support consideration of key policy and operational issues would provide increased confidence in the modelling information. No complete set of information on the models underpinning the operation of the Victorian WRPs have been made publicly available.

It is requested that a full report is made publicly available outlining the planning assumptions underpinning the BDL/SDL model. A statement of assurance of the Victoria North and Murray model, based on the evaluation criteria provided in the MDBA Position Statement 3C, is recommended to be attached to the WRP as non-accredited supporting material with the aim of providing full public transparency.

### **4. Monitoring, reporting and accounting**

The Basin Plan requires monitoring and formal reporting on the use of environmental water, relating to both planned and held environmental water (Basin Plan s10.46 - Schedule 12, s13.14).

Chapter 15 outlines the measuring and monitoring requirements for the WRP, however Table 15-2 does not include reference to monitoring and reporting of system water which provides an important contribution to the baseline conditions for determining the SDL and environmental delivery (refer to section 1 of this submission). To improve annual monitoring and reporting it is suggested that system water be added to Table 15-2 and explicitly detailed within the annual Victorian Water Accounts.

The CEWO looks forward to continuing to collaborate with the Victorian Government to establish a framework for monitoring, reporting and accounting of environmental water use. These changes are specific to accounting and reporting within the River Murray and not limited to the Victorian water resource area. A framework that supports the on-going improvement in environmental water measurement, accounting and reporting should aim to meet obligations under the Water Act, Basin Plan and the PGPA Act, by:

- satisfying a high level of public accountability, demonstrating the effective and efficient use of the Commonwealth’s environmental water;
- establishing a holistic approach to water accounting that provides transparency in the use of held and planned environmental water and its interaction with water managed for other objectives; and
- providing transparency to the methods used for determining the end of system environmental flows.

It is expected that the implementation of pre-requisite policy measures, to the extent that it meets the policy objectives of the Basin Plan, should satisfy this requirement.

To strengthen the monitoring and reporting requirements outlined in Table 15-2 of the draft WRP, it is recommended that:

- system water be acknowledged within table 15-2 as contributing to the baseline flow conditions (Baseline Diversion Limit) for the Victorian Murray and Northern Victoria WRP areas; and
- the accredited text for s10.46 of the Basin Plan refers to a process for continuous improvement in environmental water accounting through the development of operational procedures to give effect to State and Commonwealth reporting obligations under the Basin Plan (s10.46, s13.14, and Schedule 12).

## 5. Extreme events

The Extreme Events and Critical Human Water Needs (CHWN) chapter of the WRP aims to provide transparency in the state's water resource management response during extreme events. While CHWN are emphasised throughout the chapter, the environmental water needs and priorities are not well established. The critical environmental needs that would be supported by operational procedures during extreme dry periods should be more clearly articulated to guide water resource priorities relevant to each critical stage (tier 1-3)<sup>10</sup> and to enable an assessment of residual risk from operational decisions. The Victorian Long-term Watering Plans (LTWP) should support the implementation of the critical response by defining the critical environmental needs and by including explicit cross references between both documents; a recommendation for the forthcoming revision to the existing version of the LTWP.

Section 10.2.2 of the draft WRP outlines that the Minister may declare a water shortage to temporarily qualify rights under section 33AAA of the Victorian Water Act 1989. This statement alone does not provide transparency around the circumstances under which a shortage may be declared, nor certainty in the following management response. It is recommended that further description is provided within the WRP clarifying the key principles guiding the Minister's discretion in the management of extreme events, which should include the equal treatment of all entitlement holders and the public interest in the protection of priority environmental assets.

The following inclusions are suggested in the accredited text (or explicit reference to such processes in the supporting text) relevant to section 10.51 of the Basin Plan, to provide increased transparency to Victoria's response in the management of water resources during extreme events:

- explicit reference to the LTWP defining the critical environmental requirements during extreme events;
- documentation of operational procedures and assessment of risks associated with water resource management during extreme events;

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<sup>10</sup> Draft WRP – s10.2.3 (Figure 10-1), p. 369

- explicit reference to the volume of CHWN identified for the Victorian Murray (77 GL/yr)<sup>11</sup> and any other specific volumes identified for other catchments of Northern Victoria;
- detailed information that outlines the process for reinstating resource allocations as conditions improve and criticality decreases. It is anticipated that this process of reinstatement would mirror the process of account restriction; and
- cross reference to the Water Quality Management Plan for managing water quality issues that may arise during extreme events.

In relation to the Minister's statutory powers to declare temporary qualification of rights<sup>12</sup>, the inclusion of principles in the accredited text that guide these decisions would provide transparency to stakeholders (similar to the NSW *Incident Response Guide*). In particular, a clarification is requested indicating that any temporary qualification of rights will be applied consistently to all like entitlements types, regardless of the purpose of water use, consistent with the state government's commitment under the *Intergovernmental Agreement for Water Reform in the Murray Darling Basin 2013*.

## 6. Water quality

The Water Quality Management Plan (WQMP) aims to provide a framework to protect, enhance and restore surface water quality, supporting the WRP and LTWP. We encourage DELWP to consider including within the WRP a requirement for periodic reassessment of water quality risk as a key mitigation strategy for the protection of priority environmental assets and ecosystem functions.

As water quality risks are often exacerbated during extreme events, a cross reference with Chapter 10 (Extreme events and critical human water needs) could strengthen arrangements described within the WRP.

The following changes would strengthen the WQMP for the protection of environmental water:

- include a mechanism for the periodic review of emerging and existing risks to provide for the effective treatment of risks; and
- include clear links between the WQMP and other WRP documents, i.e. Chapter 10 (extreme events) and the LTWP.

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<sup>11</sup> Basin Plan - s11.03(b)

<sup>12</sup> Draft WRP - s10.2.2



## 7. Constraints management

The Basin Plan requires physical, operational and management constraints that affect environmental water delivery to be addressed to maximise the benefits of held environmental water and support the expected outcomes of the SDL adjustment mechanism (Basin Plan s7.08). Relaxing constraints is the responsibility of Basin States and is critical to provide the CEWH with greater flexibility to achieve the best possible environmental outcomes.

The CEWH notes a reference to the status of the Constraints Management Strategy 2013-2024 within Appendix C of the draft WRP.<sup>13</sup> The text reads as if the Victorian constraints projects will contribute to the 450 GL of SDL efficiency measures ('upwater'). The Goulburn River constraints projects is a pre-requisite to the SDL adjustment, and the Hume to Yarrowonga Constraints Business Case is notified as a supply measure project. We appreciate that there is a direct interaction between the supply and efficiency measures, however the text provided indicates a contribution under the SDL efficiency measures that is erroneous.

It is recommended that the text regarding the Constraints Management Strategy in the draft WRP be corrected to reflect that the Hume to Yarrowonga and New Goulburn key focus areas underpins the SDL supply measures only, rather than contributing to the 450 GL of efficiency measures available for the environment.<sup>14</sup>

## 8. Pre-requisite Policy Measures

Implementation of the Pre-requisite Policy Measures (PPMs) are fundamental to the effective and efficient use of environmental water and are therefore critical for meeting the objectives of the Basin Plan. We acknowledge that Victoria's PPMs are in the process of being implemented. Given the critical importance of PPMs to enable environmental watering between connected water resource areas, we suggest inclusion of a reference to the implementation of the PPMs (Overview document) within the accredited text on co-ordination of environmental water activities. Acknowledging the current timeframe for implementation of PPMs, the CEWO looks forward to working closely with Victoria to engage with and understand how PPMs will be given full effect through management and operational priorities.

It is recommended that a reference to the implementation of PPMs be included within the accredited text<sup>15</sup> in relation to s10.27 of the Basin Plan.

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<sup>13</sup> Draft WRP – Appendix C, s6.3, p. 941

<sup>14</sup> Draft WRP – Appendix C, s6.3, p. 941

<sup>15</sup> Draft WRP – s12.6.4, p. 429

## PART C: CLARIFICATIONS AND CORRECTIONS

Below are a number of minor clarifications and corrections for consideration in finalising the WRP.

- Comprehensive Report Table 12-1 (p. 400) and Summary Report, Table 1, (p 25): Volumes for CEWH entitlements are not up to date. See <http://www.environment.gov.au/water/cewo/about/water-holdings> for figures. Given the Commonwealth's portfolio is still growing we also suggest the title of table includes "as at {Date}".
- s12.6.6 (p. 431) – "Any allocation made available to water shares held by the CEWH intended for use in Victoria is traded to the Victorian Environmental Water Holder (VEWH) for delivery under its bulk and environmental entitlements." This statement is not true in all cases—for example in the Ovens catchment we do not transfer our water to VEWH, but instead work with the local Catchment Management Authority to place the order with the storage manager. The WRP should not limit the way in which the Commonwealth chooses to deliver its environmental water resources. Not all water delivery actions are to occur through the VEWH, for example the CEWH may enter into water delivery agreements with other third parties, including private entities.
- Amendment: s12.6.4 (p 428) – For the list of members of the Southern Connected Basin Environmental Water Committee, the Australian Government's Department of Environment should be replaced with the Australian Government's Department of Agriculture and Water Resources.
- Amendment: s12.4.3 (p 416) currently states 'Each year the CEWH transfers its water allocations to the VEWH to be used in Victoria and the VEWH takes responsibility for delivering that water in Victoria'. The VEWH provide a key function to facilitate the operational delivery of Commonwealth environmental water, including coordinating the Commonwealth environmental water with other water. However, the text needs to be changed to reflect that the responsibility, decision-making and accountability for how that water will be used remains vested with the CEWH.
- s7.2.1, Table 7-2 (p 195) – regarding the table row *Buyers and sellers*, we suggest the dot point "compliance with regulations and rules governing water market transactions" should also include a reference to the Basin Plan trading rules. Specifically with regard to the *Commonwealth Environmental Water Holder*, we suggest removing the phrase "must act in accordance with the Commonwealth environmental water trading framework" as this is our own self-imposed policy framework with no legal obligations.