THE COMMONWEALTH ENVIRONMENTAL WATER HOLDER SUBMISSION FOR THE NSW BORDER RIVERS WATER RESOURCE PLAN STATUS AND ISSUES PAPER

2 June 2017

The Commonwealth Environmental Water Holder (CEWH) appreciates the opportunity to provide a submission on the New South Wales Department of Primary Industries (DPI) Status and Issues (S&I) paper for the NSW Border Rivers Water Resource Plan (WRP), and would welcome the opportunity to further discuss these issues if necessary.

This submission sets out broader principles that the CEWH considers are relevant to the development of Water Resource Plans and provides specific input on the NSW Border Rivers Water Resource Plan.

These comments are provided by the CEWH as an entitlement holder in the NSW Border Rivers, and in the context of the CEWH’s role established by the Water Act 2007 to manage Commonwealth water holdings for the purposes of protecting and restoring environmental assets of the Murray-Darling Basin.

General Principles

The CEWH recognises the importance of maintaining sustainable rural communities and supports an open and consultative WRP process which is fair, provides confidence to all entitlement holders, rural industries and communities, and delivers on the agreed commitments of governments to environmental objectives.

Water recovery for the environment represents a major investment of public funds, and the CEWH is required to use its portfolio of water holdings effectively and efficiently to achieve the environmental outcomes established by the Murray-Darling Basin Plan.

To effectively achieve these outcomes within existing water recovery settings, it is important that the development of Water Resource Plans is consistent with assumptions built into the settings framed in the Murray-Darling Basin Plan 2012, the Basin-wide Environmental Watering Strategy (2014), the Intergovernmental Agreement on Implementing Water Reform in the Murray-Darling Basin (2013) (IGA), in addition to relevant state legislation.

In this context, Water Resource Plans should be developed with regard to the following principles:

1. Protect and Restore

Water sources, floodplains and dependent ecosystems (including groundwater and wetlands) should be protected and restored and, where possible, land should not be degraded. Habitats, animals and plants that benefit from water or are potentially affected by managed activities should be protected and (in the case of habitats) restored.

[Water Act 2007 (Commonwealth); Water Management Act 2000 (NSW); Basin Plan 2012]

2. Equal Treatment

The characteristics of licensed entitlements held by environmental water holders should not be enhanced or diminished relative to the same class of entitlements held by other water users for productive or other purposes. This includes being 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. This is a non-discriminatory principle which is central to consumer law and prudential market management, and is explicit in the Inter-governmental agreement.

[Inter-governmental Agreement on Implementing Water Reform in the Murray Darling Basin 2013]
3. No third party impacts

The CEWH supports the NSW principle that there will be no adverse impacts on water available to a water access license holder. The principle of no third party impacts should apply to all water users, including environmental water holders.

Water Resource Plans need to provide for and support environmental watering. Where policies relating to environmental watering create potential impacts to third parties, the CEWH should be provided the modelling and other evidence of that potential impact and the opportunity to develop mitigation strategies to address those impacts in collaboration with DPI. This includes assessing the net impact on third parties—that is, assessing both the benefits and the costs. Changes to the plan to improve the efficiency and effectiveness of environmental water delivery can have benefits to third parties. This could include reduced competition for channel capacity, reduced losses and improved reliability. These benefits may accrue to most users, under most circumstances. However, under a limited set of circumstances, there may be negative impacts. A requirement to only undertake environmental watering that has ‘no third party impacts’ would preclude such an action, even if the benefits significantly outweigh any negatives. For this reason, a ‘net’ assessment should be made.

[Basin Plan 2012, Water Management Act 2000 (NSW)]

4. Effective and efficient environmental water use within and between catchments

The policy settings of the Basin Plan and the modelling underpinning water recovery targets and the SDL assume the efficient and effective use of environmental water within and between catchments. These settings are articulated in the Basin Plan, in the requirements for establishing environmental watering plans, and in the requirements for States to implement Pre-requisite Policy Measures (PPMs) (unimplemented policy measures). The adequate implementation of these policies is necessary to ensure the success of the Basin Plan. If these policies are not adequately implemented, more environmental water will be required to achieve the outcomes intended by the Basin Plan.

While there is ongoing engagement between State water policy agencies and the Commonwealth (Department of Agriculture and Water Resources and the Murray-Darling Basin Authority) on the implementation of these measures, it is important that Water Resource Plans are reviewed to ensure that they clearly support and facilitate the effective management of environmental water:

- between geographically connected surface water areas
- releases from storages in addition to unregulated flows
- flows along the length of river systems, and between rivers and environmental flows which are protected from re-regulation or extraction.

[Basin Plan 2012, Inter-governmental Agreement on Implementing Water Reform in the Murray Darling Basin 2013]

5. No net reduction in Planned Environmental Water

The effect of Water Resource Plan implementation must not result in a net reduction in planned environmental water, nor substitution of held environmental where planned environmental water would previously have been used to achieve environmental outcomes. The environmental outcomes sought by the Basin Plan and the water recovery targets were based on existing planned environmental water volumes. A reduction in planned environmental water will require additional held environmental water to achieve the equivalent environmental outcomes.

In assessing any net reduction, it is important that this is assessed in terms of not only the total volume of water made available to the environment, but also no net reduction in environmental
outcomes associated with planned environmental water. For example, a policy change could see reductions in the volumes of planned environmental water available in spring, for a commensurate increase in autumn—however, the ecological benefit associated with having water in spring may be much greater than having the equivalent volume available in autumn and hence not achieve ecological equivalence.

[Basin Plan 2012; Inter-governmental Agreement on Implementing Water Reform in the Murray Darling Basin 2013]

6. No growth in use

The policy settings in the Water Act and the Basin Plan assume no increase in long term average diversion limits as represented in the Baseline Diversion Limits models used to develop the Basin Plan.

[Water Act 2007 (Commonwealth), Basin Plan 2012]

7. Transparent and genuine consultation

To ensure confidence in the Water Resource Plan process, key stakeholders, including the CEWH and other environmental water managers, should be provided with the same information and opportunities for consultation within the same timeframes.

To ensure that the changes to the Water Resource Plans are understood and accepted, relevant technical information should be available to key stakeholders, including the CEWH. This includes the risks assessments undertaken for each major valley and the reports on any updated Baseline Diversion Limits, current conditions and Sustainable Diversion Limits modelling.

The CEWH expects to be consulted on any changes to the WRPs or subsidiary documents that potentially affect its water holdings.

The Stakeholder Advisory Panel (SAP) process will not consider all of the issues to be addressed in the WRP. For full transparency, entitlement holders, including the CEWH, should be consulted on issues and documents which inform or underpin the development of the Water Resource Plan, such as:

- issues relevant to WRPs that are being addressed as a State wide matter in a separate governance process, such as the PPM implementation; changes to the Environmental Water Advisory Group; planning assumptions; managing in extreme events; complying with the SDL and the trade rule reviews; and

- non-statutory documents that are subsidiary to the WRPs, including: risk assessments; trade rule reviews and explanatory material.

[Basin Plan 2012]
Issues specific to the NSW Border Rivers Water Resource Plan

The following issues are a high priority for the management of held and planned environmental water in the NSW Border Rivers WRP.

Principles have been identified against each issue for consideration.

Reviewing trade rules

Issue: Real time trading capability ('event trading') for supplementary water

The S&I paper states that real-time trading capability for supplementary water would facilitate the efficient movement of water to its highest value use.

CEWH position:

The CEWH supports improvements to the water trading framework that would enable flexible, event-specific trading of supplementary water in the Border Rivers and other catchments. Real-time trading of supplementary water allocation (and the equivalent entitlement in Queensland) for targeted enhancement of unregulated flow events in the Border Rivers, and the ability to sell surplus supplementary allocation during announced access periods, could be advantageous to all water users. Such improvements may require the simplification of the works approval conditions for trades of supplementary water between NSW users and Queensland uses of unsupplemented entitlement. A ‘catch-all’ works approval that would allow any supplementary licence holder to trade their allocation to the Commonwealth for in-stream use would be useful and mutually beneficial. The CEWH has made similar recommendations in a submission to Queensland.

Recommendation:

- Flexible arrangements to enable trade of supplementary water (and equivalent Queensland allocations) to be undertaken as unregulated flow events emerge are sought.

Principles:

Effective and efficient environmental water use.

Improving water supply

Issue: Review and relax Supplementary Access Thresholds that were raised under the state WSP process.

CEWH position:

The CEWH does not support an amendment to Supplementary Access Thresholds, as it results in a growth in use and therefore may reduce certainty and confidence in held water entitlements. Any change in supplementary access that reduces planned environmental water is inconsistent with the Basin Plan. There are also additional ecological benefits for this water as it is often sourced from tributary or unregulated flows with water chemistry and temperature from the catchment. Further detail about specific concerns can be provided on request.
Recommendation:

- That Supplementary Access Thresholds are unchanged.

Principles:

Protect and restore, no third party impacts; effective and efficient use of environmental water within and between catchments, transparent and genuine consultation.

**Improving accounting rules**

_Issue: Allow the credit of return flows_

**CEWH position:**

A policy to allow the credit of return flows or an equivalent policy to achieve the flow of environmental water into and throughout the length of the water resource is foundational to achieve environmental outcomes anticipated under the Basin Plan. The MDBA estimated that in the absence of this policy it would require an additional 1,370GL to be recovered from the consumptive pool to achieve equivalent environmental outcomes.

The credit of return flows policy should include all held environmental flows out of the system. This was assumed in the modelling that informed the Basin Plan and the setting of the recovery target at 2750GL, and more environmental water will be required to achieve the same outcomes if it is not now implemented. It is also a requirement under the Basin Plan: the pre-requisite policy measures (s7.15) and the co-ordination of environmental water between hydrologically connected systems (s10.27).

The CEWH will not agree to the use of water in a way which compromises the CEWH in meeting its statutory obligations under the Water Act (2007), Basin Plan (2012) and the Public Governance, Performance and Accountability Act (2013) (maximising the effective and efficient use of public resources). The CEWH should be engaged throughout the process to ensure any proposal is understood and there is broad stakeholder confidence in the supporting evidence.

Recommendation:

- That a return flows policy is implemented.
- That CEWH is fully engaged throughout the process to implement the return flows policy.

Principles:

Protect and restore, no third-party impacts; effective and efficient use of environmental water within and between catchments; no growth in use; transparent and genuine consultation.

_Issue: Allow high security licence holders to carry over water to provide for greater security_

**CEWH position:**

The CEWH does not support this proposal if it will result in a growth of use or negatively impact reliability of general security licences.
Recommendation:
- That there is no change to carryover arrangements for high security licences.

Principle:
No third party impacts

Cease to pump rules - unregulated

Issue: The ‘trigger levels’ (cease to pump) in unregulated rivers needs to be reviewed.

CEWH position:
The CEWH does not support any amendment to the cease to pump rules which may reduce volumes of planned environmental water.

Recommendation:
- That the cease to pump thresholds are unchanged.

Principles:
Protect and restore; no net reduction in planned environmental water; no growth in use.

Reviewing mandatory conditions on licences and approvals

Issue: reviewing mandatory conditions on licences and approvals

The S&I states that mandatory conditions relating to logbooks and metering requirements are impractical to implement.

CEWH position:
The CEWH does support improvements in monitoring and compliance. The CEWH does not support a reduction in licence conditions to maintain log books or metering requirements if this would reduce the accuracy or timeliness of water use data obtained from existing metered users or water use estimates for unmetered users in some of the unregulated streams in the Border Rivers. The need to improve usage data in unregulated streams is particularly important given that existing (estimated) extractions pose possible medium to high risks to ecological values in some streams and there is high uncertainty associated with current use estimates. Any measures that would decrease the credibility and confidence in usage data are not supported.

Recommendation:
- That there is no reduction to the maintenance of logbooks or metering requirements that would reduce the veracity and timeliness of water usage data in the Border Rivers.

Principles:
No third party impacts; no growth in use.
**Environmental watering**

Issue: Third party impacts and constraints to environmental water use

CEWH position:

The CEWH agrees that in the Border Rivers options for use of Commonwealth environmental entitlements are constrained by the current legislative and policy framework. In particular, the ability to ‘piggyback’ a regulated water release onto unregulated flows under some circumstances is prevented by current access rules and operational practices. Piggybacking offers an effective way to use the relatively small volumes of environmental water currently held in the Border Rivers (and expected under full recovery) that would amplify natural cues, overcome the long delivery pathways in the system and minimise cold water pollution impacts of releases. Releases of regulated entitlement from Glenlyon and Pindari dams on top of unregulated flows is currently prevented by the default operational practice to supply regulated water orders from run of river flows and access rules whereby any flow above winter/summer access thresholds can be extracted by supplementary users on the Dumaresq and Severn/Macintyre systems. The CEWH would not necessarily seek to piggyback every regulated release, and would be keen to discuss how to manage any real or perceived third party impacts. The pre-requisite policy measures (Basin Plan s7.15) require the implementation of policies to allow the release of flows from headwater storages on top of unregulated flows (piggy backing).

Recommendations:

- That piggy backing is implemented as required under s7.15 of the Basin Plan.

Principles:

Effective and efficient environmental water use.

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**Issue: Floodplain harvesting**

CEWH position:

Issuing significant volumes of floodplain harvesting licences in the NSW Border Rivers may have implications for the volume (component share) and reliability of existing Commonwealth general security and supplementary entitlements, and for all holders of existing entitlement types. There is no estimate of floodplain harvesting diversions in the S&I paper and yet, taking the Gwydir valley as a guide, significant historical diversions from the lower Macintyre floodplain are possible.

Recommendations:

- DPI provide an assessment to SAP of historical floodplain harvesting diversions and indicative unit shares in the Border Rivers WRP that will be allocated to this entitlement type.

Principles:

Transparent and genuine consultation, no growth in use.
**Issue: Interstate water sharing mechanisms**

The existing Border Rivers Regulated WSP and its counterpart WRP in Queensland are tightly integrated and include shared rules for accessing and protecting unregulated flows in the shared main river channel (Dumaresq River downstream of Pike Creek and the Macintyre River below the Dumaresq junction) and interstate trading between like types of entitlements. The shared rules are reflected in respective WSP and WRP provisions and the Border Rivers Intergovernmental Agreement 2009 (BRIGA).

The S&I report does not mention the BRIGA or DPI Water’s intentions in relation to future interstate water sharing and trading arrangements. Some proposals in the report, such as relaxation of supplementary take thresholds, could be in conflict with the current interstate water sharing arrangements.

**CEWH position:**

The CEWH supports continued equitable sharing of unregulated flows and common environmental flow objectives and trading rules for Queensland unsupplemented and NSW supplementary entitlements on the common parts of the Dumaresq and Macintyre Rivers.

**Recommendations:**

- The WRP processes for the NSW and Queensland Border Rivers catchment should be explicitly linked and consider consistent water access arrangements wherever possible.

**Principles:**

Effective and efficient environmental water use; transparent and genuine consultation

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**Improving water quality**

**Issue: Thermal pollution from Glenlyon Dam**

The S&I report identifies thermal pollution from Pindari Dam on the NSW Severn River as posing a medium risk to ecological values and that Pindari Dam is a high priority for mitigation measures under Stage 2 of the NSW Cold Water Pollution Strategy.

**CEWH position:**

NSW also controls 57% of the water held in Glenlyon Dam in Queensland. Releases from Glenlyon are made to satisfy Queensland and NSW regulated entitlement holders in the shared river channel. Glenlyon and Pindari dams have a similar propensity to develop temperature stratification during spring and summer months; a maximum difference between top and bottom layers of 16°C has been recorded at Glenlyon. Glenlyon only has a low level outlet so releases are made from cold bottom layers of the storage. Significant cold water impacts have been detected in the Dumaresq River below Glenlyon following irrigation releases although data is limited.

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Recommendation:

- Thermal pollution from Glenlyon dam should also be addressed as a significant water quality issue in the Border Rivers WSP review with further monitoring undertaken to determine the extent of cold water impacts in the Dumaresq River and risk to ecological values.

Principles:

Effective and efficient use of environmental water

**Water sharing plan**

**Issue: Certainty surrounding the longevity of the WSP**

Water Sharing Plans must provide certainty to users within the WSPs initial 10 year period.

**CEWH position:**

The conditions developed during the initial WSP development process must be allowed to continue for the full 10 year period of the WSP. This is to allow for a full assessment of positive and negative impacts associated with these conditions. Any changes which occur within this period may not be fully informed by changes in use and climate variability.

**Recommendation:**

- That the WSP is to be unchanged during its initial 10 year period, or that there be very few changes after full stakeholder consultation.

**Principles:**

Protect and restore; equal treatment; no third party impacts; no growth in use.