

VICTORIAN ENVIRONMENTAL WATER HOLDER SUBMISSION ON THE PROPOSED MURRAY-DARLING BASIN PLAN (MDBP)

KEY POINTS

- To allow for evolution, innovation and adaptive management, prescriptive detail should be removed from the MDBP legislative instrument and included in operating guidelines agreed through consultation with jurisdictions.
- The legislative instrument should provide more assurance that the States will be appropriately engaged in the development of Basin annual watering priorities and environmental watering decisions by the Commonwealth Environmental Water Holder. The MDBP should include the establishment of a group of State agency/authority representatives to input to strategic priority setting and policy issues which need to be resolved in order to maximise benefits from environmental watering.
- Policy and operational impediments to effective environmental water delivery should be identified and resolved, but in the meantime should not delay implementation of watering actions.
- To reduce bureaucratic process and administrative effort, delivery of a reasonable proportion of environmental water held in the southern Basin, particularly that held by the Commonwealth Environmental Water Holder, should be simplified through the use of standing orders and 'trigger' or 'rules-based' releases.
- In-season decision making on the appropriate size and timing of managed watering actions and how to optimise natural events and use of consumptive water en route, in the southern Basin in particular, should be done by an established operational group including river operators, jurisdictions and water holders.
- Community consultation for environmental watering should focus on identifying priority watering sites and environmental values and setting objectives. Targeted stakeholder consultation should also be undertaken to determine and address potential impacts of implementing watering actions. Where they exist, existing regional frameworks and networks should be used, and it is imperative that community consultation be regionally driven.
- The proposed MDBP does not recognise the critical integration between environmental flows and complementary works and measures. With an increase in the availability of environmental water, there needs to be a proportionate increase in complementary works and measures, and these will obviously have an associated cost.
- Physical constraints impeding environmental water delivery should be recognised, understood and, where feasible, overcome. In addition, in systems through which water is being delivered for downstream needs, funding should be put towards understanding the thresholds above which water delivery is having adverse environmental impacts.
- The VEWH's ability to trade water or to use water for regional environmental priorities should not be limited as a result of SDL compliance requirements.
- Costs associated with the implementation of the MDBP need to be further quantified, and should be paid by the agency which is initiating the change. It should also be clear that each water holder will fund the cost of management and delivery of their own water holdings.
- It is imperative that Victoria's environmental water planning framework, which enshrines collaborative, regionally-driven priority setting, community consultation and sound science, are protected through the implementation of the MDBP.
- The VEWH looks forward to continuing to work with the Authority, partners of the Living Murray program and the Commonwealth Environmental Water Holder to protect and improve the rivers, wetlands and floodplains of the shared River Murray.

INTRODUCTION

This submission focuses on the potential implications or uncertainties of the proposed Murray-Darling Basin Plan (MDBP) for the Victorian Environmental Water Holder (VEWH). As such, it deals mainly with the environmental watering plan outlined in Chapter 7 of the draft MDBP.

The VEWH is of the view that it is the responsibility of all environmental water managers, in managing water for a public good, to do so in an efficient and accountable manner which maximises environmental outcomes.

The VEWH looks forward to continuing to work with the Authority, partners of the Living Murray program and the Commonwealth Environmental Water Holder to protect and improve the rivers, wetlands and floodplains of the shared River Murray.

GENERAL COMMENTS

The use of adaptive management

In developing the MDBP, it is necessary for the Murray-Darling Basin Authority ('the Authority') to find the appropriate balance between:

- ensuring there is sufficient information for the various parties to understand their own and other's obligations and how the plan will be implemented
- not being overly prescriptive and allowing for the evolution and innovation that is expected of an industry as young as environmental water management.

It is not clear how the stated commitment to adaptive management will be put into practice, but what is clear is the potential for prescription and bureaucratic process to hamper timely and practical adaptive management. For example, the principles to be applied in determining priorities and undertaking environmental watering are very detailed and cannot easily be updated in the legislative instrument, if necessary as understanding develops. The VEWH therefore recommends that prescriptive detail, particularly relating to the environmental watering plan, should be removed from the MDBP legislative instrument and included in operating guidelines agreed through consultation with jurisdictions.

It should also be noted that it will take time for water resource policy and system operations to adapt to the newest water customer – environmental water holders. Policy and operations have long been geared towards maximum resource efficiency and the delivery of water for consumptive use customers, and in particular for irrigation. It will take time for these practices to be adapted to better suit environmental needs. It is important that policy and operational impediments are identified and resolved as quickly as possible. However, in the meantime, it is important that environmental water managers continue to plan for and deliver environmental water to achieve maximum environmental benefit within the existing constraints.

Engaging jurisdictions in priority setting and watering decisions

The VEWH suggests that the MDBP include that a group of State agency/authority representatives be convened, similar to the Environmental Watering Group established under the Living Murray program. This group should undertake the strategic priority setting and input to policy issues which need to be resolved in order to maximise benefits from environmental watering. The VEWH has from its participation in the Living Murray process found the Environmental Watering Group to be a fine example of collaborative decision making and an excellent forum for the identification of policy issues. This higher level group should set the bounds for a

more operational group responsible for in-season decision making and the optimisation of natural flow events and consumptive water en route (see following 'In-season decision making' section). In addition, it would be good to clarify the relationship between the committee that may be established under section 203 of the Water Act 2007 and the role that the Living Murray Environmental Watering Group is currently playing.

Simplifying delivery of a significant volume of environmental water

The southern connected Basin is a highly managed system, and the proposed sustainable diversion limits (SDLs) will result in a significant volume of held environmental water. Delivery of this substantial volume of water to meet the varying and diverse environmental needs throughout the southern Basin will be incredibly complex, with the potential for considerable and unnecessary bureaucratic process and administrative burden. To simplify the delivery of this water, the VEWH strongly recommends that the environmental watering plan of the MDBP place more emphasis on and requirement for:

- the delivery of a reasonable proportion of held environmental water through trigger-based releases or 'standing orders'
- the coordinated delivery of held environmental water with planned environmental water and consumptive water en route.

There are many environmental watering actions which will be recurring annual priorities; for example, the delivery of baseflows in some tributaries flowing to the Murray. It should be possible for the Commonwealth Environmental Water Holder in particular to commit a volume of water to meeting these recurring priorities every year, perhaps with some limitations or triggers. The triggers may include the occurrence of a certain volume of natural streamflow or delivery of consumptive water, or a particular volume of water being in storage or in the Water Holder's account.

In-season decision making

During the season, it will be important to identify exactly when managed watering actions should be implemented and how natural events and consumptive water en route can be optimised, in the southern Basin in particular, with implications for the size of managed watering actions. This role is best undertaken through collaboration of river operators, jurisdictions and water holders, who can meet regularly and respond to quickly changing conditions. The importance of involving river operators in this process cannot be underestimated, and should be recognised in the legislative instrument. The established operational group should work within the bounds set by a higher-level group inputting to priority setting and policy issues (see previous 'Engaging jurisdictions in priority setting and watering decisions' section). The operational group should have clear bounds outside which they need to go back for further strategic or authoritative decision making.

Regional community consultation

The proposed MDBP states that the views of local communities should be considered in developing Basin annual environmental watering priorities and undertaking environmental watering. In addition, there has been much talk about 'localism' in environmental watering at MDB Ministerial Council meetings. The Victorian Government has since received a letter from Minister Burke proposing arrangements for implementing this idea of localism.

The VEWH strongly supports and encourages the idea of using State frameworks and community-based networks where they exist, and emphasises the importance of community consultation remaining or being regionally driven, with coordination solely

done by regional delivery partners. In Victoria, these frameworks and networks have been developed over many years through the hard work and dedication of regional delivery partners, and have resulted in a considerable amount of trust by regional communities. It is critical that in implementing 'localism', this trust is protected and that regional delivery partners can continue to nurture the relationships integral to their business. As such, changes suggested by the Commonwealth with regard to membership and administration should be kept to a minimum.

In undertaking consultation, it is important to be clear on the purpose and subject matter of the consultation. Communities should be consulted on those aspects of environmental water management that they can influence or are potentially impacted by. As such, community consultation should focus on identifying the priority river reaches and wetlands, determining the environmental values of greatest community importance, and setting appropriate ecological objectives for these values. Sound science is then required to identify the environmental flow regime required to achieve those objectives. Scientific recommendations do not require consultation. However, it may be necessary to undertake targeted stakeholder consultation to determine possible impacts and mitigating strategies before environmental water managers decide to undertake watering actions based on recommended flow regimes.

The importance of integrated catchment management

Flow is not the only factor in ensuring healthy and resilient rivers, wetlands and floodplains; complementary works and measures are also equally important. The current proposed MDBP does not recognise this critical relationship, nor does it commit funding to the additional measures that will be required as a result of a significantly increased volume of environmental water. There is no process outlined to provide for the integration of flow with complementary works and measures.

In some instances, complementary measures are critical to the successful achievement of environmental watering outcomes, or at the least, they help to maximise the outcomes. For example, maximum benefit will not be achieved by providing flow down a river or into a wetland where there is significant damage as a result of stock access or where breeding populations are at risk from predation. However, these outcomes can be maximised through complementary measures such as fencing and baiting.

Structural works will also be important to increase the flexibility of environmental water management, and 'achieve more with less'. Again, these will help to maximise the environmental outcomes achieved with the available resources, and will also improve resilience of the system through extended drought and the possibility of climate change. The VEWH is pleased that there has been an increased focus on structural works since the release of the 'Guide to the MDBP'.

With an increase in the availability of environmental water, there needs to be a proportionate increase in complementary works and measures, and these will obviously have an associated cost.

Recognising, understanding and overcoming system constraints

All environmental water managers understand that there are real system constraints that limit the ability to deliver water to some sites at desired levels. In some instances, these constraints could be reservoir outlets that are too small to provide for releases of the required size for some environmental flows; in others, it could be the inability to provide bankfull or overbank flows as a result of the risks to private land. The VEWH is pleased that there has been an increased recognition of system constraints since the release of the 'Guide to the MDBP'.

It is now critical that we properly understand these constraints across the Basin – not only will this ensure that there is no unnecessary water recovery that results in significant amounts of undeliverable environmental water, but it will also allow those constraints that can be feasibly overcome to be identified. The VEWH suggests that the MDBA has a role in coordinating this analysis, and that this should be acknowledged in the legislative instrument. Once feasible solutions are identified, effort should be put into implementing them. There will obviously be costs associated with this implementation.

On a separate note, there are also ecological constraints associated with each of the systems; that is, above which water delivery is having adverse environmental impact. For example, this could occur when water is being delivered through the tributaries of the Murray for downstream environmental demands. There is significant technical work required to identify upper thresholds to ensure that this water is not having adverse impacts on the tributaries through which it is being delivered. There will obviously be costs associated with this technical work.

The implications of sustainable diversion limit (SDL) compliance for use of VEWH Water Holdings

The VEWH is an entitlement holder, with the same general rights and obligations as other entitlement holders. The rights of entitlement holders to make decisions about the use of their entitlements should not be limited as a result of SDL compliance requirements. It is currently unclear how SDL compliance requirements will impact on the VEWH's ability to:

- use its Water Holdings for regional environmental priorities which are not identified as 'Basin annual priorities'; or
- trade water allocation to consumptive users.

All of the VEWH's decisions must be made in accordance with its statutory functions; that is, for "improving the environmental values and health of water ecosystems"¹. In some instances, maximising environmental outcomes could mean delivering water to regional wetlands which are not identified as Basin annual priorities or selling some allocation, potentially in order to purchase in a later year or in another system. If the VEWH uses its water for regional priorities that are not included in the Basin annual priorities, will this water then be counted as consumptive diversions, therefore impacting on Victoria's ability to comply with SDLs? This type of indirect coercion to protect only Basin priorities, at the risk of regional priorities, would be entirely unacceptable to the VEWH. Similarly, it seems a perverse outcome for SDL compliance to limit the VEWH's ability to maximise environmental outcomes through trade. The VEWH would not support policy in which these decisions resulted in Victoria being non-compliant with its SDL compliance obligations in a given year.

Costs associated with implementation of the MDBP

This submission identifies several areas where there will be increased costs as a result of the implementation of the MDBP. It is necessary to quantify these costs and identify who is accountable for them before the plan is finalised. All costs should be borne by the agency which is initiating the change. In addition, it is important to be clear that each water holder will fund the cost of management and delivery of their own water holdings.

¹ *Water Act 1989* (Vic), section 33DC

COMMENTS ON SPECIFIC SECTIONS OF THE DRAFT PLAN

The environmental management framework (Chapter 7 Part 4)

Within Victoria, the VEWH works with waterway managers and policy makers to implement an environmental water planning framework that enshrines collaborative, 'bottom up', regionally-driven priority setting, of which community consultation and sound science are key aspects. The VEWH aims to ensure these processes are protected during, and can continue to be improved after, the implementation of the MDBP.

Basin priorities and Commonwealth watering decisions

The matters that the Authority must have regard to in developing Basin watering priorities appear to inappropriately give equal weighting to a number of factors. For example, in the spirit of 'bottom up' planning, primacy should be given to the long-term watering plans and the annual watering priorities developed by the jurisdictions. Factors such as water quality and salinity targets and the optimisation of socio-economic factors should be secondary considerations. Water quality and salinity outcomes are not currently, and should not become, the focus of environmental watering. Likewise, the optimisation of socio-economic-environmental outcomes is important when setting SDLs, but once the water has been recovered for environmental purposes, this must be its primary purpose. The VEWH is strongly supportive of optimising socio-economic outcomes in environmental watering, but this should only be done where environmental outcomes are not at risk. The legislative instrument should be amended to reflect this.

Apart from things that the Authority must have regard to, the proposed MDBP is silent on the process for how the Basin annual watering priorities will be developed. In addition, it is not clear what "having regard to State annual environmental watering priorities" would mean in practice. The VEWH would like some more assurance in the legislative instrument that the States will be appropriately consulted and involved, preferably through the establishment of a group as proposed in the 'Engaging jurisdictions in priority setting and environmental watering' section.

Similarly, the draft MDBP is completely silent on the process for how the Commonwealth Environmental Water Holder will make its decisions throughout the season on the annual watering priorities that will actually receive environmental water. Again, the VEWH would like some more assurance that the States will be appropriately consulted and involved, preferably through the establishment of a group as proposed in the 'Engaging jurisdictions in priority setting and environmental watering' section.

Onus for Commonwealth environmental water to be used for Basin priorities

The proposed MDBP does not explicitly state that Commonwealth environmental water must be used for Basin annual priorities. This does not make sense, given the Commonwealth water has been explicitly recovered for the purpose of 'bridging the gap' and helping to meet SDLs, which are set on the basis of Basin priorities.

Intent and form of the annual watering priorities

It is currently unclear what the required form of the annual watering priorities will be, or how much discretion there will be for States to determine the appropriate form for their own priorities. Without this information, it is difficult to ascertain the level of work that will be required to develop these priorities, or how similar they will be to existing practices. If there is a high level of prescription that will later be set by the MDBA, it is possible there will be significant additional work required, which will have

an associated cost. The VEWH recommends that the MDBP explicitly state that the States will have discretion to determine the appropriate form for annual watering priorities in their water resource plans, while leaving open the option that a format could be *agreed* by all jurisdictions in operating guidelines to be developed after the MDBP is finalised.

It is currently unclear what the Basin annual priorities aim to achieve – will they be a static, annual document that sets the scope for watering actions for the coming year, or will it be a living document that is continuously updated during the year as seasonal conditions unfold? Again, the VEWH suggests that this type of detail be *agreed* by all jurisdictions in operating guidelines to be developed after the MDBP is finalised. However, it is important that the MDBP is clear on the overall intent of each required planning document, and whether they are designed to describe environmental requirements (demand) or commitments to deliver water (supply).

Cooperative arrangements for environmental water delivery

The wording of the proposed MDBP states that long term watering plans and annual environmental watering priorities must identify possible cooperative arrangements that will “ensure” that environmental water meets the watering requirements identified. It is envisaged that Victoria’s environmental water management plans will serve as the long term watering plans. However, it is impossible that these can “ensure” watering requirements are met. As required under the proposed MDBP, these plans will identify priority assets, objectives, targets and watering requirements, but they will not include any commitment to provide water, thus they cannot ensure requirements are met. Within Victoria, commitments to provide planned environmental water are made through some environmental entitlements and bulk entitlements, and commitments to provide held environmental water are made through VEWH seasonal watering statements. Even if the entitlement instruments were included as part of the long term watering plans, it is impossible for them to “ensure” that full environmental watering requirements will be met, for example in severe drought or low inflow years. This requirement should be removed from the legislative instrument, or at least amended to “aim to meet full environmental watering requirements”.

Objectives, subsidiary objectives and targets of the environmental watering plan (Chapter 7 Part 2, Part 3 and Schedule 7)

It is not clear to what extent the VEWH is bound by the objectives, subsidiary objectives and targets of the MDBP environmental watering plan, or what will be required in demonstrating that it has had regard to the MDBP. The VEWH maintains that it is an entitlement holder like any other, and has the right to use its water for its own priorities, including for regional environmental assets that may not be a priority at the Basin scale. The VEWH would like this recognised in the MDBP.

The objectives outlined in Chapter 7 Part 2 in many cases rely on actions broader than environmental water recovery and delivery. For example, objective 7.05(3) to restore connectivity relies not only on flows, but also on the removal of infrastructure or construction of fishways. This and other objectives may not be achievable without associated funding of and integration with complementary works and measures. Without this funding and integration, the objectives should be reworded to be confined to environmental water management. The objectives also seem to include unnecessary specificity relating to objectives of the Lower Lakes and Coorong, giving undue emphasis to these assets over others in the Basin. This specificity should be removed from the legislative instrument.

With regards to the targets outlined in Schedule 7, it is unclear:

- what methods will be used to measure progress against the targets;
- what the baseline is or should be; and
- what scale the targets will be applied at.

Given their high-level nature, it is suggested that the targets be removed from the legislative instrument and agreed through operating guidelines developed in consultation with jurisdictions. This will allow for targets to be tailored to the specific circumstances to which they will be applied, and allow for them to be adapted as understanding grows. The obligations of the VEWH in contributing to reporting on the achievement of MDBP targets are currently unclear. If these obligations are materially different from existing reporting frameworks, there will obviously be additional reporting costs.

Method for identifying environmental assets, ecosystem functions and environmental watering requirements (Chapter 7 Part 5 and Schedule 5)

The proposed MDBP currently states that the annual environmental watering priorities prepared by jurisdictions must include both priority environmental assets and priority ecosystem functions (section 7.22(1)). The VEWH considers that it is not practical to set objectives, targets or watering requirements for ecosystem functions in the southern connected Basin. However, in discussions with Authority staff, it seems that the identification of priority ecosystem functions is very relevant to the northern Basin. As such, the VEWH recommends that the legislative instrument be very clear that it is not necessary to identify both assets and functions in *all* areas. In addition, the separation of planning processes for the northern and southern systems could be explored and agreed through operating guidelines developed after the finalisation of the MDBP.

Principles and method to determine priorities for environmental watering (Chapter 7 Part 6) and principles to be applied in environmental watering (Chapter 7 Part 7)

The method for determining priorities for environmental watering currently requires the determination of a (single) resource availability scenario and is too detailed and too rigid. The VEWH encourages the use of scenario-based planning to provide insights and preview choices to support robust and timely decision making. However, the requirement to 'pick a scenario' during the season to inform decision making is ill advised. While it is important to plan for scenarios, it is critical that management decisions are based on actual, real-time conditions (which may or may not be represented by one of the planning scenarios).

There is confusion and overlap between the principles to be applied:

- to determine the priorities for applying environmental water; and
- in environmental watering.

The VEWH strongly recommends that these principles be combined and simplified, and would be happy to provide input to this process.

Water quality and salinity objectives and targets (Chapter 8 Parts 3 and 4)

The proposed MDBP states that in identifying Basin annual environmental watering priorities, the Authority must have regard to water quality and salinity objectives and targets. However, it is not appropriate that these objectives and targets be a driver for environmental water use, when they are set based on other (socio-economic) outcomes.