

## NOTICE BY THE VICTORIAN GOVERNMENT UNDER SECTION 43A(7) OF THE WATER ACT 2007

The Victorian member of the Murray-Darling Basin Ministerial Council (Council) has additional views to those outlined in the s43A(7) Notice at Attachment A to the Commonwealth Minister, in response to the Murray-Darling Basin Authority's (MDBA) 6 August 2012 Altered Proposed Basin Plan. This notice details Victoria's individual views on certain other issues. The Victorian member of the Council formally acknowledges that these comments will be circulated to his fellow Ministerial Council members.

Attachment C details issues on which Victoria and NSW have joint views.

Victoria is disappointed with the MDBA's response to the s43A(4) joint Notice of Disagreement that the Council provided to the MDBA on 9 July 2012 (9 July 2012 Consensus Notice), which followed six weeks of intensive, highly constructive dialogue between Governments to achieve consensus on a range of critical Basin Plan matters.

The Victorian Government considers that the 6 August 2012 version of the Altered Proposed Basin Plan does not address a number of important issues raised in the 9 July 2012 Consensus Notice, which if addressed appropriately in the next iteration of the Basin Plan would provide greater certainty to Basin States and their communities.

This notice covers the following issues - the appendices contain suggested word changes to the Altered Proposed Basin Plan:

1. Environmental Watering Plan (Appendix A); and
2. Transition period to the requirements under Chapter 11 (Appendix B).

## **1. Environmental Watering Plan**

The 9 July 2012 Consensus Notice requested that the MDBA make a variety of amendments to the environmental watering plan in Chapter 7 of the Basin Plan. Victoria remains concerned about several elements of the environmental watering plan in the Altered Proposed Basin Plan.

### *Relationship between environmental watering strategy and long-term watering plans*

In Victoria's view, there is a need to clarify the relationship in the environmental watering plan between the environmental watering strategy (EWS) to be prepared by the MDBA and the long-term watering plans (LTWPs) to be prepared by the Basin States.

Victoria considers that the LTWPs are the essential building blocks of the environmental water planning process. The key role of the EWS is to establish a framework for the integration of the local LTWPs to meet the overall environmental objectives of the Basin.

In Victoria's view, it is preferable to apply an iterative approach whereby the initial EWS is developed having regard for the LTWPs that are available within two years of the Basin Plan taking effect and subsequent versions of the EWS are developed having regard for further LTWPs as they become available.

Victoria therefore requests that the Commonwealth Minister suggest to the MDBA that it amend Chapter 7 of the Altered Proposed Basin Plan to reflect that:

- The Basin States should be given an opportunity to provide available LTWPs to the MDBA in order to feed into its development of the initial EWS – this requires an amendment to section 7.21 of the Altered Proposed Basin Plan;
- The MDBA must prepare its first EWS having regard for the available LTWPs and, in the absence of these documents, must consult with the relevant Basin States – this requires an amendment to section 7.15 of the Altered Proposed Basin Plan; and
- The EWS cannot direct content of the LTWPs, as is currently provided for in section 7.19(3) of the Altered Proposed Basin Plan.

In addition, in order to provide some certainty across years and to reduce the need for annual priority setting for the entire portfolio of water, Victoria considers that a key purpose of the EWS should be to facilitate development of long-term watering arrangements between Basin States and environmental water managers and holders. Victoria therefore requests that the Commonwealth Minister suggest to the MDBA that it amend section 7.13(2)(c) of the Altered Proposed Basin Plan to refer to "long-term watering arrangements" rather than to "consistent long-term watering plans".

### *Review and update EWS following SDL adjustment*

In the 9 July 2012 Consensus Notice, the Council agreed that the EWS needs to be reviewed and updated to reflect the operation of any proposed SDL adjustment mechanism. In line with this, the EWS must be capable of giving effect to the implementation of environmental works and measures, the removal of constraints and any agreed changes to river operations, including any agreed commitment for the use of environmental water resulting from the SDL adjustment mechanism.

Victoria recognises that the MDBA has included two notes in the Altered Proposed Basin Plan – in sections 7.11 and 7.17 – which enable, but do not require, the MDBA to revise the EWS following an SDL adjustment.

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Victoria considers that these notes do not adequately address the Council's request, as they do not require the MDBA to take action to amend the EWS in response to an SDL adjustment.

Victoria therefore requests that the Commonwealth Minister suggest to the MDBA that it amend sections 7.17 and 7.29(3) of the Altered Proposed Basin Plan to require the MDBA to amend the EWS for an SDL adjustment, including taking account of any agreed commitment for the use of environmental water.

In addition to these comments, Victoria has suggestions for specific amendments to Chapter 7 of the Altered Proposed Basin Plan provided at Appendix A.

## **2. Transition period to the requirements under Chapter 11**

Victoria requested in its Appendix G Notice that section 1.04 of the Basin Plan be amended so that the commencement date for Chapter 11 is changed from 1 July 2014 to 1 July 2015. However, the MDBA has retained the 1 July 2014 commencement date in its Altered Proposed Basin Plan.

Victoria remains concerned that there are inconsistencies between the trading rules approach proposed in Chapter 11 of the Altered Proposed Basin Plan and the Victorian Water Act and existing State policies with regard to trade. These inconsistencies cannot be addressed with any assurance by 1 July 2014, which is the timeframe specified by the MDBA in Chapter 1 of the Altered Proposed Basin Plan.

In particular, the Victorian Act requires buyers of water allocation, with some exceptions, to hold a water-use licence or registration (e.g. in section 33); however the Basin Plan rules out any such restriction on who can buy water allocations (section 11.06).

To comply with the Basin Plan will require changes to Victoria's legislation and, subsequently, changes to legislative instruments, the water register system, forms, procedures and communications. The changes to legislation are likely to be included in a current major review of the Victorian Water Act, targeted for July 2014.

Moreover, the current restrictions act as a brake on the movement of large volumes of water between valleys in pursuit of carryover advantages – the movement of which can often have third party effects. Therefore, by the time the current restrictions are revised, alternative ways of controlling such harmful effects must have been developed and put in place.

Accordingly, the current 1 July 2014 timeframe for Chapter 11 coming into effect allows insufficient leeway for the delivery of the complex transitional activities described above. Should the requisite changes to State arrangements not be achieved in time, there is a high risk that a situation could arise where a trade cannot be approved under Victoria's legislation, but has to be approved under the Basin Plan.

To avoid this highly undesirable outcome, Victoria requests that the Commonwealth Minister suggest to the MDBA that Chapter 11 commence on 1 July 2015, which is one year later than what is currently proposed under the Altered Proposed Basin Plan.

In addition to these comments, Victoria has suggestions for specific amendments to Chapter 1 of the Altered Proposed Basin Plan provided at Appendix B.

## Appendix A: Environmental watering plan - suggested amendments to Chapter 7

In addition to the comments provided above, Victoria requests that the Commonwealth Minister suggest to the MDBA that the following specific amendments to Chapter 7 of the Altered Proposed Basin Plan be made to address issues on the Environmental Watering Plan.

### 7.13 Obligation to prepare Basin-wide environmental watering strategy

- (1) The Authority must prepare a Basin-wide environmental watering strategy for the Murray-Darling Basin (*Basin-wide environmental watering strategy*).
- (2) The purpose of the Basin-wide environmental watering strategy is to:
  - (a) explain the context within which the Basin annual environmental watering priorities will be set **and how the objectives of the long-term watering plans will be integrated under a basin-wide approach**; and
  - (b) identify particular Basin-wide environmental watering priorities over the long term; and
  - (c) help co-ordinate the management of environmental water, including guiding the development of ~~consistent~~ long term watering ~~plans~~ **arrangements**.

### 7.15 Preparation of Basin-wide environmental watering strategy

- (1) .....
- (2) .....
- (3) .....
- (4) When preparing the Basin-wide environmental watering strategy, the Authority must have regard to each of the following, where these relate to achieving objectives in Part 2:
  - (a) **the long-term watering plans;**

### 7.17 Review and update of Basin-wide environmental watering strategy

- (1) .....
- (2) **The Authority must review and update the Basin-wide environmental watering strategy after any SDL adjustments have been made in accordance with Part 3 of Chapter 6, including any agreed commitments for the use of environmental water resulting from the SDL adjustment process.**
- ~~(23)~~ .....

### 7.19 Content of long-term watering plans

- (1) .....
- (2) .....

~~(3) If the Basin wide environmental watering strategy has identified particular assets or functions, and their requirements, under subparagraph 7.14(2)(a)(i), a long term watering plan must be consistent with that part of the Basin wide environmental watering strategy.~~

**7.21 Provision and publication of long-term watering plans**

(1) A Basin State may, in order to inform the development of the initial Basin-wide environmental watering strategy, provide the Authority with a long-term watering plan for a water resource plan area.

~~(2)~~ .....

**7.29 Preparation of Basin annual environmental watering priorities**

(1) .....

(2) .....

*Matters to which Authority must have regard*

(3) .....

(a) .....

(b) .....

(c) commitments for water use including those resulting from the SDL adjustment process;

(ed) annual environmental watering plans for all water resource plan areas;

(e) .....

**Appendix B: Transition period to the requirements under Chapter 11 - suggested amendments to Chapter 1**

In addition to the comments provided above, Victoria requests that the Commonwealth Minister suggest to the MDBA that the following specific amendments to Chapter 1 of the Altered Proposed Basin Plan be made to address issues on the transition period to the requirements under Chapter 11.

**1.04 Commencement**

- (1) The Basin Plan, apart from Chapter 11, commences on the day after it is registered.
- (2) Chapter 11 commences on 1 July ~~2014~~ 2015.