

MEMORANDUM OF UNDERSTANDING

in relation to water for the environment

This is a Memorandum of Understanding (MOU) between

the NEW SOUTH WALES GOVERNMENT

and

the COMMONWEALTH OF AUSTRALIA.

INTRODUCTION

1. The scarcity of water arising from prolonged drought and the emerging impacts of climate change has highlighted the importance of water to our communities, the environment and the economy. In recognising these challenges, the Commonwealth and New South Wales Governments have committed to actions that will secure additional water for the environment to restore the health of rivers and wetlands and secure a sustainable future for irrigated agriculture, which makes a vital contribution to the Australian economy.
2. The parties note the "Water for Environment" agreement between the Prime Minister and the Premier of Victoria. The parties support the purchase of water entitlements for the environment as a means to secure the sustainability of the Murray-Darling Basin, but acknowledge the need for fair burden sharing in terms of the volume of water recovered from within each jurisdiction within the Murray-Darling Basin.
3. In addition to water purchases for the environment, water for the environment will be secured by:
 - a. infrastructure investment creating water savings to be transferred to the Commonwealth; and
 - b. implementation of statutory water sharing plans that comply with sustainable diversion limits to be established under the new Basin Plan.
4. The NSW and Australian Governments acknowledge and support the important and ongoing work around infrastructure investment, development of statutory water sharing plans (WSP) and existing environmental watering programs including:
 - a. Commonwealth investment in rural water infrastructure: During 2007 and 2008, the Commonwealth committed in principle to providing approximately \$1.8b in funding for projects in NSW, subject to due diligence assessment. This includes a suite of State Priority Projects, involving investment both off-farm and on-farm, as well as election commitments such as for Menindee Lakes. This investment has the dual purpose of securing water for the environment with a share of the water savings to be transferred to the Commonwealth as well as assisting irrigation water providers, individual irrigators and their communities to improve long term sustainability and adjust to a future with less water.
 - b. NSW development of statutory WSPs: Ninety per cent of water use in NSW is now managed through statutory water sharing plans. These plans set limits on overall water extractions, have recovered water for the environment, and make specific provision for environmental flows through environmental entitlements or rules-based environmental flows. NSW water sharing plans were developed to recover a significant volume of water per year for the environment when compared against 1993-94 levels of diversion used in the management of the Murray-Darling Basin cap.
 - c. Joint initiatives, including The Living Murray, Water for Rivers, the RiverBank program, and other activities that benefit the environment.

5. The parties agree to continue to cooperate in relation to these existing mechanisms.
6. The parties strongly support an open water market and recognise the vital role of the market in implementing necessary water reforms and providing commercial options for irrigators to respond to changing circumstances, including reduced water availability.
7. The parties recognise that:
 - a. Substantial purchases of water for the environment have already occurred in NSW. The total water purchased under the Riverbank, Rivers Environment Restoration Program (RERP) and the Living Murray (TLM) programs at August 2009 is 556 gigalitres (GL) of entitlement. NSW water purchases under these programs were supported by Commonwealth funding of \$71.77 million for Riverbank (including RERP) and \$76.16 million under the TLM Package B and Market Purchase Measure.
 - b. Purchases secured in NSW under the Commonwealth's Restoring the Balance in the Murray-Darling Basin program amount to 393 gigalitres of entitlement as at 31 August 2009.
 - c. 56 per cent of the Murray-Darling Basin is in NSW, 65 per cent of flows originate in NSW and NSW accounts for on average 51 per cent of surface water extraction.
 - d. The Basin Plan will contain provision for trade rules and also an environmental watering plan on which the States will be consulted in the development of the Basin Plan. The Basin Plan has the potential to resolve many of the issues associated with the delivery of environmental water.
8. The parties agree that water purchases are an essential element of securing water for the environment. As part of Water for the Future, the Commonwealth is committed to implementing a water purchase program across the Murray-Darling Basin to restore the health of the river system and help smooth the transition for irrigators to the lower diversion limits expected under the Basin Plan. Over the five years from 2008-09, the Commonwealth is committed to purchasing a balanced, value-for-money portfolio of water entitlements to the value of at least \$2.5 billion (from a ten year program of \$3.1 billion.)
9. The parties further agree that:
 - a. Water purchases should be made on a value for money basis, to provide water to address high priority environmental watering needs in order to maximise environmental outcomes.
 - b. There should be fair burden sharing among Basin States in terms of the volumes of water purchased by the Commonwealth for the environment.
 - c. Water purchasing for the environment will be most effective if all Basin States remove barriers to trade as soon as possible, consistent with requirements of the NWI.
 - d. The Commonwealth's environmental water purchase program should not be delayed until the trade rules and environmental watering plan are completed as part of the Basin Plan.
 - e. Irrigators in all areas of NSW will continue to have the option of joining together to negotiate managed closures (group sale of entitlements to the Commonwealth).
10. In the meantime this MOU sets out principles and processes which the parties have agreed to facilitate balanced delivery of the Commonwealth's water purchase program.
11. This joint commitment by the NSW and Commonwealth governments also recognises the necessity of supporting irrigation communities in their efforts to secure a sustainable future in the face of expected lower diversion limits under the Basin Plan and declining water availability due to climate change.

FAIR BURDEN SHARING

12. Both parties are concerned at trade restrictions and user subsidies that distort the water market. They consider that this market distortion is likely to result in:
 - a. reduced supply of water available for purchase by the Commonwealth; and
 - b. potential imbalance in terms of the relative proportion of Commonwealth water purchases made in each Basin State.
13. At the end of May 2009, the publicly available information on the outcomes of the Commonwealth water purchase program suggested more than 95 per cent of purchases had been made from NSW, leading to the imposition of a NSW embargo.
14. Since that time a substantial volume of additional purchases have been made, and secured purchases from Victorian now total almost 140 GL. As at 31 August 2009 the NSW proportion of all Commonwealth environmental water purchases had declined to 72 per cent. This MoU and the May 2009 agreement between the Commonwealth and Victoria provide a pathway to move further over time to fair burden sharing in the overall purchase program.
15. In seeking to achieve balance in terms of burden sharing among Basin states, the Commonwealth will use a quantum target for Commonwealth water purchases in NSW under the Restoring the Balance program of around 890 GL of general security entitlement (or equivalent) over the five years from 2008-09 inclusive. The quantum target of 890 GL general security entitlement (or equivalent) reflects a balance in terms of the proportion of purchases in NSW and Victoria, based on the expected reduction (median CSIRO projection) in surface water availability borne by the environment in these states.
16. The parties agree that
 - a. in 2009 –10 tenders, offers to NSW sellers will be capped at 60GL of general security entitlement (or equivalent) unless otherwise agreed
 - b. In 2010 -11 tenders, offers to NSW sellers will be capped at 80 GL of general security (or equivalent) unless otherwise agreed
 - c. In 2011 -12 tenders, offers to NSW sellers will be capped at 80 GL of general security (or equivalent) unless otherwise agreed
 - d. In 2012 -13 tenders, offers to NSW sellers will be capped at the shortfall between total purchases at the commencement of the year and 890GL general security entitlements (or equivalent).
17. The approach described in para 16 will ensure purchases of around 890 GL of general security entitlement (or equivalent) in NSW over the five year period.
18. Consistent with NSW legislation, NSW will give trade approval to all water purchases which were pursued in NSW by the Commonwealth from its 2008-09 Southern Basin and Northern Basin tenders. These total 532 GL of entitlements.
19. The parties note that for the Commonwealth environmental water purchase program in 2007-08 and 2008-09, purchases in NSW will total around 560 GL entitlements (around 320 GL cap equivalent - around 57 per cent of MDB total). Purchases from Victoria for the same period will total 222 GL entitlements (around 200 GL cap equivalent - 36 per cent of MDB total).
20. The parties note that not all the offers made on water entitlements in one year will be settled in that year, due to offers being pursued late in the irrigation season.

21. The parties agree that the quantum target of 890 GL does not include or apply to water entitlements associated with the Commonwealth's share of water savings derived from Commonwealth-funded infrastructure projects, including State Priority Projects.

REMOVAL OF THE NSW EMBARGO ON WATER PURCHASES FOR THE ENVIRONMENT

22. NSW will immediately repeal the order under section 71Z(1) of the Water Management Act 2000 (NSW) published in the Government Gazette of the State of New South Wales No. 102 on Thursday 9 July 2009 which applied an embargo on trade of water for environmental purposes.
23. Further, NSW will stand by its commitment to the COAG and National Water Initiative in relation to water trading, including to refrain from introducing any new barriers to trade, except where such amendments are needed for operational purposes, including to minimise transmission losses.
24. NSW agrees that water rights held and used by the Commonwealth will be subject to terms that are no less favourable than those provided to other holders of equivalent rights.

MANAGEMENT OF ENVIRONMENTAL WATER IN NSW

Ensuring best environmental outcomes in management of environmental water

25. The parties agree that the use (deployment) of environmental water should be based on sound scientific evidence and seek to achieve the best environmental outcomes possible across the Murray-Darling Basin from the water available.
26. The parties recognise that many environmental assets are under significant stress due to both river regulation and a lack of available water resulting from many factors including climate change, particularly in the southern Murray-Darling Basin.
27. Commonwealth environmental water is managed by an independent statutory office holder – the Commonwealth Environmental Water Holder. The Commonwealth environmental water holdings must be managed in accordance with the environmental watering plan in the Basin Plan, once it has been adopted.
28. The Commonwealth will continue to consult with and seek suggestions from NSW with regard to environmental watering priorities, including coordinating, where possible, the use of environmental water held by the Commonwealth, NSW and other entities. In this regard, the Commonwealth Environmental Water Holder and the NSW Department of Environment, Climate Change and Water are currently parties to a memorandum of understanding on the cooperative use of environmental water.
29. Water acquired by the Commonwealth will be used to water key environmental assets in the Basin. In New South Wales these assets may include but are not limited to the Darling River, Culgoa Floodplain, Narran Lakes, the Wakool River System, the Macquarie Marshes, the Gwydir wetlands, Booligal Swamp, the Lowbidgee wetlands, the Millewa and Pericoota-Koondrook forests. Significant volumes of water will be required to protect and restore environmental assets, giving effect to relevant international agreements.
30. The parties acknowledge that physical characteristics of rivers and other water sources affect the amount of water that may flow for environmental watering purposes. These physical constraints may vary:
 - a. from river to river;
 - b. between reaches of the same river;

- c. as a result of the management of interconnected rivers;
- d. as a result of climatic conditions; and
- e. as a result of general river management requirements (such as orders from water users, management of algal blooms and delivery of water for the NSW environmental water manager).

Shepherding of environmental water

31. The parties agree that the benefits of investing in water for the environment can only be fully realised if water rights can be used in an optimal way to meet high priority needs.
32. To implement the commitment made by their respective water ministers to negotiate a bilateral agreement to ensure that all water for the environment can be protected from access by downstream consumptive users, the Commonwealth and New South Wales agree that:
 - a. A joint taskforce comprising officials from NSW and the Commonwealth, funded by the Commonwealth, will develop a draft bilateral agreement for consideration by Ministers by 30 November 2009, which provides for water shepherding in NSW.
 - b. The bilateral agreement will establish principles for water shepherding and its implementation including:
 - i. scope, terms of reference and resourcing for the ongoing work of the joint task force.
 - ii. provisions for shepherding throughout NSW and from the Queensland border, for environmental water held by the Commonwealth;
 - c. The objective of the agreement is to optimise the use of all water for the environment, to provide the capacity to deliver water to high priority environmental assets, and, in the case of in-stream environmental watering, to provide protection for environmental flows to pass through the system as far as transmission losses allow.
 - d. NSW undertakes to implement the agreed water shepherding strategy subject to:
 - i. Commonwealth funding of costs associated with implementation (including costs arising from modelling, monitoring, operational, licensing or compliance issues), in excess of those incurred by NSW in meeting its statutory obligations to manage water in NSW; and implementing existing commitments under the NWI and the Intergovernmental Agreement on Murray-Darling Basin Reform
 - ii. Entitlements and allocations held by water users in NSW will not be enhanced nor diminished as a result of environmental watering actions and shepherding for environmental watering.
 - e. In the period before permanent arrangements are agreed:
 - i. NSW will endeavour to shepherd Commonwealth holdings for environmental watering acquired by purchase or investment in infrastructure by the Commonwealth; and
 - ii. The Commonwealth will fund the costs associated with this shepherding (including costs arising from modelling, monitoring, operational, licensing or compliance issues), in excess of those incurred by NSW in meeting its statutory obligations to manage water in NSW; and implementing existing commitments under the NWI and the Intergovernmental Agreement on Murray-Darling Basin Reform.

39. NSW is responsible within its borders for managing access to water and ensuring water is shared between the environment, towns and cities, and farmers and industry as well as for Aboriginal cultural activities. NSW will manage water in accordance with:

- a. State and Commonwealth legislation, including the Basin Plan when it comes into effect; and
- b. existing commitments under the National Water Initiative (NWI) and the Agreement on Murray-Darling Basin Reform.

34. In recognition of the necessity of Basin-wide water trading to allow the efficient operation of water markets, the NSW commits to implementing a water sharing plan for the Murray-Darling that is consistent with the National Water Initiative by 30 June 2011, unless otherwise agreed.

REPORTING AND REVIEW

35. The Commonwealth undertakes to report publicly on a monthly basis on the volumes of environmental water purchased and secured in NSW and in other Murray Darling Basin states.

36. The parties agree to review progress in implementing the provisions of this MOU on an annual basis.

37. The parties agree to this document being publicly available once both have signed.

Signed for and on behalf of the Commonwealth of Australia by:



The Honourable Julia Gillard MP

Acting Prime Minister of the Commonwealth of Australia

22 September 2009



The Honourable Nathan Rees MP

Premier of the State of New South Wales

23 September 2009