



Office of the Chief Executive

Recovering Water in the MDB
Productivity Commission
LB2 Collins Street East
MELBOURNE VIC 8003

Re: Murray-Darling Basin Authority Submission to the Productivity Commission report on *Market Mechanisms for Recovering Water in the Murray-Darling Basin*.

The Murray-Darling Basin Authority (MDBA) welcomes the opportunity to provide a submission to the Productivity Commission (the Commission) draft report on *Market Mechanisms for Recovering Water in the Murray-Darling Basin*.

I appreciate the Commission granting the MDBA an extension on this submission, and for arranging a meeting between MDBA staff, the Commissioners responsible for the draft report, and Commission staff. This meeting, held on 12 February 2010, enabled the MDBA to discuss key elements from the draft report.

Please find attached the MDBA's submission in response to the *Market Mechanisms for Recovering Water in the Murray-Darling Basin* report.

If you have any questions in relation to this submission, please contact Joanne Nathan, A/g General Manager – Basin Plan, on 02 6279 0477 or by email at Joanne.Nathan@mdba.gov.au.

Yours sincerely

A handwritten signature in black ink that reads "Rob Freeman".

Rob Freeman
Chief Executive
Murray-Darling Basin Authority
17 February 2010



MURRAY-DARLING BASIN AUTHORITY SUBMISSION TO THE PRODUCTIVITY COMMISSION REPORT ON MARKET MECHANISMS FOR RECOVERING WATER IN THE MURRAY-DARLING BASIN

FEBRUARY 2009

INTRODUCTION

The Murray-Darling Basin Authority (MDBA) is established under the *Water Act 2007* (the Water Act). The Act confers on the MDBA a broad range of responsibilities including continuing work previously initiated by the Murray-Darling Basin Ministerial Council and the Murray-Darling Basin Commission (MDBC).

Water Act 2007: Interpretations

The MDBA notes that in some matters the Commission has interpreted sections of the Water Act in a way that differs from the understanding of the MDBA. The Commission's interpretations have led to findings which the MDBA believes may not accurately reflect the actions, activities and intent of the MDBA's current work, particularly in relation to the development of the Basin Plan.

Development of SDLs – optimising social, economic and environmental outcomes

The Commission seems to have interpreted sections of the *Water Act 2007* (the Water Act) in a way that requires the MDBA to primarily consider "least cost" ways of achieving SDLs, and that the Basin Plan will be developed with no regard to opportunity costs, or social and economic consequences. This interpretation has led to a number of the Commission's draft findings including 4.2 ("community preferences should be considered where tradeoffs are required between different environmental outcomes, and between environmental and consumptive outcomes") and 6.2 (in the setting of SDLs the allocation of water "between environmental and consumptive uses does not take into account community preferences, the opportunity cost of water or the role of other inputs such as land management").

However, an Object of the Water Act is to promote the use and management of the Basin water resources in a way that optimises economic and social, as well as environmental outcomes. In addition, Section 21 of the Water Act stipulates that in developing the Basin Plan, which includes determining SDLs, the MDBA must have regard to the consumptive and other economic uses of Basin water resources, as well as to social, cultural, Indigenous

and other public benefit issues. The development of the SDLs will utilise social and economic analysis to determine the potential implications for a range of possible changes in water availability across the Basin, at the same time as environmental watering requirements are being determined. The MDBA will ensure that environmental water requirements and socio-economic impacts are considered together, with the social and economic analysis being used initially to inform how, where and when water can be delivered to meet environmental requirements at least social and economic cost.

Once the SDLs have been developed for the proposed Basin Plan, MDBA will assess the socio-economic implications of any reductions in the long-term average SDLs and provide a report to the Murray-Darling Basin Ministerial Council along with the proposed Basin Plan. Membership of the Ministerial Council comprises the Commonwealth Water Minister, who also chairs the council, and one minister from each of the Basin states and the ACT. Governments will use this information to consider appropriate responses to the social and economic impacts of the Basin Plan.

The Water Act sets out a detailed public consultation process for the proposed Basin Plan to ensure that a wide range of stakeholders, including Governments, industry and community groups, and individuals, are given the opportunity to have their views considered as part of the Plan's development. The MDBA views community involvement as an important input to the social and economic choices reflected in the Basin Plan.

The MDBA released an issues paper in November 2009 titled *Development of Sustainable Diversion Limits for the Murray-Darling Basin*, which provides details on how the MDBA proposes to consider socio-economic factors in developing SDLs (available at <http://www.mdba.gov.au/services/publications/more-information?publicationid=36>).

Environmental Outcomes

The Commission notes in the 'Overview' section of the draft report that the Basin Plan aims to achieve environmental outcomes "solely through the setting of SDLs" (draft finding 9.3). The proposed Basin Plan, which is currently being developed by the MDBA, will provide for the integrated and sustainable management of water resources in the Murray-Darling Basin. A central element of the Basin Plan is an environmental watering plan. The Water Act states that this plan will "protect and restore the wetlands and other environmental assets of the Murray-Darling Basin; and protect biodiversity dependent on the Basin water resources and achieve other environmental outcomes for the Murray-Darling Basin" (Section 28).

The Commission's draft report also raises the need for greater coordination between water recovery programs and the use of environmental water across the Basin. Draft finding 9.3 stipulates that "better systems are needed to coordinate the mix of water purchases with other actions and inputs to achieve the desired environmental results". As required by the Water Act (Section 28), the environmental watering plan will safeguard existing environmental water, plan for the recovery of additional environmental water, and will coordinate the management of environmental water across the Basin.

The environmental watering plan will manage both held environmental water and planned environmental water. Entitlements held by the Commonwealth Environmental Water Holder (CEWH) will be managed in accordance with the environmental watering plan.

These water entitlements, along with planned environmental water provided for under the Basin Plan, will be used to protect and restore environmental assets such as wetlands and streams, including those in the Murray-Darling Basin. If and when the Basin Plan specifies a reduction in water availability or a change in the reliability of water allocations, the CEWH will be treated the same as all other entitlement holders.

The Commission also raises concerns regarding a lack of on-ground environmental management action. The MDBA undertakes a range of activities to co-ordinate on-ground environmental management. This includes The Living Murray program, established in 2002. This program is a partnership of the Australian, NSW, Victorian, South Australian and ACT governments. The program's 'first step' has focused on recovering 500 gigalitres of water, and funding infrastructure such as regulating structures, fishways and water delivery channels to make best use of the recovered water. This will benefit plants, animals and the millions of Australians that the River Murray supports, along with improving the environment at six icon sites.

Other programs include the MDBA's Native Fish Strategy, which aims to rehabilitate native fish communities in the Basin back to 60% of their estimated pre-European-settlement levels, after 50 years of implementation. The Native Fish Strategy has been in place since 2004. The MDBA's River Murray Water Quality Monitoring Program (WQMP) aims to guide management actions along the River Murray and the lower reaches of its tributaries and storages. The WQMP collaboratively funds research and innovation in water quality, ecosystem response, algal monitoring and adaptive management strategies. The MDBA also provides guidance for on-ground actions such as construction of fishways and pest management.

More information on MBDA programs is available at www.mdba.gov.au/programs.

Clarification of Issues

Risk Allocation Provisions

The Commission's draft report raises the issue of uncertainty in the community about the application of risk assignment provisions under the National Water Initiative (NWI) and the Water Act, and the need for governments to clarify "as soon as possible" how the risk assignment provisions will apply to potential reductions in the SDL under the Basin Plan. Specifically, draft finding 6.1 refers to the need for clarification of risk assignment provisions and how they will apply to the reductions in water availability that are likely under the Basin Plan.

The MDBA acknowledges that there is a high level of uncertainty in rural communities awaiting the release of the proposed Basin Plan. The Basin Plan risk assignment provisions are set out in Part 2 Division 4 of the Water Act. The provisions stem from two intergovernmental agreements; the *Intergovernmental Agreement on a National Water Initiative 2004* (NWI) and the *Intergovernmental Agreement on Murray-Darling Basin Reform 2008* (MDB IGA). In the 2008 MDB IGA, the Commonwealth agreed to assume some of the State NWI responsibilities for payments and to bring forward potential risk allocations when transitional or interim water resource plans cease, if a State had applied certain of the NWI provisions about risk sharing. This agreement was legislated for in 2008, by amendment to

the Water Act. The Commonwealth's share of the reduction to SDLs will be determined by the MDBA along with the sustainable diversion limits of water resource plan areas and included in the proposed Basin Plan, due for public release and comments in mid-2010. This will provide greater certainty for water users. Payment to entitlement holders will be administered by the Department of Environment, Water, Heritage and the Arts (DEWHA).

The Basin Plan is required (if the SDL for a water resource plan area is reduced or the Basin Plan results in a change in water reliability) to determine the Commonwealth share of the reduction and the amount of reduction attributed to changes in Commonwealth Government policy and new knowledge. Under the Water Act the Commonwealth must endeavour to manage the impact of any reductions in the SDL or changes in reliability of allocation that are attributed to the Commonwealth's share. The implementation of programs to mitigate any such impacts is also the responsibility DEWHA.

The Basin Plan: State Responsibilities

In the 'Overview' section of the Commission's report, it notes that a serious impediment to achieving a good outcome for the community in relation to water recovery is that even with the Basin Plan in place, State Governments will still have to "reign in overallocation of water resources in the Basin".

The Basin Plan will be implemented through water resource plans prepared by Basin states and provided to the Commonwealth Minister for accreditation. It will also play an important role in identifying responsibilities for managing risks related to reduced water availability and changes in reliability of supply. Water-sharing arrangements that are provided for in existing water resource plans will remain in place until these plans cease as outlined in the transitional arrangements set out in the Water Act.

The enforceable limits on the quantities of surface water and groundwater that can be taken from the Basin water resources are a central element of the Basin Plan. These limits must be set at a level that the MDBA, using the best available scientific knowledge, determines to be environmentally sustainable. However, the division of water between competing users of a water resource within the relevant SDL, and the management of entitlement products, is the responsibility of the states (refer Rec 10.2).

In recommendation 10.2, the Commission states that the MDBA should commission an independent study into ways of expanding the ability of water users to carry over water, while adequately managing third-party impacts. While the MDBA would support an investigation into carry-over provisions, the management of allocations within SDLs is a matter for State Governments to manage.

Transitional Arrangements

The Commission's draft report refers to the Water Act providing for the setting of temporary diversion provisions (TDP). The purpose of a TDP, as outlined in section 24(1) of the Water Act, is to provide for a transition period to minimise social and economic impacts where the long term average SDL is lower than the long term average quantity of water that has been taken previously. The Commission notes that TDPs will provide a five year transition period. However, there is provision within the Water Act for TDPs to be set at zero, and where TDPs are set above zero, reductions to zero may be phased in for up to a five year period. The

purchase of water entitlements for environmental use will also assist with adjustment to any lower diversion limits.

Water Markets

In exploring the benefits and costs of water trade, the Commission discusses the negative externalities of trade, including delays in delivery causing environmental damage, decreased water quality, and changes in the condition of neighbouring land. Basin Plan water trading rules will address delivery constraints causing environmental damage, as any restrictions to trade will be based on environmental, delivery and physical constraints. In the case of changes to the condition of neighbouring land, it should be noted that in unbundled systems, trade is independent from use, and water use approvals issued under state legislation manage extraction and application of water on land, not the trading process. For a trade to be approved in an unbundled system, assessment of land use aspects may be required as part of the approval process.

In the draft report, the Commission examines various other ways in which water could be recovered, in addition to the purchase of permanent water entitlements. In the section on tagged trade, it may be beneficial for the report to include the extraction/use factors of tagged water. The MDBA notes that the tagging makes allocation made under the entitlement within the source water resource available for extraction and use within another water resource.

The report then mentions interstate water trade and the Australian Capital Territory, noting that there is currently no trade between the ACT and other Basin states. In fact, Schedule D to the Murray-Darling Basin Agreement has already been amended to enable interstate trade for the Australian Capital Territory by becoming a party to the Murray-Darling Basin Agreement, as approved by Ministerial Council 1 on 12 June 2009.

The Commission report also discusses the role of intermediaries, such as water exchanges and brokers, in facilitating trade. The MDBA notes that there is no regulation or even an accreditation process for intermediaries of this nature, and as such is concerned that the information gathered and supplied by intermediaries may be biased and should not be used as the only source of information for making decisions on water purchases. The MDBA suggests that wherever possible independent information should be used to ascertain market prices (such as the DEWHA current practice of utilising market information compiled by independent consultant GHD Hassall) until the development of the National Water Markets System.

When discussing the water charge (infrastructure charges) rules, the MDBA notes that the Commission's report paraphrases a clause within the access, exit and termination fees protocol regarding the Murray-Darling Basin Agreement's requirement that water delivery rights be unbundled from any water entitlement and be recognised through a separate, explicit delivery entitlement by a date no later than 30 June 2010. However, it is important to recognise that the protocol only applies to Irrigation Infrastructure Operators within the Southern-connected basin, and that all Infrastructure Operators in the Southern-connected Basin have already complied with this clause of the protocol.

The Living Murray

With regard to the Commission's comments on the Living Murray (TLM) initiative, the report notes that the Commission did not have any data on TLM environmental watering for 2008-09. Please note that information on 2008-09 watering is now available on the MDBA website in the 2009-10 Environmental Watering Plan (available at www.mdba.gov.au/files/publications/MDBA_TLMWateringReport.pdf).

The Commission's report also discusses the relationship between the Commonwealth Environmental Water Holder (CEWH) and TLM. TLM currently manages its portfolio and watering actions separately to the CEWH. However, as noted previously in this submission, a central element of the Basin Plan is the development of an environmental watering plan. This plan will safeguard existing environmental water, plan the recovery of additional water, and coordinate the use of environmental water across the Basin, including water held under TLM.

There is also discussion in the Commission's report on the volume of water that is expected to be recovered through TLM. The report notes that the MDBA expected to have recovered 495.7 GL long-term cap equivalent (LTCE) by 31 December 2009. The current estimate, provided in the MDBA's November 2009 TLM Water Recovery Progress Report (available at www.mdba.gov.au/system/files/Water-Recovery-progress-report.pdf), is that 485GL LTCE will be recovered by the end of the 2009-10 financial year. This progress report also contains information on why previous water recovery targets have not been reached, such as reduced project budgets and changes to market rules. It might facilitate a clearer understanding of changes to water recovery targets if information from the TLM Water Recovery Progress Report was incorporated into the Commission's report.

Finally, there appear to be some minor errors with the referencing in the report. For example, in 'B1: The Living Murray' all references to 'MDBA 2009c' appear to refer to a link on the DEWHA website rather than being an MDBA reference.