

11 September 2015

DPI Water
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Sent by email: hunter.regwsp@dpi.nsw.gov.au

Dear Sir/Madam

Review of Water Sharing Plan for the Hunter Regulated River Water Source

EDO NSW welcomes the opportunity to provide brief comments on the Draft Water Sharing Plan for the Hunter Regulated River Water Source (**Draft WSP**).

Our principal focus is ensuring that the Draft WSP maintains or improves environmental outcomes. Community groups have expressed concern to us that proposed amendments to certain rules will undermine this objective. Specifically, they have noted that proposed changes to rules governing flows during dry periods, access to uncontrolled flows, and supplementary access will reduce the amount of water that is available to the environment.

In particular, questions have been raised regarding the way in which the new dry condition daily flow targets outlined in Table C of cl. 28 will interact with the uncontrolled flow access rule outlined in cl. 55 (6).¹ Specifically, the 11% annual flow tally limit specified in cl. 55 (6) is only triggered when supplementary water may be accessed pursuant to rule 53. That is, the 11% limit does not apply unless supplementary water may be accessed.

As the new dry condition daily flow targets are lower than the daily flow targets in the current WSP, it is arguable that it will take longer before there is enough water in the river to trigger supplementary access rules. This essentially means that there will be a (potentially longer) period during which uncontrolled flows may be pumped² without being subject to the 11% limit.

As a consequence, there is concern that the new dry condition daily flow targets will 'lengthen the drought' for the river. That is, these targets, combined with cl. 56 (6), will diminish environmental flows beyond that which is necessary to mimic the natural reduction that occurs during dry periods.

The Draft Report Card for this water source notes that '[t]he sub-catchments of the Hunter Regulated River are generally considered as under medium or high environmental stress.'³ A reduction in environmental flows is likely to further degrade this water source, in turn compromising its overall resilience (particularly during periods of drought).

¹ For the sake of completeness, we note that access to uncontrolled flows is subject to cll. 55 (4) and 55 (5). Nonetheless, the wording of 55 (6) is of concern.

² Note that uncontrolled flows may only be accessed when the rules outlined in cll. 55 (4) and 55 (5) are satisfied.

³ <http://www.water.nsw.gov.au/water-management/water-sharing/plans-on-exhibition/exhibitions-open/draft-wsp-hunter-regulated> (accessed 10 September 2015).

The Draft Report Card further notes the presence of two Ramsar listed wetlands, namely the Kooragang Wetlands and the Hunter Wetlands Centre Australia. These wetlands support three species that are nationally and internationally listed as well as well as 45 species of waterbirds which are listed under international agreements to which Australia is a signatory.

International law requires Australia to ensure that there is sufficient water available to first, maintain the ecological character of listed wetlands⁴ and second, protect the habitat upon which migratory species depend.⁵ Reducing environmental flows in an already compromised system may result in breaches of the relevant treaties.

Recommendations

Generally, we request that you reconsider any amendments which are likely to place this water source and its dependent ecosystems under further stress and which may be in conflict with Australia's international legal obligations.

Specifically, we request that you consider amending:

- cl. 56 (6) to ensure that the 11% rule applies to access to all uncontrolled flows (as opposed to only applying where supplementary water may be accessed); and
- cl. 52 (10) to require access to uncontrolled flows to be debited from water allocation accounts.

We are of the view that changing these rules would not trigger a right to compensation under the *Water Management Act 2000* (NSW) (**WM Act**).⁶ This is because water taken during uncontrolled flows is not currently debited from water allocation accounts.⁷ As such, it does not satisfy the definition of 'water allocation' in the WM Act. To clarify, only a reduction in water allocations is potentially compensable under the Act.

Please contact us if you have any questions regarding the issues raised in this submission.

Yours sincerely,

EDO NSW



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Policy and Law Reform Solicitor

⁴ Ramsar Convention, Article III (1) and COP 9, Resolution 9.1, Annex A.

⁵ See for example; Japan Australia Migratory Bird Agreement (JAMBA), article IV, which states that '[e]ach Government shall endeavour to take appropriate measures to preserve and enhance the environment of birds protected under the provisions of this Agreement.'

⁶ Only reductions in water allocations are potentially compensable. See WM Act, Division 9, Part 2 of Chapter 3 (Compensation relating to access licences) and the definition of 'water allocations' in the Dictionary.

⁷ WSP for the Hunter Regulated River Water Source 2003, cl. 39 (9), (10).