

Basin Plan Water Resource Plan Requirements Position Statement 3A Determining planned environmental water

POLICY ISSUE	How should planned environmental water (PEW) be identified?
REFERENCES	Basin Plan s10.09, <i>Water Act 2007</i> (Cth) s6, s4

MDBA POSITION STATEMENT
<p>When considering whether a water resource plan identifies planned environmental water (PEW) for the purposes of s10.09 the MDBA is bound by the definition of PEW in s6 of the <i>Water Act 2007</i> (Cth).</p> <p>This definition applies irrespective of any language used or not used by a state in this regard.</p> <p>This position statement does not restrict the definition in s6.</p> <p>PEW is water which meets the following criteria:</p> <ol style="list-style-type: none"> 1. the water is committed by a plan made under a State water management law or any other instrument made under a law of a State, or is preserved by a law of a state or an instrument made under a law of a State; and 2. the water is committed or preserved for the purposes of achieving environmental outcomes or, in the case of committed water, other environmental purposes specified in the plan or instrument; and 3. the water cannot, to the extent to which it is committed or preserved for such purposes, be taken or used for any other purpose. <p>No PEW is committed by the Basin Plan.</p>

Rationale

Water is planned environmental water (PEW) if it meets the criteria of s6 of the *Water Act 2007* (Cth).

The Explanatory Memorandum to the Water Bill 2007 explains that the criteria are intended to allow for an expansive definition, to include what is sometimes referred to in various jurisdictions as 'rules-based' environmental water.

Different States have different arrangements with respect to how their legislation may currently require them to consider or outline how PEW is dealt with. No State is required to amend their legislation or take any other action, beyond setting out things required by a WRP, which include identifying PEW in the terms used in s6.

The MDBA will apply the criteria in the following way:

MDBA Reference	D15/14921	<i>Accessed:</i>
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(Criteria 1) The water being ‘committed’ or ‘preserved’

- Water is committed or preserved based on the operation of a plan or instrument, and does not necessarily require an express statement to that effect in the plan or instrument.
- Water is ‘committed’ when a plan or instrument sets aside or consigns the water for a particular purpose.
- Water is ‘preserved’ when, due to the way in which the plan or instrument operates, the water is saved or maintained (including by default – for example, if rules operate to limit extraction, any water in a resource remaining beyond that extraction limit is, by default, ‘preserved’).

(Criteria 2) For ‘achieving environmental outcomes’ or (in the case of committed water) ‘other [specified] environmental purposes’

- ‘Environmental outcomes’ is a phrase defined by the Water Act to include ecosystem function, biodiversity, water quality and water resource health. These are broad concepts.
- There is no need for a plan or instrument to specify which environmental outcomes are to be achieved by the committed or preserved water, provided there is a reasonable argument that the water in question is committed or preserved for the purposes of achieving environmental outcomes. Water may also be committed for achieving ‘other environmental purposes’ as specified in the relevant plan or instrument. Other environmental purposes are matters relating to the natural environment, its protection and conservation in addition to those covered by the phrase ‘environmental outcomes’, and would need to be particularised.
- In considering whether water is committed or preserved for a relevant purpose, MDBA will seek either an explicit statement to that effect in the relevant plan or instrument, or some evidence of the intended purpose of the water – for example, a ‘note’ or ‘explanatory memorandum’ in (or associated with) the plan or law identifies that the water is for environmental purposes.

(Criteria 3) And cannot, to the extent to which it is committed or preserved, ‘be taken or used for any other purpose’

- To the extent which a plan or instrument commits or preserves water for achieving an environmental outcome or (in the case of committed water, a specified other environmental purpose), there must not be any other provision in or under State law that would allow the water to be taken or used for another purpose.
- Water may be committed or preserved either generally, or only at specified times or in specified circumstances. That is, the way in which the water is committed or preserved may inherently allow for other uses at particular times or in particular circumstances.
- Water can also be taken for another purpose in emergency circumstances, where a law provides for this.
- If there are no other provisions that allow or have the effect of allowing the water in question to be taken or used for another purpose, the MDBA will consider this criterion to be met.

The current Basin Plan did not take up the option of committing PEW in the Basin Plan. Therefore there is no PEW committed by the Basin Plan under s6(1)(a)(i).

MDBA Reference	D15/14921
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