

HEADS OF AGREEMENT

THE AGREED OUTCOME FROM THE SNOWY WATER INQUIRY

6 December 2000

This Heads of Agreement has been prepared to outline arrangements to implement the outcome from the Snowy Water Inquiry which has been agreed between the NSW, Victorian and Commonwealth Governments.

Legislative Basis of An Agreed Outcome

The *Snowy Hydro Corporatisation Act 1997* (NSW) requires that, following the completion of the Snowy Water Inquiry, NSW is to reach agreement with Victoria on:

- the initial release of water to the Snowy River for environmental reasons on the issue of the Snowy water licence; and
- the increased amount of such releases of water following the first review of the Snowy water licence that will not give Snowy Hydro an entitlement to compensation.

The Act requires a review of the provisions of the Snowy water licence relating to the initial release of water to the Snowy River for environmental reasons five years after the licence is issued. The Act also requires reviews of all obligations under the Snowy water licence 15 years after the licence is issued and every 10 years thereafter.

The *Snowy Hydro Corporatisation Act 1997 (Cth)* requires the relevant Commonwealth Minister to be satisfied with the adequacy, conduct, outcome and planned implementation of the Snowy Water Inquiry, having regard to the continued viability of the Snowy Scheme.

Environmental Objectives

The environmental objectives for the Snowy River and the Snowy upper montane rivers are to improve the habitat for a diverse range of plant and animal species by a combination of:

- improving the temperature regime of river water;
- achieving channel maintenance and flushing flows within rivers;
- restoring connectivity within rivers for migratory species and for dispersion;
- improving triggers for fish spawning; and
- improving the aesthetics of currently degraded riverine environments.

These objectives are complemented by an objective to maintain and improve environmental flows for the River Murray.

1. INTRODUCTION

This Introduction sets out the principles adopted by the three Governments in reaching agreement on the Snowy Water Inquiry outcome. The body of the document repeats the principles and provides more information about the implementation of the agreed outcome.

1.1 In implementing increased flows in the Snowy River below Jindabyne, in the River Murray and in the Snowy montane rivers, there will be no adverse impacts on:

- water entitlements for irrigation in diversions from the River Murray and in the Murrumbidgee and Goulburn-Murray river systems;
- water flows for environmental purposes in the River Murray and in the Murrumbidgee and Goulburn-Murray river systems;
- South Australian water security or water quality consistent with water sharing arrangements in the *Murray-Darling Basin Agreement*.

1.2 The three Governments have adopted the following target levels of water flows to be achieved progressively within 10 years:

- total flows equivalent to 21% of average natural flow (ANF) in the Snowy River;
- increased flows equivalent to 150 gigawatt-hours per annum of foregone electricity generation in the Snowy montane rivers, including the upper Murrumbidgee River;
- dedicated environmental flows allocated to the River Murray of 70 gigalitres per annum.

1.3 The additional 7% of further flows in the Snowy River up to a total of 28% ANF may be achieved following the implementation of an additional major capital works program to achieve water savings in the southern Murray-Darling Basin beyond those required to offset the 21 % ANF flows in the Snowy River. This program will be undertaken through public private partnerships in which the water saved is shared between the governments and private sector partners. Water savings allocated to the governments will be used to offset increased flows in the Snowy River and to provide further dedicated environmental flows in the River Murray.

1.4 All increased flows in the Snowy River and dedicated environmental flows allocated to the River Murray will be offset with water acquired primarily through prior verified water savings in diversions from the River Murray and in the Murrumbidgee and Goulburn-Murray river systems and, if necessary, through purchases of water from these areas.

1.5 Once a flow of 15% ANF is achieved in the Snowy River, the security of the further offset water required to achieve a 21 % ANF flow in the Snowy River will be at the level of reliability measured at the point of acquisition or purchase, not at the reliability level for annual inflows to the Snowy River.

1.6 Compensation for all net foregone revenue resulting from reduced availability of water flows will be paid to Snowy Hydro Ltd, by arrangement between NSW and Victoria, for any flows in the Snowy River above 21% ANF.

1.7 A joint government enterprise will be established by the NSW, Victorian and Commonwealth Governments with a charter to acquire water at least cost, irrespective of whether it is sourced in NSW or Victoria. The enterprise will acquire water primarily through

investing in water savings projects and, if necessary, through purchasing water entitlements and water rights. Any of the three Governments may provide the enterprise with costed water savings projects to be investigated by the enterprise.

1.8 The purpose of the enterprise will be expressed in its founding documents as being to:

- acquire sufficient water to offset up to 21% ANF flows in the Snowy River and to provide for dedicated environmental flows of 70 gigalitres per annum allocated to the River Murray; and
- commission necessary environmental and riverine works, in addition to works commissioned by Snowy Hydro Ltd, in the Snowy River, the Snowy montane rivers and the River Murray as nominated and agreed by the three Governments.

1.9 The enterprise will be funded as follows:

- New South Wales Government: \$150 million;
- Victorian Government: \$150 million,
- Commonwealth Government: \$75 million.

These are the total financial contributions which will be made by the Governments towards achieving the target levels of water flows specified in Clause 1.2. All financial contributions will be provided in the first ten years. The Commonwealth financial contribution will be provided, in particular, to secure environmental releases to the River Murray.

Commitment of funds can only be varied by agreement between the three Governments.

1.10 All increased flows in the Snowy River and the River Murray are to be for environmental purposes and are not to be used for irrigated agriculture or any other consumptive purpose.

2. COMMITMENTS BY THE GOVERNMENTS

2.1 The NSW, Victorian and Commonwealth Governments agree that in implementing increased flows in the Snowy River below Jindabyne, in the River Murray and in the Snowy montane rivers, there will be no adverse impacts on:

- water entitlements for irrigation in diversions from the River Murray and in the Murrumbidgee and Goulburn-Murray river systems;
- water flows for environmental purposes in the River Murray and in the Murrumbidgee and Goulburn-Murray river systems;
- South Australian water security or water quality consistent with water sharing arrangements in the *Murray-Darling Basin Agreement*.

2.2 The three Governments agree that flows in the Snowy River below Jindabyne will not be increased and dedicated environmental flows allocated to the River Murray will not be implemented unless they are first offset by water acquired through:

- primarily undertaking water saving, environmental improvement and regional development projects in diversions from the River Murray and in the Murrumbidgee and Goulburn-Murray river systems; and

- if necessary, purchasing water entitlements and water rights from holders in a manner which promotes the water trading market.

2.3 The three Governments agree that, at any given time, the total volume of water releases from the Snowy Scheme to the Snowy River below Jindabyne cannot exceed the total verified volume of water acquired through the processes outlined in Clause 2.2.

2.4 The three Governments agree that water to offset increased flows to the Snowy River below Jindabyne or dedicated environmental flows to the River Murray will not be acquired from the Darling River system except by agreement between NSW, Victoria, the Commonwealth and South Australia.

2.5 All increased flows in the Snowy River and the River Murray are to be for environmental purposes and are not to be used for irrigated agriculture or any other consumptive purpose.

3. ESTABLISHMENT OF A JOINT GOVERNMENT ENTERPRISE

3.1 A joint government enterprise will be established by the NSW, Victorian and Commonwealth Governments with a charter to acquire water at least cost, irrespective of whether it is sourced in NSW or Victoria. The enterprise will acquire water primarily through investing in water savings projects and, if necessary, through purchasing water entitlements and water rights.

3.2 The enterprise will acquire water in order of least cost in diversions from the River Murray and in the Murrumbidgee and Goulburn-Murray river systems, treating the water available as a single pool.

3.3 Any of the three Governments may provide the enterprise with a costed water savings project or package of projects to be investigated by the enterprise or provide water from savings projects initiated by the relevant Government at the lesser of the cost of the project(s) or the prevailing market price in the market from which the savings were drawn.

3.4 The purpose of the enterprise will be expressed in its founding documents as being to

- acquire sufficient water to offset up to 21% ANF flows in the Snowy River and to provide for dedicated environmental flows of 70 gigalitres per annum allocated to the River Murray; and
- commission necessary environmental and riverine works, in addition to works commissioned by Snowy Hydro Ltd, in the Snowy River, the Snowy montane rivers and the River Murray as nominated and agreed by the three Governments.

3.5 The enterprise will be funded as follows:

- New South Wales Government: \$150 million;
- Victorian Government: \$150 million;
- Commonwealth Government: \$75 million.

These are the total financial contributions which will be made by the Governments towards achieving the target levels of water flows specified in Clause 1.2. All financial contributions will be provided in the first ten years. The Commonwealth financial contribution will be provided, in

particular, to secure environmental releases to the River Murray.

Commitment of funds and the allocation of water savings for environmental purposes can only be varied by agreement between the three Governments.

3.6 The enterprise will be non-profit. It will have a defined annual cash flow and a limited capacity to carry out short-term investment, carry over of funds between financial years, and borrowing. The annual business plan of the enterprise including the proposed savings projects or package of projects will require the approval of the three Governments.

3.7 The parties recognise that NSW and Victoria are moving to establish fully functioning water markets consistent with COAG principles and MDBC resolutions and the parties also note that NSW is currently in a program of active water policy reform and that these initiatives will underpin the operation of the enterprise.

3.8 Pending the establishment of fully operating water markets, the State Governments will take all reasonable steps to promote access by the enterprise to water entitlement and water rights holders (including individuals) in both States for the acquisition of water for the purposes of this agreement.

4. STAGES FOR INCREASED FLOWS

First Stage (Initial release)

4.1.1 An initial increased release of water to the Snowy River below Jindabyne will be made from the Mowamba River and Cobbon Creek aqueducts at a time agreed by all three Governments following the proclamation of the Snowy corporatisation legislation.

4.1.2 Water to offset the increased flows in the Snowy River resulting from releases from the Mowamba River and Cobbon Creek aqueducts will be sourced for up to the first three years from Snowy Scheme storages. These borrowings will be paid back over a time scale which does not affect water allocations for irrigation farming. The repayment schedule will be part of the agreed annual business plan of the joint government enterprise. Within three years, inflows to the Snowy River from the Mowamba River and Cobbon Creek will be offset by verified water savings from the enterprise. Reductions in assured releases to the west made by Snowy Hydro Limited equal to these verified water savings will be implemented when this offsetting commences.

4.2 Second Stage (2 to 7 years)

4.2.1 Water releases from the Snowy Scheme to the Snowy River below Jindabyne will be progressively increased in tandem with increases in the verified volume of water acquired by the joint government enterprise. For this stage, the target flow in the Snowy River below Jindabyne is 15% ANF. To enable these releases to be made, within three years of corporatisation Snowy Hydro Ltd will build an outlet at Jindabyne Dam to enable a flow in the Snowy River of at least 28% ANF.

4.2.2 Dedicated environmental flows allocated to the River Murray of up to 70 gigalitres per annum will be progressively implemented in tandem with increases in the verified volume of water acquired by the joint government enterprise. The River Murray flows will be matched to the allocation to the Snowy River on the basis of one gigalitre allocated to the River Murray per

two gigalitres allocated to the Snowy River over the Second Stage (2 to 7 years).

4.2.3 The MDBC will be responsible for managing a variable inflow regime, including above-target water from the Snowy Scheme to provide dedicated environmental flows to the River Murray downstream from the Hume Dam.

4.2.4 NSW will develop schedules for increased water releases to the Snowy montane rivers, including the upper Murrumbidgee River, of a total volume of water equivalent to foregone Snowy electricity generation of 100 gigawatt hours per annum. If necessary to enable releases to the upper Murrumbidgee River, within three years of corporatisation Snowy Hydro Ltd will build an outlet at Tantangara Dam.

4.2.5 Water releases to the Snowy River below Jindabyne and to the Snowy montane rivers will mimic natural flows under prevailing climatic conditions to the extent possible, depending on the availability and reliability of offset water and the capacity of constructed outlet works at Jindabyne and Tantangara Dams.

4.3 Third Stage (8 to 10 years)

4.3.1 Water releases from the Snowy Scheme to the Snowy River below Jindabyne will be progressively increased in tandem with increases in the verified volume of water acquired by the joint government enterprise. For this stage, the target flow in the Snowy River below Jindabyne is 21% ANF.

4.3.2 In this stage, the security of the further offset water required to achieve a 21% ANF flow in the Snowy River will be at the level of reliability measured at the point of acquisition or purchase, not at the reliability level for annual inflows to the Snowy River.

4.3.3 Water allocated from the Snowy Scheme to the River Murray for dedicated environmental flows will continue to be matched to the allocation to the Snowy River on the basis of one gigalitre allocated to the River Murray per two gigalitres allocated to the Snowy River up to a maximum allocation of 70 gigalitres per annum to the River Murray within 10 years.

4.3.4 Water releases from the Snowy Scheme to the Snowy montane rivers will be increased to a total volume of water equivalent to 150 gigawatthours per annum of foregone electricity generation.

4.3.5 The target is to complete this stage in 10 years.

4.4 FOURTH STAGE (BEYOND 10 YEARS)

4.4.1 The additional 7% of further flows in the Snowy River up to a total of 28% ANF may be achieved following the implementation of an additional major capital works program to achieve water savings in the southern Murray-Darling Basin beyond those required to offset the 21% ANF flows in the Snowy River. This program will be undertaken through public private partnerships in which the water saved is shared between the governments and private sector partners. Water savings allocated to the governments will be used to offset increased flows in the Snowy River and to provide further dedicated environmental flows in the River Murray.

5. COMPENSATION PAYABLE TO SNOWY HYDRO LTD

5.1 The three Governments agree that compensation for all net foregone revenue resulting from reduced availability of water flows will be paid to Snowy Hydro Ltd, by arrangement between NSW and Victoria, for any flows in the Snowy River above 21 % ANF.

5.2 No flows in excess of 21% ANF will be implemented before arrangements for sharing the cost of the compensation are agreed between the NSW and Victorian Governments.

6. WATER ACCOUNTING ARRANGEMENTS

6.1 The measuring point for all Snowy River flows will be immediately below the confluence between the Snowy and Mowamba rivers.

6.2 The three Governments will present each water savings project or package of projects proposed by the joint government enterprise or by the Governments themselves to the Murray Darling Basin Commission for comment under clause 46 of the *Murray Darling Basin Agreement*.

6.3 A methodology for verifying the water savings actually acquired through each project for the purposes of offsetting increased flows to the Snowy River below Jindabyne and dedicated environmental flows to the River Murray will be developed for comment by the MDBC and approval by the three Governments.

6.4 An auditor appointed by the three Governments in consultation with the MDBC will review the calculation of prospective water savings from each project, certify that the calculations are reasonable and verify the actual water savings achieved by each project.

6.5 Victoria and NSW will create specific environmental water entitlements for the Snowy and Murray Rivers. The water contained in these entitlements will represent the water savings and purchases made by the joint government enterprise.

6.6 The allocation of water to the Snowy Scheme for increased flows in the Snowy River below Jindabyne and for dedicated environmental flows in the River Murray will be made when the offsetting water savings actually acquired have been verified by the auditor. However, the initial release of water from the Mowamba River and Cobbon Creek aqueducts will be in accordance with clause 4.1.2 of this agreement.

6.7 The joint government enterprise will be required to maintain a continuous and audited record of water acquired for the purpose of offsetting increased releases to the Snowy River below Jindabyne and dedicated environmental flows to the River Murray and the relationship of these acquisitions to the Murray and Tumut developments of the Snowy Scheme. The enterprise will advise the respective responsible Ministers of the volumes of offset water acquired.

6.8 Assured releases from the Murray and Tumut developments of the Snowy Scheme will be reduced by the increased volumes of water released to Snowy montane rivers external to the Scheme, including the upper Murrumbidgee River, according to the catchment into which each of these rivers flows.

6.9 Each State will reduce its MDBC Cap by the audited total volume of water advised by the enterprise as having been acquired within that State for the purpose of offsetting increased releases to the Snowy River below Jindabyne and dedicated environmental flows to the River Murray.

6.10 The water allocated to the Snowy Scheme as dedicated environmental flows to the River Murray will be held in Snowy Scheme storages and will be available to Snowy Hydro Ltd as above-target water.

6.11 Following agreement between the three Governments, the NSW Water Administration Ministerial Corporation, as the licensor, will direct Snowy Hydro Ltd prior to the development of the annual Snowy Hydro Operating Plan on the volume of water to be deducted from assured releases to, and from the guaranteed minimum for, the west from each development to offset increased releases to the Snowy River below Jindabyne and dedicated environmental flows to the River Murray during the currency of the Operating Plan. The deductions from assured releases and the guaranteed minimum are to be equal to the total verified water savings acquired by the joint government enterprise.

6.12 Following agreement between the three Governments, the NSW Water Administration Ministerial Corporation, as the licensor, will direct Snowy Hydro Ltd on the monthly schedule of releases to the Snowy River below Jindabyne to be achieved which corresponds to the increased release volume. This direction will be provided in time to be included in the Snowy Hydro annual Operating Plan.

6.13 Following agreement between the three Governments, the NSW Water Administration Ministerial Corporation, as the licensor, will direct Snowy Hydro Ltd on the monthly schedule of releases to the Snowy montane rivers to be achieved which corresponds to the volume of water equivalent to foregone Snowy electricity generation of 150 gigawatt-hours per annum, or the agreed component thereof within the first ten years. This direction will be provided in time to be included in the Snowy Hydro annual Operating Plan.

7. ENVIRONMENT AND RIVERINE WORKS

7.1 The joint government enterprise will be responsible for funding environment and riverine works in the Snowy River, the Snowy montane rivers and the River Murray as nominated and agreed by the three Governments and in accordance with its approved business plan.

8. RESPONSIBILITIES OF SNOWY HYDRO LTD

8.1 The three Governments will, as appropriate, indemnify Snowy Hydro Ltd from any liability for downstream environmental or property damage resulting from release of water from the Snowy Scheme for increased flows in the Snowy River below Jindabyne and in the Snowy montane rivers or for dedicated environmental flows in the River Murray made in accordance with the Snowy water licence.

8.2 Within three years of corporatisation, Snowy Hydro Ltd will build an outlet at Jindabyne Dam to enable a flow in the Snowy River of at least 28% ANF.

8.3 If necessary to enable releases to the upper Murrumbidgee River, within three years of corporatisation, Snowy Hydro Ltd will build an outlet at Tantangara Dam.