

SNOWY RIVER ALLIANCE Inc.

5157 Snowy River Way Dalgety NSW 2628 PO Box 652 Bairnsdale Vic. 3875

<http://www.snowyriveralliance.com.au/>

Wednesday 27th April 2011
Committee Secretary
Senate Legal and Constitutional Committee
PO Box 6100
Parliament House
Canberra ACT 2600
Email: legcon.sen@aph.gov.au

Re: **Inquiry into the Provisions of the Water Act 2007.**

Supplementary Submission to Snowy River Alliance Submission 17th March 2011 (Inquiry Submission Number 35)

Dear Committee Secretary,

Snowy River Alliance appreciates the opportunity to present the following information as a supplementary submission to our initial submission to the Inquiry into the Provisions of the Water Act 2007.

In our initial submission (see point 3) we raised concerns that the Act reduces the volume of Snowy River Increased Flows in contravention of the Snowy Water Inquiry Outcomes Implementation Deed (SWIOID) and the Snowy Water Licence.

Snowy River Alliance discussed this matter at a meeting with Ms Tanja Cvijanovic, Assistant Secretary, Aquatic Systems Health Branch, Department of Sustainability, Environment, Water, Population and Communities, and Mr Euan Roberston, policy advisor to the Hon Tony Burke MP on 9th February in the Office of the Minister for Sustainability, Environment Water, Population and Communities. Snowy River Alliance has since received correspondence from Ms Cvijanovic (letter dated 17th March 2011, attached) responding to our concerns regarding the apparent inconsistency of the Commonwealth Water Act 2007, Schedule F s5 with the definition of Base Passing Flow contained in the Snowy Water Licence 2002 and the Snowy Water Inquiry Implementation Outcomes Deed (SWIOID) 2002.

However Snowy River Alliance considers that the response received from the Department of Sustainability, Environment, Water, Population and Communities has still not satisfactorily addressed the issue and that the Commonwealth Water Act 2007 in its current form effectively reduces the total annual volume of Snowy River Increased Flows.

According to SWIOID (1.1(6)(a)) and the Snowy Water Licence (1.1(8)(a)) the total annual Snowy River Increased Flows includes the Snowy River annual allocation PLUS 9gigalitres regulated base passing flow from Jindabyne Dam PLUS the non-regulated base passing flow that occurred over Mowamba and Cobbon Creek weirs prior to corporatisation. The unregulated flow over Mowamba and Cobbon Creek weirs has been calculated as between 18¹-24² gigalitres/year.

¹ Snowy River Flow Response Monitoring Project, 2005, *Derivation of staged environmental flow release volumes to the Snowy River downstream of Jindabyne Dam*, DIPNR Feb. 2005, p4.

² Snowy River Flow Response Monitoring Project, 2004, *Fact Sheet no 2, Nov. 2004*; Snowy Mountains Hydro-Electric Authority (SMHEA) 1998, *Spills and Riparian Releases, average scheme inflows and diversions 1905-1987 statistics and information design reports for structure and operational records based on G/D.G.E.N./31/1 and I.S./G-GEN/76/1*;

However, the Water Act 2007 definition of Snowy River Excess Releases (Schedule F, s5) does not include the unregulated flow over Mowamba and Cobbon Creek weirs in the total volume of Snowy River Increased Flows.

In the response to Snowy River Alliance from the Ms Cvijanovic, Department of Sustainability, Environment, Water, Population and Communities (letter dated 17th March 2011) it was stated:

1. That the effect of the current definitions (in Schedule F of the Commonwealth Water Act) which separates the unregulated flows over Mowamba and Cobbon Creek weirs that occurred prior to corporatisation from the regulated releases calculated under Excess Snowy River Releases (s5) and Snowy River Release Shortfalls (s6) is to ensure that where releases are made according to the Snowy Water Inquiry Outcomes Implementation Deed (SWIOID) there are no excess releases and no release shortfalls.

And 2. That the exclusion of the Mowamba and Cobbon Creek unregulated flows from the definitions used under Schedule F has no impact on the volumes of water required to be released into the Snowy River under the Snowy Water Licence and the SWIOID.

We note though that according to the Snowy Water Licence **Release Requirements** cl.5.2 (2) (c) *in the case of a shortfall: the difference is to be added to the release required during the subsequent water year; and (d) in the case of an excess: the difference is to be subtracted from the release otherwise required during the subsequent Water Year.* These Release Requirements are replicated from SWIOID (8.2 (2) (c) & (d).

We note also that according to the SWIOID (1.2 (o)(i) the release volumes for the Snowy River are measured *immediately below the confluence of the Snowy River with the Mowamba River.*

According to both the SWIOID and the Snowy Water Licence, total annual Snowy River Increased Flows includes the non-regulated flows over Mowamba and Cobbon Creek weirs, therefore the total volumes of flows, which are measured immediately below the confluence of the Snowy and Mowamba rivers, must also include any spills or unregulated flows over Mowamba and Cobbon Creek weirs that have occurred in that Water Year.

However the Water Act 2007 Schedule F, s5 **Excess Snowy River Releases** determines that it is only the regulated releases made to the Snowy River in the relevant Water Year, which is measured immediately below the confluence of the Snowy River and the Mowamba River.

(The regulated releases include the Snowy River Annual Allocation and the 9GL regulated Base Passing Flow from Jindabyne Dam.)

Therefore it would appear that according to the Water Act 2007 any volume of non-regulated flows over Mowamba and Cobbon Creek weirs that has occurred in that Water Year will be identified as Excess Snowy River Releases and will have to be repaid to Snowy Hydro Ltd from the Snowy River annual allocation the subsequent Water Year, because whilst the Act determines it is the regulated flows that are measured BELOW the confluence of the Snowy and Mowamba Rivers, in actual fact (and according to the SWIOID) it is the total Snowy flows including unregulated flows over Mowamba and Cobbon Creek weirs that will be measured at this point.

In which case despite assurances from the Department of Sustainability, Environment, Water, Population and Communities (letter dated 17 March) that the Water Act 2007 Schedule F has no impact on the volumes of water to be released into the Snowy River according to the Snowy Water

Department of Industry and Science 2000, *Draft EIS Corporatisation of Snowy Mountains Hydro-Electric Authority*, p44.

Licence and the SWIOID; the actual wording of s5 of Schedule F of the Water Act would indicate otherwise.

In effect the Water Act 2007 Schedule F reduces the annual Snowy River Increased Flows by up to 24GL or 2% mean annual natural flow, in breach of both the intergovernmental SWIOID agreement and the Snowy Water Licence.

Snowy River Alliance therefore urges in the strongest possible terms that the Commonwealth Water Act 2007 Schedule F must be amended to ensure that the total volume of Snowy flows measured immediately below the confluence of the Snowy and Mowamba Rivers includes the non-regulated flows over Mowamba and Cobbon Creek weirs in order that any non-regulated Mowamba and Cobbon Creek flows are NOT automatically identified as Excess Snowy River releases.

This could be addressed by amending the Water Act 2007 Schedule F in either of two ways, to require that:

- a) Snowy River regulated releases are measured at the point of release; or
- b) Mowamba and Cobbon Creek non-regulated flows are measured below the relevant weirs and calculated separately from the required regulated releases and deducted from the total Snowy River Increased Flows as measured immediately below the confluence of the Snowy and Mowamba Rivers.

If (as stated by Ms Cvijanovic DSEWPC 17th March) the Act has no impact on volumes of Snowy River flows, then it must be explained how the non-regulated flows over Mowamba and Cobbon Creek weirs are in fact not identified as Excess Snowy River Releases when Schedule F of the Water Act 2007 determines that only the Snowy River regulated releases are measured immediately below the confluence of the Snowy and Mowamba Rivers.

Secondly, if (as stated by Ms Cvijanovic DSEWPC 17th March) the Act has no impact on the volumes of water to be released to the Snowy River according to the Snowy Water Licence, then it is incumbent upon the department to state categorically that any unregulated releases over Mowamba and Cobbon Creek weirs, that have occurred in previous water years or will occur in future water years, have not and will NOT be identified as Excess Snowy River Releases.

Yours sincerely
Louise Crisp
Vice-chair
On behalf of
Snowy River Alliance
PO Box 652
Bairnsdale Vic. 3875
lcristp@bigpond.com
mob: 0418 516 373



Australian Government

Department of Sustainability, Environment, Water, Population and Communities

Ms Louise Crisp
Snowy River Alliance

By email: lcristp@bigpond.com

Dear Ms Crisp

I am writing in response to an issue raised by the Snowy River Alliance (the Alliance) at a meeting on 9 February 2011 in the office of the Minister for Sustainability, Environment, Water, Population and Communities, the Hon Tony Burke MP. The issue raised by the Alliance is one of a perceived inconsistency between the definition of "Base Passing Flow" under the Snowy Water Licence 2002 and the definition of "Excess Snowy River Releases" and "Snowy River Release Shortfall" under Schedule F to the *Commonwealth Water Act 2007*. I regret the delay in responding.

The Department of Sustainability, Environment, Water, Population and Communities (DSEWPaC) considered this issue in consultation with the New South Wales Office of Water and the Murray Darling Basin Authority and has determined the following:

1. The current separation of the "pre-corporatisation unregulated flows from the Mowamba River and Cobbon Creek" referred to under the definition of Base Passing Flow from the regulated releases calculated under Excess Snowy River Releases and Snowy River Release Shortfall is consistent with the intent of Schedule F. The effect of the current definitions is to ensure that where releases are made according to the Snowy Water Inquiry Outcomes Implementation Deed (SWIOD) there are no excess releases and no release shortfalls.
2. Exclusion of the pre-corporatisation unregulated flows from the Mowamba River and Cobbon Creek referred to under the definition of Base Passing Flow from the definitions used under Schedule F has no impact on the volumes of water required to be released into the Snowy River under the Snowy Water Licence and the SWIOD.

Thank you for seeking clarification from DSEWPaC on this issue. Any further questions regarding the Snowy Water Licence or the SWIOD are best taken up with the NSW Office of Water in the first instance.

Yours sincerely

Tanja Cvijanovic
Assistant Secretary
Aquatic Systems Health Branch

17 March 2011



GPO Box 787 Canberra ACT 2601 Telephone 02 6274 1111 Facsimile 02 6274 1666
www.environment.gov.au ABN 34 190 894 983

