

SNOWY RIVER ALLIANCE Inc.

PO Box 622 Orbost, Victoria 3888 c/o PO Dalgety, NSW 2628

<http://www.snowyriver.alliance.com.au/>

Submission to the 2009 Biennial Assessment of Progress in Implementation of the National Water Initiative.

Snowy River Alliance has been involved for more than a decade in working to achieve increased environmental flows and improved environmental outcomes for the Snowy River. The Snowy River legislation set an international precedent and acknowledged 28% mean annual natural as the minimum environmental flow required to restore ecological health to the severely degraded Snowy River.

We have chosen therefore to make comment to the Biennial Assessment of progress in implementation of the NWI specifically in relation to Snowy River environmental flows.

In summary:

The outcomes expected under the NWI regarding the management of water for the environment have clearly not been achieved in relation to the Snowy River despite high community involvement & expectations, legislation by three governments (Victoria, NSW and the Commonwealth) and a commitment of \$425 million of public funds.

It is of serious concern that:

- Legislated scheduled Snowy River Increased Flow targets have not been met.
- As a consequence legislated ecological objectives for the Snowy River have not been achieved.
- There has been a notable lack of transparency and accountability in regard to Snowy River Increased Flows, as well as a lack of compliance with the relevant legislation.
- Decisions regarding Snowy environmental water have been taken without the necessary legislated scientific advice.
- There is no independent environmental water manager for the Snowy River.

Background

The Snowy River is inextricably linked to the Murray River.

Snowy Hydro Ltd under the terms of their 75 yr Snowy Water Licence, must release 2088 GL per annum to the Murray and Murrumbidgee Rivers, unless a drought year. On the other hand the water savings to offset the Snowy River Increased Flows are to be acquired in the Murray, Murrumbidgee and Goulburn-Murray systems.

In 1967 Jindabyne Dam in the Snowy Mountains Hydro-Electric Scheme was completed. For the next 35 years only 1% annual natural flow (ANF)¹ was released

¹ *Monitoring the response to environmental flows in the Snowy*,
http://dwe.nsw.gov.au/water/monitor_snowy.shtml

into the Snowy below Jindabyne Dam. The diversion of 99% of the headwaters of the Snowy River's had dire consequences for the river's ecology.

Following a community campaign in the late nineties, governments agreed to restore 28% minimum environmental flow² to the Snowy River.

The Heads of Agreement (2000) between Victoria, NSW and the Commonwealth jointly committed the three governments to target levels of water flows to be achieved within 10 years as follows: total flows equivalent to 21% ANF in the Snowy River; increased flows to 150 gigawatt-hours per annum of foregone electricity generation in the Snowy montane rivers, including the upper Murrumbidgee; and dedicated environmental flows allocated to the River Murray of 70 gegalitres per annum. A further 7% Snowy River flows up to a total of 28% ANF could be achieved from public private partnership.

On corporatisation of Snowy Hydro in June 2002, the Snowy Water Inquiry Outcomes Implementation Deed (SWIOID) was signed by the three governments.

The agreed outcomes³ included a staged schedule of Snowy River Increased Flows:

- up to 38 gegalitres (GL) during the first 12 months from corporatisation;
- from the first anniversary until the seventh of the corporatisation date a target average annual flow of up to 142 GL;
- from the seventh to the tenth anniversary of the corporatisation date target average annual flows of 212 GL;
- from the tenth anniversary Snowy River Increased Flows could be released up to 294 gegalitres per water year.

The Snowy River Increased Flow volumes were calculated as follows⁴:

- in reference to the 142 GL: when added to the base passing flow of the Snowy River was equivalent to 15% the annual average natural flow of the Snowy River;
- in reference to 212 GL: when added to the base passing flow of the Snowy River was equivalent to 21% annual average natural flow;
- in reference to 294 GL: when added to the base passing flow was equivalent to 28% annual natural flow.
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Base passing flow (bpf) was defined⁵ as 9GL regulated flow released from Jindabyne Dam plus the non-regulated flow past the weirs on Mowamba River and Cobbin Creek prior to corporatisation.

Under SWIOID the two state governments contributed \$150 million each and the Commonwealth \$75 million, to establish the Joint Government Enterprise (now known as Water for Rivers) to fund water savings and purchase water entitlements to offset Snowy River Increased Flows up to 21% by 2012 and 70 gegalitres for the River Murray.

² Recommended by the *Expert Panel Environmental Flow Assessment of the Snowy River below Jindabyne Dam*, Snowy-Genoa Catchment Management Authority 1996.

³ Snowy Water Inquiry Outcomes Implementation Deed 2002, Part Two, clause 7.1

⁴ IBID Part Two, clause 7.3

⁵ IBID p2, Definitions and Interpretation.

An additional \$50 million was committed by the Commonwealth during the 2007 federal election, to assist Water for Rivers in meeting the 21% ANF target for the Snowy River by 2012.

To date, the remaining 7% Snowy River Increased Flows to bring the total flows up to 28% remains un-funded.

All increased flows to the Snowy River and dedicated environmental flows to the River Murray have to be first offset by water acquired primarily through Verified Water Savings in the River Murray, Murrumbidgee and Goulburn-Murray river systems. Water purchases can also be made from these areas.

Snowy River Environmental flow volumes and reliability

The first environmental flows were released to the Snowy River on 28 August 2002, when Mowamba Aqueduct was de-commissioned and the Moonbah River once again flowed freely into the Snowy River downstream of Jindabyne Dam.

On 31 January 2006 Mowamba Aqueduct was re-commissioned. The water that flowed over Mowamba weir during this period is known as the Mowamba Borrowings Account and has to be repaid from the annual Snowy River environmental allocation as water savings are accrued by Water for Rivers.

In the 2008/09 Water Year the Snowy was allocated only 4% flow yet the SWIOLD target for 2009 is 15%.

Snowy River Increased Flows since 2002:

Year	Jindabyne	Mowamba	Total releases	Per cent MANF
2002/03		10.7GL	19.7GL	1.7%
2003/04		29.7GL	38.7GL	3.3%
2004/05		23.5GL	32.5GL	2.8%
2005/06	39.3GL	1.7GL	50.0GL	4.3%
2006/07 ⁶	36.7GL		45.7GL	3.9%
2007/08 ⁷	32.1GL		41.1GL	3.5%
2008/09 ⁸	38.1GL		47.1GL	4.04%

(Mean Annual Natural Flow = 1164 GL, from old Jindabyne Gauge 222501A over 55 years)

Total releases are calculated from the annual allocation on Snowy River environmental entitlement, repayment to the Mowamba Borrowings Account, adjustment for over or under-spills, and 9GL regulated base passing flow.

It is evident from the table above that little progress on returning real water to the Snowy River has been made and the mid-2009 Snowy River environmental flow target is far from being met.

⁶Advice for water years 2002 – mid 2007 from NSW Minister for Natural Resources Ian McDonald to Craig Ingram MP, received 30 July 2006.

⁷ Advice from NSW Minister for Climate Change, Environment and Water, Phil Koperburgh to Craig Ingram MP, received 22 July 2007.

⁸ Advice from NSW Department of Water and Energy to Snowy River Alliance 10 Sept 2008.

There are a number of reasons for this:

1. The NSW Government and senior departmental officials have blamed⁹ the drought but whilst this has contributed to the lack of flows in the Snowy it is definitely not the sole reason.

In the 2008/09 Water Year total environmental entitlements acquired by Water for Rivers for the Snowy/Murray (shared 2:1) were only 101 GL. If the Snowy had received a full allocation on entitlements, including base passing flow, releases would have only been equivalent to 6.5% ANF.

In August 2008 Water for Rivers¹⁰ had acquired 165 GL of water savings and entitlements. Based on this figure if the Snowy receives a full allocation on entitlements for the water year 2009/10, releases equivalent to only 10.2% would be made. However there is no doubt, reduced allocations on entitlements will be made in 2009/10 and Snowy increased flows will be even further off target.

2. On top of this there still remains 60.3 GL¹¹ (equivalent to 5.2% ANF) owed to the Mowamba Borrowings Account, which has to be repaid to Snowy Hydro Ltd from the Snowy River environmental allocation. Not only is there a large water debt to be repaid but Snowy River Alliance also has concerns that the rate of repayment is jeopardising urgently needed Snowy Increased Flows in the immediate future.

In 2006/07 and 2008/09 the Mowamba Borrowings Account was repaid all additional Snowy allocation above 38GL. This is in breach of SWIOID clause 19.5 which determines that from the 3rd year after corporatisation the Mowamba Borrowings Account is repaid 1:1 Mowamba Account: Snowy River Increased Flows. It would appear to be the policy of the NSW Department of Water and Energy to first repay the Mowamba Borrowings Account with all Snowy River Increased Flows allocation in excess of 38 GL¹². In which case we could see the Snowy River remain at 4% flow below Jindabyne Dam for some years to come.

In 2007/08 it also appears that 0.7GL¹³ was repaid to the Mowamba Borrowings Account despite the Snowy River allocation being less than 38GL in which case the repayment may have been in breach of SWIOID clause 19.6.

Snowy River Alliance also has concerns that the regulated base passing flow released is less than the full 9GL.

3. Water for Rivers has not been able to accrue the savings required within the intended timeline.

(a) This is in part due to the increased competition for water savings projects between various government funded water recovery programs. As a result demand for water projects has exceeded the projects available to meet time frames and has increased the cost of projects.

⁹ Deputy Director General DWE David Harris on ABC Radio Southeast NSW (Bega) 9 Dec. 2008.

¹⁰ Stated in presentation by Water for Rivers CEO Neville Smith at Snowy River Day, Dalgety NSW, 31 August 2008.

¹¹ Advice from NSW Department of Water and Energy to Snowy River Alliance, 10 Spt 2008.

¹² Appendix B summary of environmental entitlements and releases, ref 2006/07, Information for public submission, Review of the Snowy hydro water licence, Department of Water and Energy, Dec. 2007. Reiterated at Ministerial meeting between Minister for Water, Philip Costa; Deputy Director General DWE David Harris; and representatives of Snowy River Alliance, Queanbeyan NSW 10th Feb 2009.

¹³ Advice from NSW Department Water and Energy to Snowy River Alliance 10 Sept 2008, & 11th October 2008.

(b) Water for Rivers initiated water efficiency projects intended for the Snowy have been re-assigned elsewhere, for instance the Central Goulburn Channel Automation Project 1-4. 17GL of water savings from this project are to be accumulated from 2008/09 to assist in securing 75 GL for Melbourne by 2010/11, prior to the savings from the Foodbowl Modernisation Project (since renamed the Northern Victoria Irrigation Renewal Project) being obtained.¹⁴ Central Goulburn stage 2 was due to be completed by June 2009¹⁵ and was identified as contributing to the 2009 Snowy target of 142 GL on the DSE website Restoring Health to the Snowy River.¹⁶ It would appear that the Victorian Minister for Water has re-scheduled converting the savings from CG2 to an environmental entitlement. In this way the Victorian government has avoided breaching the conditions imposed by the Commonwealth Environment Minister on approval¹⁷ of the north-south pipeline.

(c) Water for Rivers has purchased general security licences, which during periods of drought and with the effects of climate change, will continue to have such low reliability as to be virtually useless. Water for Rivers general security purchases available for release in 2008/09 amounted to 12.5% of the total accrued entitlements. The allocation on these licence entitlements varied between 0 and 13%.¹⁸ This would not appear to be a cost effective method of getting real water down the Snowy River. NB: The most cost –effective method of returning approx 4% ANF to the Snowy River in the immediate future may be to decommission Mowamba Aqueduct. This could be a much more cost-effective use of the \$50million committed to the Snowy River by the Commonwealth at the last federal election than investing in scarce and increasingly costly water efficiency projects in the Murray system.

(d) There appears to be quite a delay between when Water for Rivers has identified water savings and when those savings are converted into Environmental Entitlements.¹⁹

(e) The Snowy Water Inquiry Outcomes Implementation Deed (SWIOID), Snowy River Increased Flow target volumes in equivalent percentages include 2% paper water. In effect, even if the Increased Flow targets are achieved the Snowy will actually receive 2% less water in the river than the stated equivalent percentages would indicate.

The scheduled Snowy River Increased Flows of 142 GL by 2009, 212 GL by 2012 and 28% post 2012, (including base passing flow), is stated as equivalent to 15%, 21% and 28%²⁰. However only a regulated 9GL base passing flow is released via Jindabyne Dam. The staged Snowy River Increased Flow volumes plus 9GL bpf calculated as percentages of 1164 GL MANF reveal a shortfall of 2%. Included in all the SWIOID target flow figures is an invisible 24GL or 2% ANF.²¹ This was apparently the amount of unregulated flow over Mowamba and Cobbon Creek weirs prior to corporatisation. As noted above this unregulated flow is included in the definition of base passing flow but it actually no longer occurs. There is no publicly

¹⁴ FoodBowl Modernisation Project Steering Committee Final Report , Nov 2007.

¹⁵ DSE website

<http://www.land.vic.gov.au/DSEwcmn202.nsf/LinkView/52D904DBB7519870CA25...>

¹⁶ <http://www.land.vic.gov.au/DSEwcmn202.nsf/LinkView/C567A49447DB9BF7CA2..>

¹⁷ Granted September 12, 2009.

¹⁸ Advice from NSW Department of Water and Energy to Snowy River Alliance 10 September 2008.

¹⁹ *Adequacy of environmental releases to the Snowy River*, Snowy Scientific Committee, October 2008, p11.

²⁰ Snowy Water Inquiry Outcomes Implementation Deed (SWIOID) 2002, Part Two clause 7.3.

²¹ For further details see: *Snowy River Environmental Flows-How successful so far?* by Louise Crisp, in Snowy Strategic Workshop Report Nov 2006, available at www.snowyriveralliance.com

available historical data regarding the annual average amount of this unregulated flow²² but it is clearly incorporated in the total release volumes identified in the table provided in Fact Sheet 2 of the Snowy River Flow Response Monitoring Project²³.

(f) On the tenth anniversary of corporatisation, the Snowy River entitlements are to be converted to the equivalent of 142 GL, at reliability equivalent to the reliability of the entitlement received by South Australia under the MDB Agreement²⁴. In other words any low reliability entitlements will be converted to high reliability but in the process the Snowy will incur a reduction in the volume of Increased Flows.

NB: The Expert Panel in 1996 recommended a MINIMUM environmental flow for the Snowy River of 28% ANF, not 21% and not 15%.

The Heads of Agreement in 2000 set a 10 year time frame to return 21% ANF to the Snowy River. In June 2002, 18months later, the SWIOID also set a 10 year time frame to return 21%.

From the initial commitment by Victorian Premier Steve Bracks in 1999 to return 28% to the Snowy River, the Snowy River Alliance has witnessed both the real volumes of flows and timeframes for delivery shrink into the distance.

Snowy River Environmental Objectives.

Annexure One of Snowy Water Inquiry Outcomes Implementation Deed (SWIOID) identifies the environmental objective of returning increased flows to the Snowy River as follows: *to improve the habitat for a diverse range of plant and animal species through a combination of:*

- (1) improving the temperature regime of the river water*
- (2) achieving channel maintenance and flushing flows within rivers*
- (3) restoring connectivity within rivers for migratory species and their dispersion*
- (4) improving triggers for fish spawning; and*
- (5) improving the aesthetics of currently degraded riverine environments.*

The recent Snowy Scientific Committee (SSC) report²⁵ identified that none of these ecological objectives have been achieved, in particular because of continued low flows.

The flow regime since 2002 was considered focusing on volume, seasonality and variability, and all three were found to be inadequate to meet the intended ecological objectives. The actual volumes have not increased since the first year following corporatisation.²⁶ The seasonal signal has been muted and barely noticeable

... flows down the Snowy River from the dam have not been adequate for habitat and channel maintenance, have not provided normal stream

²² *Adequacy of environmental releases to the Snowy River*, Snowy Scientific Committee, October 2008, p7, footnote 3.

²³ Fact Sheet 2, *Snowy River recovery*, Snowy River Flow Response Monitoring Project, November 2004, NSW Dept of Infrastructure, Planning and Natural Resources.

²⁴ SWIOID 2002, Part Two, clause 17.4

²⁵ *Adequacy of environmental releases to the Snowy river*, Snowy Scientific Committee, October 2008.

²⁶ The SSC appears to refer here to the target volume for the first year after corporatisation; the SSC did not have access to the 2008/09 Snowy River entitlements and allocations data.

conditions, and have not delivered any discernible lateral connectivity; they have maintained a reduced longitudinal connectivity and have provided conditions for the maintenance of some exotic fish species, for example Eastern Gumbusia, goldfish.²⁷

The Snowy River urgently requires sustained high flows in the immediate future.

Mowamba River flows are vital for Snowy River health.

The Snowy Scientific Committee report findings identified the vital role flows via Mowamba weir could contribute to the ecological health of the Snowy. Since the re-commissioning of Mowamba Aqueduct 31 January 2006, flows in the Snowy River have shown reduced variability, with releases from Jindabyne Dam flat-lined at around 95mg/d with only a small increase in spring.²⁸

In-flows from the Mowamba River are recognized as potentially significant in restoring the uppermost reaches of the regulated Snowy River, through contributing colonizing micro-fauna and propagules, water of suitable quality and temperature, and adding flow variability.²⁹

The NSW Water Administration Ministerial Corporation is currently undertaking the first Five Year Review of the Snowy Water Licence. According to the Snowy Hydro Corporatisation Act³⁰ the Licence may be amended following the first Five Year Review and the State will not owe compensation to Snowy Hydro Ltd (the Licensee).

It should be a priority therefore that the NSW Government amends the Snowy Water Licence following the Review, to permit environmental releases to be made via Mowamba weir as well as Jindabyne Dam. This would facilitate improved environmental outcomes for the Snowy.

Despite being more than 12 months overdue the Five Year Review report has still not been released by NSW Minister for Water, Philip Costa.

However a senior representative of the NSW Department of Water and Energy effectively pre-empted the release of the Five Year Review report recommendations in statements he made on ABC Radio in December 2009.³¹ DWE Deputy Director General stated that the NSW Government was not considering decommissioning Mowamba Aqueduct at this stage. The Deputy Director General's rationale being that decommissioning Mowamba: (a) would be at the expense of providing flushing flows from Jindabyne Dam into the Snowy, (b) would reduce the capacity of Snowy Hydro Ltd to generate electricity from the mini-hydro at the Jindabyne outlet, (c) would trigger compensation.

Firstly Snowy River Alliance is not proposing an either/or scenario but rather a combination of environmental releases made via Mowamba weir AND Jindabyne

²⁷ See: Footnote 25, Executive summary.

²⁸ *Monthly Release Patterns for Snowy River Environmental Flows From Jindabyne dam for 2007-08 Water Year*, Advice from NSW Minister for Climate Change, Environment and Water received 22 July 2007; *Monthly Release Patterns etc for 2008-09 Water Year*, Advice from NSW DWE to Snowy River Alliance 10 Sept 2008.

²⁹ *Adequacy of environmental releases to the Snowy River*, Snowy Scientific Committee October 2008, p26.

³⁰ *Snowy Hydro Corporatisation Act 1997* (in effect June 2002), clause 30 (2) (b)

³¹ Deputy Director General DWE David Harriss in an interview with ABC's Jen Hunt, broadcast on ABC Radio Southeast NSW (Bega) 9 December 2009.

Dam. The average flow down Mowamba River would account for around 4% ANF³² out of the total Snowy River Increased Flows. If Snowy River Increased Flows were anywhere near the 2009 target of 142 GL environmental releases (15% ANF), flushing flows could be provided via Jindabyne Dam at the same time as a smaller portion of the total environmental releases could be made via Mowamba weir providing vital nutrients, connectivity and variability.

NB: According to the legislation flushing flows to the Snowy can only be implemented³³ when the volume of the Snowy River allocation for any water year exceeds 100GL.

Secondly it appears that NSW is willing to compromise the ecological integrity of Snowy River environmental flows in order to permit Snowy Hydro Ltd to produce a negligible amount of electricity from the tiny 1.1 MW mini-hydro at the base of Jindabyne Dam. The NSW government is in effect also justifying the diversion of 99% of the Mowamba River (on average flows for the Mowamba)³⁴ on that basis. Green consumers may be surprised to know that the mini-hydro is an accredited Green Power generator.³⁵

NB: There is no reference to the mini-hydro in any of the original Snowy legislation. Nevertheless, as in the argument regarding the flushing flows, if Snowy Increased Flows were anywhere near the 2009 target of 15% ANF, the generator could still be run off the Jindabyne Dam releases whilst at the same time a portion of flows could be released down Mowamba.

NB: The Snowy Water Inquiry Outcomes Implementation Deed (SWOID) also states³⁶ that water transferred to an Environmental Entitlement is not to be re-allocated for consumptive use.

Finally, as regards compensation, as was noted above³⁷ the Snowy Hydro Corporatisation Act very clearly states that compensation would not be owed Snowy Hydro Ltd if the Licence were to be amended (i.e. to permit environmental releases via Mowamba weir as well as Jindabyne Dam) following the first Five Year Review.³⁸

However, if at any other time the three governments agree to amend the Licence, compensation may be owed to Snowy Hydro Ltd if Snowy Hydro doesn't agree to the Licence variation proposed.³⁹

Recently⁴⁰ the Department of Water and Energy also indicated to Snowy River Alliance that compensation would be owed for varying the Licence under the Water Management Act (2000). However, there does not appear to be legal grounds for such a statement.⁴¹

³² *Snowy River Downstream of Jindabyne Dam Environmental Flow Scoping Study* 1995, NSW Department of Land and Water Conservation; Victorian Department of Conservation and Natural Resource; Snowy Mountains Hydro Electric Authority.

³³ *Snowy Water Inquiry Implementation Deed* 2002, Part Three, Clause 13.1 (1).

³⁴ Ref. Footnote 32.

³⁵ Internet doc. GreenPower%20accredited%20generatorsupdated20feb08, by K.Barnett, viewed 15 Jan 2009.

³⁶ SWOID 2002, clause 15.5

³⁷ Snowy Hydro Corporatisation Act 1997 clause 30(2) (b)

³⁸ Legal advice from NSW Environmental Defenders Office (EDO) to Snowy River Alliance, 23 February 2009.

³⁹ *Snowy Water Licence* 2002, clause 10.4 (2).

⁴⁰ Ministerial meeting at Queanbeyan with NSW Minister for Water Philip Costa MP and Deputy Director General DWE David Harriss with representatives of Snowy River Alliance, 10th February 2009.

⁴¹ Legal advice from NSW EDO to Snowy River Alliance, 23 February 2009.

Why then is the NSW Department of Water and Energy so opposed to decommissioning Mowamba Aqueduct when it could have such a significant environmental benefit for the Snowy River (as well as Mowamba downstream of the weir) and NO compensation would be owed?

Transparency, accountability, and compliance with the legislation.

The progress of returning Snowy River environmental flows has been marred by a lack of transparency, accountability and compliance with the legislation.

Transparency and Accountability

There is no independent public data available on environmental releases from Jindabyne Dam or Mowamba weir. Data from Snowy Hydro Ltd's gauging stations is restricted information. The Snowy Hydro website gives daily releases to the Snowy River from Jindabyne Dam for one month only then it is removed. There is no way of obtaining independent data. The only public Snowy River flow data is from the DWE gauge at Dalgety weir, 22 km downstream of Jindabyne Dam, and below both the Mowamba River junction and Wulwye Creek junction.

There is also no easily available public data on the environmental flows information contained in the Snowy Annual Water Operations Plan. In the past, Snowy River Alliance has obtained information on Snowy River entitlements, allocations and the status of the Mowamba Borrowings Account from the relevant NSW Minister through East Gippsland Independent MP Craig Ingram, or directly via the NSW Department of Water and Energy but this is often a prolonged process.

The Snowy Scientific Committee had to rely on Snowy Hydro's submission to the Five Year Review of Snowy Water Licence for data on the release history and actual flow regime, there being no other sources available.⁴²

The Scientific Committee did not have access to details of the 2008/09 Snowy River entitlements and allocations in time to include in their report, even though the Water Year had begun on May 1st 2008 and their report was completed in October 2008

There also appear to be discrepancies in the figures provided to Snowy River Alliance from ministerial and departmental sources over the years and with the Information for Public Submissions provided by the Department of Water and Energy for the Five Year Review of the Snowy Water Licence.

In the seven years since corporatisation there has not been an independent audit of Snowy River environmental entitlements, allocations and releases.

Legislative Compliance

The NSW government has repeatedly failed to comply with the relevant Snowy legislation, in particular the NSW Snowy Hydro Corporatisation Act 1997, no99.⁴³

1. Re: Snowy Scientific Committee

Under the Snowy Hydro Corporatisation Act 1997 clause 57 the Snowy Scientific Committee should have been established when the Act came into effect (June 2002).

⁴² *Adequacy of environmental releases to the Snowy River*, Snowy Scientific Committee, October 2008, p5 footnote 1.

⁴³ NSW Snowy Hydro Corporatisation Act 1997, no 99, Part 8, clause 43 ***This Act binds the Crown in right of New South Wales...***

However the Minister for Energy Ian McDonald MLC delayed establishing the Scientific Committee for five and a half years. The Committee was finally established on 31 January 2008, the closing date for public submissions to the first Five Year Review of the Snowy Water Licence.

The Snowy Scientific Committee still does not receive funding directly from Treasury and instead has to rely on the largesse of the Department of Water and Energy and does not even have sufficient funds for an independent website.

According to the Snowy Hydro Corporatisation Act 1997, 57

(3) The principal functions of the Committee are as follows:

(a) to advise the Water Administration Ministerial Corporation each year on the regime for the releases of water for environmental reasons under the Snowy water licence,

(b) to advise that Corporation from time to time on the adequacy of those releases and the programs for management and restoration of the catchments (and the Snowy River and other rivers and stream) receiving water from those releases, including the arrangements for consultation, monitoring and on-going research about those programs

(4) The Committee is to produce every year a public state of the environment report on the catchments (and the Snowy River and other rivers and streams) affected by the Snowy Mountains Hydro-Electric Scheme

It is clear from the legislation therefore, that the Snowy Scientific Committee as an independent committee could provide much needed accountability and transparency, if it had adequate support and funding.

Is also obvious that for at least the first five and a half years after corporatisation the Water Administration Ministerial Corporation has been directing Snowy Hydro Ltd, as regards its Licence obligations on environmental releases, in the absence of any scientific advice from the Snowy Scientific Committee.

Specifically, the Water Administration Ministerial Corporation (WAMC) has permitted Snowy Hydro Ltd to re-commission Mowamba Aqueduct on 31 January 2006, effectively cutting off the Snowy from a natural surrogate headwater, without any scientific evaluation of the environmental consequences whatsoever. (Nor was there any socio-economic evaluation made either). Secondly WAMC has continued to permit Snowy Hydro Ltd to implement an environmental releases regime from Jindabyne Dam, particularly since Mowamba Aqueduct was re-commissioned, that have reduced all flow variability, to the detriment of the river health.⁴⁴

Poor environmental water management decisions have been made on the Snowy because the Snowy Scientific Committee had not been established and therefore could not provide the necessary advice on such decisions.

Thirdly, despite the legislation, whilst the Snowy Scientific Committee has completed a report on the adequacy of environmental flows in the Snowy River, it has not included in that report comment on the environmental status of the many other rivers and streams in the Snowy Scheme simply because there has been no monitoring undertaken of those rivers and streams. Long term monitoring of all the rivers and streams in the Hydro Scheme however is essential⁴⁵ and the Snowy Scientific

⁴⁴ *Adequacy of environmental flows to the Snowy River*, Snowy Scientific Committee, October 2008, p8.

⁴⁵ *IBID* p19-21.

Committee cannot fulfill its legislated responsibilities unless such monitoring is undertaken. So far the Snowy River Benchmarking and Flow Response Project, which has been underway since 1999, has restricted its operations to the Snowy River. At present the Monitoring Program receives funding only from the Victorian government but its long-term future is not secure.

No funding has been provided for monitoring the montane rivers, which should also be receiving increased environmental flows.⁴⁶

The recent Snowy Scientific Committee report has provided some invaluable information on the condition of the Snowy River. Under the Snowy Hydro Corporatisation Act 1997⁴⁷ the Scientific Committee state of the environment reports are public reports, and the Committee is not subject to the control or direction of the Minister. However even though the report was completed in October 2008 it has still not been made public officially by the Department of Water and Energy although a senior officer in the Department had stated last December⁴⁸ that they shortly would do so.

The Snowy Scientific Committee does not have an independent website on which its reports could be posted for open community access.

2. Re: Five-Year Review of the Snowy Water Licence.

On corporatisation of Snowy Hydro in June 2002, the NSW Water Administration Ministerial Corporation issued Snowy Hydro Ltd with a 75 year Snowy Water Licence. According to the Snowy Hydro Corporatisation Act 1997⁴⁹, the Water Administration Ministerial Corporation was to undertake a review of the obligations under the Licence after the first five years, relating to the provisions of the initial release of water to the Snowy River for environmental reasons; and was to use its best endeavours to complete the first Review and give effect to the results of the review within 6months after the fifth anniversary of the issue of the licence. To achieve this, the WAMC could commence public consultation of the review before that anniversary.

However public consultation on the Review actually began 6months late and public submissions closed on 31 January 2008. According to the Act⁵⁰, in order to give the public the opportunity to make informed submissions, each annual state of the environment report of the Snowy Scientific Committee was to be exhibited by WAMC at its Head Office and regional offices.

If due process had been complied with there should have been five annual Snowy Scientific Committee state of the environment reports available. In actual fact, there were none because there was no Snowy Scientific Committee.

The Department of Water and Energy then unjustifiably restricted the scope of the review to specifically exclude *the adequacy of the volumes of the environmental releases*.⁵¹

⁴⁶ SWIOID 2002, Annexure Three.

⁴⁷ Snowy Hydro Corporatisation Act 1997, clause 57.4, clause 57.7.

⁴⁸ ABC Radio Southeast NSW (Bega) 9 December 2009.

⁴⁹ Snowy Hydro Corporatisation Act 1997, clause 25.

⁵⁰ Snowy Hydro Corporatisation Act 1997, clause 27.

⁵¹ *Information for public submission, Review of the Snowy hydro water licence*, Department of Water and Energy, December 2007, p 3.Review Scope.

The focus of the first Review, according to the legislation, is specifically on Snowy River environmental flows why then did the Review scope exclude the adequacy of the volumes of those flows, particularly when flow is the principal driver of riverine ecology?⁵²

The Review report is now more than 12 months overdue and at a recent meeting⁵³ Minister for Water Philip Costa could still not give Snowy River Alliance representatives a timeline for its release.

The Snowy Scientific Committee report makes very plain the urgency of the situation in the Snowy. The longer the NSW Government delays on making a decision to amend the Snowy Water Licence to improve the ecological condition of the Snowy, the more degraded the Snowy becomes.

The Snowy Hydro Corporatisation Act 1997 and the Snowy Water Inquiry Outcomes Implementation Deed 2002 are the foundation legislation agreed to by the three governments to implement major change to improve the ecology of the Snowy River. It must be acted upon.

An independent environmental water manager for Snowy River?

The Snowy environmental water is a special case outside the management of all other NSW environmental water.

At present Snowy River matters are the responsibility of both the Minister for Water Philip Costa MP and the Minister for Energy Ian McDonald MLC.

The Department of Water and Energy has responsibilities to both Ministers. Therein perhaps lies the problem.

NSW Ministerial responsibilities for the Snowy have continued to be re-distributed since corporatisation of Snowy Hydro 2002.

Mr McDonald has had a long involvement with the Snowy since corporatisation, when as Minister for Natural Resources he was responsible for both the Snowy Hydro Corporatisation Act, the Snowy Water Licence and in his role as the Water Administration Ministerial Corporation.

These responsibilities were separated following the last NSW election. Phil Koperburgh MP became Minister for Climate Change, Environment and Water, and was responsible for the Water Management Act 2000, as the Water Administration Ministerial Corporation; and also the Snowy Water Licence, which required him to direct Snowy Hydro Ltd annually as to what environmental flows were to be released. In his latter role the Minister was bound by the intergovernmental agreement SWIOID in that he could not direct in any way contrary to the Deed.

Ian McDonald retained responsibility for the Snowy Hydro Corporatisation Act 1997 and thus for the establishment of the Snowy Scientific Committee.⁵⁴

⁵² Adequacy of environmental flows to the Snowy River, Snowy Scientific Committee, October 2008, Executive summary, &p1.

⁵³ Ministerial meeting Quenbeyan, Minister for Water Philip Costa and Snowy River Alliance 10 February 2009.

⁵⁴ Email from Minister for Climate Change, Environment and Water Phil Koperburgh to Louise Crisp 11 Feb 2008, regarding Ministerial responsibility for Snowy matters.

Phil Koperburgh was replaced by Phil Costa MP in Feb 08 and roles were again separated: Costa became Minister for Water; and Verity Firth, then Carmel Tebbutt became Minister for Environment and Climate Change. Minister Tebbutt has responsibility for all NSW environmental water other than Snowy environmental water.⁵⁵

However because the Department of Water and Energy has responsibilities to both the Minister for Water and the Minister for Energy there is potential for conflict of interest due to the fact that the Snowy Hydro Scheme releases water for irrigation and environmental purposes as well as generating electricity.

For instance the Water Administration Ministerial Corporation has permitted Snowy Hydro Ltd to release forward borrowings, above the minimum releases required by Snowy Hydro's Licence, to irrigators of 868 GL (for an undisclosed fee) despite Snowy Scheme storages being below target storage levels since corporatisation.⁵⁶ This is contrary to the drought proofing strategy the Scheme was designed to operate under and in 2007 even threatened the security of the minimal annual environmental releases to the Snowy River.⁵⁷ The details of all the borrows, such as quantities, timing and costs have not been reported in Snowy Hydro's Annual Reports⁵⁸. When will this water be repaid?

Details of water storage on Snowy Hydro's website is less than adequate with information only on total, not active storage, and there is no information regarding volumes of Above and Below Target Water. This distinct lack of transparency in Snowy Hydro's reporting cannot be justified on the grounds of commercial-in-confidence. *The only really commercial-in-confidence information is in their electricity risk hedging contracts as it is not possible for Snowy Hydro Ltd's competitors to link water storage and release data to the timing of generation, and thus market impact, nor to the composition of their contracts portfolio*⁵⁹.

The three shareholder governments of Snowy Hydro Ltd surely have a responsibility to their constituents to rectify this serious lack of accountability and transparency.

The resistance, which the NSW government, in particular the Department of Water and Energy has shown to decommissioning Mowamba Aqueduct, may also be a consequence of similar management conflict of interest.

The Snowy Scientific Committee report has also identified the institutional inflexibility⁶⁰ that has occurred regarding the Snowy environmental flows and which has not facilitated the best environmental outcomes for the Snowy River.

⁵⁵ Pers. comm., Ministerial meeting Queanbeyan 10 February 2009.

⁵⁶ *Snowy Scheme Storage Operation*, John Kelly 23 July 2007, p22;

⁵⁷ *Rain drain – secret Snowy water grab*, Carmel Edan & Jason Dowling, Sunday Age 4 Nov 2007

⁵⁸ *Snowy Scheme Storage Operation*, John Kelly, update 27 November 2007.

⁵⁹ Pers comm. 11 October 2007 from Max Talbot former executive officer for strategic engineering with the Snowy Mountains Authority and Snowy Hydro Ltd., to Louise Crisp

⁶⁰ *Adequacy of environmental flows to the Snowy River*, Snowy Scientific Committee, October 2008, p.22, 27, 28.

In conclusion there is an urgent need to establish an independent, and fully accountable environmental water manager for the Snowy River with the capacity to develop flexible and innovative strategies for Snowy River environmental water and to provide open community communication.

It is the opinion of Snowy River Alliance that a fully supported and adequately funded Snowy Scientific Committee would be indispensable to the operations of such an environmental water manager.

Thank you for the opportunity to comment on the Biennial Assessment.

We look forward to the outcome.

Louise Crisp
On behalf of Snowy River Alliance
February 2009.

For further information regarding details of this submission
Please contact:

John Gallard
Chairperson
Snowy River Alliance (NSW)

Louise Crisp
Vice-chair
Snowy River Alliance (Vic)