ENVIRONMENT PROTECTION AND BIODIVERSITY
CONSERVATION ACT 1999
Part 10 Strategic Assessments
Section 146(1) Agreement

Relating to the Assessment of Impacts of the Water Access Program
for the Midlands Water Scheme, Tasmania

between

THE COMMONWEALTH OF AUSTRALIA

and

THE STATE OF TASMANIA
1 PARTIES

The Parties to this Agreement are:

The Commonwealth of Australia, represented by the Minister for the Environment, Heritage and the Arts

and

The State of Tasmania, represented by the Minister for Primary Industries and Water

2 DEFINITIONS

2.1 Unless stated otherwise in this Agreement, the definitions, meanings and terms in the *Environment Protection and Biodiversity Conservation Act 1999* apply to this Agreement and its attachments.

2.2 In this Agreement:

*Department* means the Australian Government Department of the Environment, Water, Heritage and the Arts

*DPIPWE* means the Tasmanian Government Department of Primary Industries, Parks, Water and Environment

*Draft Report* means the impact assessment report written in accordance with section 6 of this Agreement and the agreed Terms of Reference, that is released for public comment

*EPBC Act* means the *Environment Protection and Biodiversity Conservation Act 1999 (Commonwealth)*

*Minister* means the Australian Government Minister for the Environment, Heritage and the Arts or delegate

*MWS* means the Midlands Water Scheme

*NES* means national environmental significance

*The Program* means the Water Access Program for the Midlands Water Scheme, Tasmania, including relevant construction and operation aspects.

*State* means the State of Tasmania

*TIDB* means The Tasmanian Irrigation Development Board or successor entities, and

*Working days* means a business day as measured in Canberra, ACT.

2.3 In this Agreement references to the singular include the plural.
3 PREAMBLE

3.1 The Parties agree that the areas within and surrounding the Midlands Water Scheme (MWS) area have significant environmental values and that significant environmental, social and economic values may be derived from implementing the Program.

3.2 Recognising those significant environmental values, the Parties commit to:

a) undertake a strategic assessment of the impacts of actions under the Program on the following matters of national environmental significance protected by Part 3 of the EPBC Act: national heritage places, listed threatened species and communities, wetlands of international importance and listed migratory species, and

b) share information, including but not limited to, mapping, spatial and other data and work collaboratively to undertake the activities within this Agreement.

4 BACKGROUND

4.1 Section 146(1) of the EPBC Act allows the Minister to agree in writing with a person responsible for the adoption or implementation of a policy, plan or program that an assessment be made of the impacts of actions under the policy, plan or program on a matter protected by a provision of Part 3 of the EPBC Act. For the purpose of Section 146(1) of the EPBC Act the Agreement relates to the Program as defined in clause 2.2.

4.2 The MWS will supply irrigation water to irrigable land in the Midlands region of Tasmania. The Program will identify how this water is to be made available through the MWS. The Program will encompass both the physical development and implementation of the scheme.

4.3 Assessment of the impacts of the Program on the matters of NES specified in clause 3.2 (a) will be undertaken through a report prepared in accordance with section 146 of the EPBC Act. This will include preparation of Terms of Reference for a report on the impacts of the Program, preparation of the report and consideration by the Minister of that report.

4.4 After considering the report, the Minister may decide to endorse the Program in accordance with section 146(2)(f) of the EPBC Act if the Minister is satisfied that the report adequately addresses the impacts to which this Agreement relates and that recommended modifications, or modifications having the same effect, have been made.

4.5 Importantly, the Parties acknowledge that the endorsement of the Program itself does not constitute any approval under the EPBC Act for the taking of actions for which approval is required under the EPBC Act.
4.6 If the Minister decides to endorse the program under section 146(2)(f) of the EPBC Act, the Minister may then, under section 146B of the EPBC Act, decide to approve the taking of an action, or a class of actions, in accordance with the endorsed Program. The effect of this decision is that actions or classes of actions (if any) approved under section 146B would not need further approval for the purposes of the matters of NES specified in clause 3.2 (a) from the Minister under the EPBC Act.

4.7 The Parties acknowledge that, where proponents propose to take an action in accordance with the Program that is not the subject of an approval under section 146B, they are still capable of seeking approval for that action via the ordinary channels for assessment and approval established under Parts 7, 8 and 9 of the EPBC Act.

5 TERMS OF REFERENCE FOR THE REPORT

5.1 The Parties shall as soon as practicable agree on the Terms of Reference to be used in this strategic assessment (draft at Attachment B).

6 PREPARATION OF THE REPORT

6.1 The State will cause a Draft Report to be prepared in accordance with this Agreement and the Terms of Reference once finalised.

6.2 The State shall provide the Draft Report for public comment by notice:
(a) posted on the DPIPWE and TIDB websites, and
(b) published in the major Tasmanian newspapers.

The notice must advise that the Draft Report is available and how copies may be obtained, provide contact details for obtaining further information, invite public comments on the Draft Report and state the period specified by the Minister (of at least 28 days) within which comments must be received.

6.3 The State will finalise the Report taking into account the comments (if any) received after publication of the Draft Report (clause 6.2). The finalised Report can be either a revised Draft Report, or the Draft Report and a Supplementary Report taking account of the comments received.

7 CONSIDERATION OF THE REPORT

7.1 The State will submit to the Minister for consideration:
(a) the Report, comprised of:
   (i) the revised Draft Report, or
   (ii) the Draft Report and a Supplementary Report (clause 6.3).
(b) public responses relating to the Draft Report
(c) a report demonstrating how each public response has been taken into account in the Report, and
(d) the Program.
7.2 The Minister may make recommendations to the State regarding modifications to the Program.

7.3 The State may provide the Minister with advice, or seek clarification from the Minister on recommendations in clause 7.2.

7.4 The State will then submit to the Minister for consideration:
(a) a summary of how the Minister’s recommendations were given effect through modifications to the Program
(b) the revised Program, and
(c) a revised Report and/or any further supporting material considered necessary to satisfy the Minister that the impacts of the Program have been adequately addressed.

8 ENDORSEMENT OF THE PROGRAM

8.1 The Minister may endorse the Program if satisfied that:
(a) any recommended modifications to the Program, or modifications having the same effect, have been made, and
(b) the Report adequately addresses the impacts to which this Agreement relates.

8.2 In considering whether to endorse the Program, the Minister will also consider the endorsement criteria at Attachment C.

9 APPROVAL OF ACTIONS

9.1 If requirements of sections 146 F,H,J,K,L and M of the EPBC Act are met the Minister may approve, or approve with conditions for the purposes of the matters of NES specified in clause 3.2 (a), the taking of an action or class of actions in accordance with the endorsed Program and section 146B of the EPBC Act.

10 VARIATION

10.1 The Parties may vary this Agreement by an exchange of letters or electronic communications to the extent only that such variation is consistent with the provisions of the EPBC Act.

11 DISPUTE RESOLUTION

11.1 Where there is a dispute between the Parties to this Agreement on a particular matter, the Parties will consult in a spirit of mutual cooperation in relation to that matter and will use their best endeavours to negotiate a mutually acceptable resolution.

12 TERMINATION

12.1 This Agreement may be terminated by written agreement (including by way of electronic communication) between the Parties.
SIGNED BY:

__________________________________________
The Hon. Peter Garrett AM MP
Minister for the Environment, Heritage and the Arts

_________________________________________
The Hon. David Llewellyn
Minister for Primary Industries and Water

Dated this ...........day of .....................2010
The purpose of this Strategic Assessment is to assess the adequacy of the State party’s policy and regulatory processes (the Program) to ensure that the following matters of national environmental significance that are potentially impacted by actions resulting from the construction and operation of the MWS are managed in accord with the objectives of the EPBC Act: national heritage places, listed threatened species and communities, wetlands of international importance and listed migratory species.

1. PURPOSE AND DESCRIPTION OF THE PROGRAM BEING ASSESSED

The Report, referred to in clause 6 of the Agreement, must describe the Water Access Program (the Program), including:

a) the Tasmanian Government policy and program context within which the Program is implemented
b) the Program’s legal standing in regulating access to irrigation water
c) the person(s) or authority responsible for the adoption or implementation of the Program
d) the Program components, including relevant construction and operation aspects, the biodiversity, soil and water modules and Water Connection Agreements that have been developed
e) the actions related to the Program that will take place, and
f) how the Program will facilitate preparation, accreditation, implementation and monitoring of any agreements that provide access to water from the MWS.

2. THE ENVIRONMENTAL VALUES OF THE MIDLANDS WATER SCHEME (MWS) AREA AND HOW THE PROGRAM WILL PROMOTE ECOLOGICALLY SUSTAINABLE DEVELOPMENT

2.1. Identification of national heritage places, listed threatened species and communities, wetlands of international importance and listed migratory species potentially affected by the MWS

The Report must describe how the Program identifies the national heritage places, listed threatened species and communities, wetlands of international importance and listed migratory species which have the potential to be affected, either directly or indirectly, by the MWS.

2.2. Planning for and promoting ecologically sustainable development

The Report must describe the social and economic factors and considerations associated with the MWS developments and how the Program addresses the principles of ecologically sustainable development (ESD).

3. PREVENTING IMPACTS ON MATTERS OF NATIONAL ENVIRONMENTAL SIGNIFICANCE AND PROMOTING THE PROTECTION AND CONSERVATION OF BIODIVERSITY VALUES
3.1. **Nature and magnitude of impacts**

The Report must include an analysis of the potential short, medium and long term, direct and indirect impacts of the Program on national heritage places, listed threatened species and communities, wetlands of international importance and listed migratory species.

3.2. **Management, mitigation or offset of likely impacts**

The Report must describe how the implementation of the Program will manage the potential for any consequential impacts on national heritage places, listed threatened species and communities, wetlands of international importance and listed migratory species.

The Report must describe how the Program will be implemented to prevent, avoid, minimise, rehabilitate or offset the potential environmental impacts on national heritage places, listed threatened species and communities, wetlands of international importance and listed migratory species. The Report must set out the statutory and other arrangements in place to implement the Program including responsibilities for compliance and maintenance.

4. **ADAPTIVE MANAGEMENT: ADDRESSING UNCERTAINTY AND MANAGING RISK**

The Report must set out the circumstances in which the Program will be reviewed and modified (for example new information or changing standards) and the procedures which would be undertaken to review, modify or abandon the Program.

The Report must identify the authority responsible for these actions.

5. **AUDITING AND REPORTING**

The Report must set out:

a) monitoring, public reporting and auditing to be undertaken

b) enforceable undertakings

c) record keeping and review processes under the Program, and

d) identify the person(s)/authorities responsible for these actions.

6. **INFORMATION SOURCES**

The Report must identify the information and data relied upon to make judgements, including but not limited to, the impacts and appropriateness of mitigation measures.
Strategic Assessment Endorsement Criteria

Under section 146 of the *Environment Protection and Biodiversity Conservation Act 1999*, (EPBC Act) in order to endorse the Program the Minister must be satisfied that the assessment report adequately addresses the impacts to which the agreement relates and that any modifications to the Program recommended by the Minister, or modifications having the same effect, have been made.

In determining whether to endorse the Program the Minister will have regard to the extent to which the Program is consistent with the objectives of the EPBC Act. In particular that it:

- protects the environment, especially the following matters of national environmental significance: national heritage places, listed threatened species and communities, wetlands of international importance and listed migratory species
- promotes ecologically sustainable development, and
- promotes the conservation of biodiversity.

Without limiting the matters the Minister may consider when making the decision to endorse the Program, the Minister will consider the manner in which the Program:

- provides for the avoidance of impacts on national heritage places, listed threatened species and communities, wetlands of international importance and listed migratory species or areas of high biodiversity value
- mitigates impacts on national heritage places, listed threatened species and communities, wetlands of international importance and listed migratory species
- offsets impacts on national heritage places, listed threatened species and communities, wetlands of international importance and listed migratory species
- provides a comprehensive framework of adaptive management, monitoring, auditing and public reporting, and
- contributes to the enhancement of the existing environment and management of existing threats.