



Submission in response to the draft NSW Murray and Lower Darling Surface Water Resource Plan

prepared by

EDO NSW
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Introduction

Water resource plans under the Commonwealth *Water Act 2007* (which incorporate parts of the water sharing plans under the NSW *Water Management Act 2000*) will be critically important to delivering the environmental and other objectives of the *Water Act 2007* and *Basin Plan 2012* because they are the operational documents which actually govern the flows in the rivers of the Murray-Darling Basin.

If water resource plans do not comply with the *Basin Plan 2012*, including through appropriate linkages with other plans such as the relevant Long-Term Watering Plan, they will compromise the restoration of the health of the Basin which is the key objective of the *Basin Plan 2012*.

The analysis below identifies errors of law in the preparation of the draft *NSW Murray and Lower Darling Surface Water Resource Plan*, primarily centered on the Risk Assessment in Schedule D, which demonstrates failures to comply with sections 10.17 and 10.41 – 10.43 of the *Basin Plan 2012*. These provisions create important links between water resource plans and the environmental watering plan in Chapter 8 of the *Basin Plan 2012* which is given local effect through the relevant Long-Term Watering Plan.

The errors we have identified are so fundamental that we cannot recommend individual changes to the draft Water Resource Plan to achieve compliance with the *Basin Plan 2012*. We instead recommend that the second stage in the Risk Assessment (being the development of strategies to manage the identified risks) be re-done in a lawful way that complies with sections 10.17 and 10.43 of the *Basin Plan 2012* and that an updated draft Water Resource Plan and amendments to the Water Sharing Plans be developed on the basis of that process (and exhibited for further public comment).

WRP Section 1.3 Objectives and guiding principles

The draft *NSW Murray and Lower Darling Surface Water Resource Plan (SW8 Water Resource Plan Area)* (**draft WRP**) makes the claim (at page 4) that the outcomes and objectives of the *Basin Plan 2012* are refined for this part of NSW through the objectives stated in the three relevant draft Water Sharing Plans (**draft WSPs**)¹.

We do not believe that the objectives stated in the draft WSPs, which are incorporated by reference into the draft WRP, actually reflect the objectives of the *Basin Plan 2012* or the *Water Act 2007 (Cth)*, and in fact represent a significant reduction from the outcomes sought.

The key objectives set out in section 3 of the *Water Act 2007 (Cth)* include:

- 3(b): to give effect to relevant international agreements (including the Ramsar Convention in relation to wetlands of international importance); and
- 3(d): without limiting paragraph (b) or (c):
 - i. to ensure the return to environmentally sustainable levels of extraction for water resources that are overallocated or overused; and
 - ii. to **protect, restore** and provide for the ecological values and ecosystem services of the Murray-Darling Basin (taking into account, in particular, the impact that the taking of water has on the watercourses, lakes, wetlands, ground water and water-dependent ecosystems that are part of the Basin water resources and on associated biodiversity); and
 - iii. **subject to subparagraphs (i) and (ii)**—to maximise the net economic returns to the Australian community from the use and management of the Basin water resources.

These objectives cascade down into the requirements for the *Basin Plan 2012* listed in section 21 of the *Water Act 2007 (Cth)*:

- 1) The Basin Plan (including any environmental watering plan or water quality and salinity management plan included in the Basin Plan) must be prepared so as to provide for giving effect to relevant international agreements (to the extent to which those agreements are relevant to the use and management of the Basin water resources).
- 2) Without limiting subsection (1), the Basin Plan must:
 - a) be prepared having regard to:
 - i. the fact that the use of the Basin water resources has had, and is likely to have, significant adverse impacts on the conservation and sustainable use of biodiversity; and
 - ii. the fact that the Basin water resources require, as a result, **special measures to manage their use to conserve biodiversity**; and
 - b) promote sustainable use of the Basin water resources to protect and restore the ecosystems, natural habitats and species that are reliant on the Basin water resources and to conserve biodiversity.

¹ draft *Water Sharing Plan for the New South Wales Murray and Lower Darling Regulated Rivers Water Sources 2020*, ss8(1) and 8(2)
Draft *Water Sharing Plan for the Lower Murray-Darling Unregulated River Water Source 2011 (proposed amendments 2020)*, ss8(1) and 8(2)
draft *Water Sharing Plan for the Murray Unregulated River Water Sources 2011 (amended 2020)*, ss10(1) and 10(2)

These objectives in the primary legislation make it clear that the objective of the *Basin Plan 2012* is to “protect and restore” Basin ecosystems.

These statutory requirements then cascade down into the more detailed environmental outcomes for the Basin set out in section 5.03 of the *Basin Plan 2012* which include ‘protecting and restoring’ water-dependent ecosystems and ecosystem function.

By contrast to these clear statutory objectives to both **protect and restore** the Basin’s natural environment, the draft WSPs use the language of “protect and, where possible, enhance” in relation to both their broad environmental objective and their targeted environmental objectives.

The language of ‘enhance’ in the WSPs is certainly a lower level of ambition than the language of the Act and the Basin Plan, which have the objective of ‘restoring’ ecosystems and ecological function.

The language of ‘where possible’ is more troubling, including because it misleadingly suggests that it may not be ‘possible’ to enhance the health of the water-dependent ecosystems and ecosystem functions of the Basin. There is no doubt that it is possible to enhance the ecological health and functioning of the Basin ecosystems. The barrier to this is the willingness of governments to set limits on the water being taken for consumptive use and to manage the flows of the rivers in a way that supports ecological functioning, both of which can be achieved with an appropriately drafted WSP.

This drafting is misleading, inconsistent with the objectives of both the Act and Basin Plan and appears designed to disguise the fact that any failures by these plans to enhance the ecological health of the Basin will be the result of a choice by government not to do so.

Key recommendation:

- ***The environmental objectives in all three WSPs be amended to reflect the objectives of the Water Act 2007 and Basin Plan to ‘protect and restore’ relevant ecosystems and ecosystem functions (and remove the language of ‘protect and where possible enhance’).***

WRP Section 1.3.1: Requirements of NSW Act

The draft WRP incorporates by reference a number of other documents, including parts of the three relevant Water Sharing Plans made under the state *Water Management Act 2000 (NSW)* (note that water sharing plans are referred to in the Act as “management plans”). The package of documents comprising the draft WRP includes amendments to the three existing WSPs.

Section 1.3.1 of the draft WRP states that the objectives of the WSPs “are guided by” a number of provisions of the *Water Management Act 2000 (NSW)*. This language suggests that the relevant provisions of the Act are in the nature of non-mandatory guidelines, rather than statutory requirements which must be complied with. This includes the express obligation in section 5(3) and 9 to prepare WSPs in a way that firstly ensures the needs of the environment are met, then ensures that basic landholder rights are met and then makes any remaining water available for sharing among other users.

Recommendation:

- ***Section 1.3.1 of the WRP be amended to acknowledge the mandatory rules for water sharing plans contained in, among other provisions, sections 5(3) and 9 of the NSW Water Management Act 2000***

Section 1.4: Relationship between WRP and other instruments

We commend the attempt in this section to visually represent some of the complex relationships between the various plans in effect under State and Commonwealth legislation. However, the resulting figure (Figure 1-1) is highly misleading to the extent that it suggests that there is only an indirect relationship between Long-term watering plans (**LTWPs**) and WRPs (and the WSPs which are incorporated into the WRPs).

To put this discussion in context, the plans relevant to environmental watering under the Commonwealth *Water Act 2007* are as follows:

- Section 22 of the Act provides that the mandatory content of the Basin Plan includes an environmental watering plan which complies with the content requirements of section 28;
- Chapter 8 of the *Basin Plan 2012* is the environmental watering plan (**EWP**) required by ss22 and 28 of the primary Act. The EWP sets the overall environmental objectives for the Basin Plan and provides for them to be given effect by a Basin-Wide Environmental Watering strategy² (**BWEWS**) (to be prepared by the MDBA) and Long-Term watering plans for each water resource area (to be prepared by the relevant state government);
- The BWEWS sets the high-level framework for environmental watering, including of regionally significant **priority environmental assets (PEAs)** and **priority ecosystem functions (PEFs)**³;
- Long-term watering plans are then prepared by the states for each WRP area to identify PEAs and PEFs for the area, the objectives and targets for the management of those PEAs and PEFs and – importantly – the **environmental watering requirements** for meeting those objectives⁴.

The key things to note about this cascade of plans are that:

- They are intended to coordinate the management of both Held Environmental Water (**HEW**) (ie. entitlements acquired by government to achieve the Sustainable Diversion Limits (**SDL**)) and Planned Environmental Water (**PEW**) (rules-based environmental water which is created by, and governed by, State water plans)⁵; and
- They set the detailed environmental objectives which need to be met in order to achieve the higher-level environmental objectives of the Act and the Basin Plan; and
- Given that WRPs are the key operational documents which establish PEW and control the management of the flow regimes of the rivers, WRPs are a key and essential tool for achieving the objectives of the LTWP, the EWP, the Basin Plan and the Act itself.

As a consequence, there are a number of provisions of the *Basin Plan 2012* (including sections 10.17 and 10.26)⁶ which require water resource plans to be consistent with and reflect the environmental watering plans, particularly the LTWP, and to address the **environmental watering requirements** of PEAs and PEFs.

We will return to this point in discussing subsequent sections of the WRP, however, it is clear that this mistaken interpretation of the role of LTWP has infected, and created legal error in, other provisions of the draft WRP.

² *Basin Plan 2012*, ss8.13 - 8.17

³ *Basin Plan 2012*, ss8.14-8.15

⁴ *Ibid* ss8.18 – 8.20

⁵ *Water Act 2007 (Cth)*, s28(1)(c)

⁶ see also *Basin Plan 2012*, s10.01(2)(e), 10.27, 10.41(2)(a)

Key recommendations:

- ***Figure 1-1 of the draft WRP should be amended to remove the misleading suggestion that the relationship between the LTWP and the WRP is indirect only.***
- ***A number of other provisions of the draft WRP will need to be amended to ensure that the LTWP and the broader Environmental Watering Plan are properly integrated into the WRP (this is discussed further below).***

WRP Section 3: Risks to water resources

This section of the draft WRP purports to address the requirements of sections 10.41 - 10.43 of the *Basin Plan 2012* which are about addressing risks to water resources primarily through a risk assessment.

In this section we discuss the obligations created by section 10.43 of the *Basin Plan 2012* and legal errors which are apparent on the face of the risk assessment which forms schedule D to the draft WRP (**Risk Assessment**).

Obligations under ss10.41 - 10.43: Risk assessment

The text of the Risk Assessment document demonstrates that the NSW Government has undertaken this process in a legally flawed way, including due to:

1. Misdirecting itself as to the law in terms of the decisions it was required to make under 10.43 of the Basin Plan (in that it gave itself an option for addressing risks which is not available under the *Basin Plan 2012*);
2. In the process of identifying strategies to address those risks it chose to address, it had regard to irrelevant considerations, failed to have regard to relevant considerations and misinterpreted provisions of both the *Basin Plan 2012* and the *Water Management Act 2000* (NSW) which led it into further error.

Section 10.41 of the *Basin Plan 2012* provides that WRPs must be prepared having regard to current and future risks to the condition and continued availability of the water resource, including the risks to the capacity to meet **environmental watering requirements**. Each risk must be assessed as low, medium or high.

Section 10.43 goes on to require that, if a risk is assessed as medium or higher, then the WRP must either:

- (a) describe a strategy for the management of the water resources of the water resource plan area to address the risk in a manner commensurate with the level of risk; or
- (b) explain why the risk **cannot** be addressed by the water resource plan in a manner commensurate with the level of risk.

“Environmental watering requirements” is defined to mean the environmental watering requirements of a **priority environmental asset** or **priority ecosystem function**⁷. PEAs and PEFs (and their environmental watering requirements) are identified in the Basin-wide Environmental Watering Strategy⁸ and the relevant LTWP⁹.

The overall effect of these provisions is that, in preparing the WRP, the NSW Government must assess risks to the environmental watering requirements of the PEFs and PEAs identified in the LTWP and the BWEWS and, if those risks are medium or higher, then the draft WRP must either:

1. Include a strategy to manage the risk in a manner commensurate with the level of risk; or
2. Explain why the risk **cannot** be addressed in a manner commensurate with the level of risk.

Note that the language of this provision in relation to the second option is that the risk ‘cannot’ be addressed. That means that this assessment is about what is possible, not what a State government may decide is preferable, given its other priorities.

⁷ *Basin Plan 2012*, s1.07

⁸ *Basin Plan 2012*, 8.14(2)(a)(i)

⁹ *Basin Plan 2012*, s8.19

Section 10.43(3) provides that a WRP must be prepared having regard to the strategies to address or manage identified risks set out in section 4.03 of the *Basin Plan 2012*. These strategies will be relevant considerations for the state government in identifying strategies to address the risks it has identified in the process set out in section 10.43(1).

The formal content of the draft WRP includes the Risk Assessment in schedule D which addresses (or purports to address) both the risk assessment for section 10.41 and the strategies for addressing the identified risks for the purposes of section 10.43. The parts of the Risk Assessment which purport to comply with section 10.43 are section 8 and Table 1 (see s3.3 of the draft WRP).

The following sections outline the legal flaws we have identified in section 8 and Table 1 of the Risk Assessment.

Decisions available under s10.43

Section 8 of the Risk Assessment outlines the approach the NSW government has chosen to take to addressing the identified risks.

There are a number of legal flaws in the approach outlined in this section which appear to have flowed through to the rather concerning decisions outlined in other parts of the Risk Assessment.

The initial, and perhaps most significant, flaw is the approach outlined on page 207 in which the NSW Government purports to give itself a third option, beyond the two options to addressing risks which are legally available under s10.43(1). This third (unlawful) option is to define High or Medium risks as 'tolerable' and to therefore decide not to develop any strategy or mechanism to address the risk or explain why the risk can't be addressed¹⁰. ***This is not one of the options available under s10.43 of the Basin Plan 2012 and, in our view, is unlawful.***

Section 8.2 of the Risk Assessment further explains this (unlawful) approach by stating that:

*"There are a variety of reasons why medium or high risk results may be tolerable including **acceptance of the fundamental changes** that river regulation has made to some NSW rivers and the **balancing** of environmental, social, cultural and economic demands on water resources"*

Neither of these considerations are within the scope of lawful considerations available under the *Basin Plan 2012*. Any 'acceptance' of environmental degradation can only occur through the process of developing the EWP (and the BWEWS and LTWPs underneath it) - it is unlawful for the NSW Government to neglect the obligations it has under the *Basin Plan 2012* to address the environmental watering requirements and seek the environmental outcomes established in the higher order documents.

Secondly, the concept of 'balancing' environmental, social, cultural and economic demands is, once again, unlawful (particularly at this point in the process). The outcomes to be achieved have been established and it is not open to the NSW government to decide in a subsidiary document to its draft WRP to simply not attempt to achieve them or leave them at high risk of remaining unachieved.

¹⁰ see discussion below - the risks 'predefined' as tolerable include a significant number of the environmental watering requirements in the regulated part of the system.

8.2.2.1: precautionary principle

Section 8.2.2.1 of the Risk Assessment outlines deficiencies in the information available to assess the level of risk to the environment from water extraction and subsequent decisions to define each risk level as ‘tolerable’ and to recommend further monitoring.

This is exactly the type of situation where the precautionary principle should be applied and, given that the relevant risks are risks to environmental watering, the *Basin Plan 2012* would seem to suggest that the precautionary principle should have been applied¹¹.

8.3: Mistakes of law and irrelevant considerations in developing strategies to manage risks

Section 8.3 of the Risk Assessment outlines the approach taken to addressing risks for which mitigation is considered possible.

This section of the Risk Assessment goes on to state that there are a number of “*overarching principles which guide the development of WRPs*” in NSW and states that those principles have been considered in the development of new actions and mechanisms to address the risks. The “overarching principles” are identified in Table 8-4.

The ‘*overarching principles*’ identified in table 8-4 demonstrate that, in approaching the mitigation of risks, the NSW Government has:

- Failed to have regard to relevant considerations;
- Had regard to several irrelevant consideration; and
- Misdirected itself as to the law in its interpretation of both the *Basin Plan 2012* and the *Water Management Act 2000 (NSW)*.

Commonwealth Water Act

Table 8-4 of the Risk Assessment identifies the following as the relevant principles from the *Commonwealth Water Act 2007*:

- There will be no net reduction in the protection of Planned Environment Water;
- The Commonwealth is responsible for funding the gap between existing limits and the Sustainable Diversion Limits (SDL);
- WRPs will meet the requirements set out in the Basin Plan.

This list is not incorrect, as far as it goes (however, see discussion later of whether the level of protection of PEW has been reduced), though the second bullet point is largely irrelevant for the purposes of drafting a WRP.

However, the list fails to have regard to the objectives of the *Water Act 2007* and *Basin Plan 2012* which should be used to guide and interpret other obligations, in particular in undertaking the difficult task of preparing a WRP.

Basin Plan 2012

The sole principle identified as drawn from the *Basin Plan 2012* is:

“Nothing in the Basin Plan requires a change in the reliability of water allocations of a kind that would trigger Subdivision B of Division 4 of Part 2 of the Act (s. 6.14)”

¹¹ *Basin Plan 2012*, s8.38: *A lack of full scientific certainty as to whether there are threats of serious or irreversible environmental damage should not be used as a reason for postponing measures to prevent environmental degradation.*

This not only neglects to have regard to all of the objectives of the *Basin Plan 2012*, it also identifies a provision which has no current function and gives it an interpretation which is incorrect at law.

The NSW Government appears to have assumed that section 6.14 of the *Basin Plan 2012* means that it can't (or need not) alter any rules in WSPs which may affect the reliability of supply under Water Access Licences (**WALs**). This is wrong at law. When a WSP is made or amended or a WRP (incorporating a WSP) is made, it may well be appropriate to make new rules which affect the reliability of WALs if, for example, the previous rules were not achieving the outcomes required by the primary legislation.

Section 6.14 of the *Basin Plan 2012* must be read in the context of the relevant provisions of the Primary Act. Subdivision B of Division 4 of Part 2 of the *Water Act 2007 (Cth)* has the following general effect:

- It applies where there is a "change to the Basin Plan".¹² That means it doesn't apply to the original Basin Plan - only to subsequent changes. Section 6.14 merely has the effect of recording that there have not yet been any changes to the Basin Plan which trigger the operation of this subdivision.
- If a change to the Basin Plan results in a change to the reliability of a water allocation, then there may be a right to claim compensation if "*the change is reasonably attributable to the Commonwealth's share of the change in reliability*";¹³
- If the Basin Plan contains a relevant change, then it must specify the extent to which the changed reliability is attributable to changes in Commonwealth Government Policy (the '**Commonwealth Government Policy Component**') and the extent to which the changed reliability is "attributable to improvements in knowledge about the environmentally sustainable level of take for the water resources of the water resource plan area" (this is the '**new knowledge component**')¹⁴;
- The 'Commonwealth's share' of the change in reliability is then calculated using the method in the National Water Initiative and the Regulations (if any).¹⁵

The key points to be taken from these provisions are that:

- Neither the *Water Act 2007* nor the *Basin Plan 2012* (or indeed state laws) prevent WRPs (or WSPs) from changing the reliability of WALs - in fact some changes to reliability may be necessary to meet the requirements of the Basin Plan and the *Water Management Act 2000 (NSW)* through the ordinary application of good policy processes (given the outcomes of the current WSP);
- The Basin Plan has not been subject to a change which engages the operation of section 6.14. As a consequence, that section has no relevance to the current process; and
- The relevant provisions of the *Water Act 2007* are about allocating compensation risk between the States and the Commonwealth - they do not constrain the content of a WRP.

Overall this means that:

- To the extent that the NSW Government has assumed that, in preparing its WRP and addressing the risks identified in the risk assessment, it cannot lawfully change the reliability of WALs - it has erred at law;
- The assessment of how to respond to the identified risks must be undertaken anew on a lawful basis and without the assumption that reliability cannot be affected;

¹² see *Water Act 2007*, s80(2) and 81(1) and (2)

¹³ *ibid* s80(4)

¹⁴ *ibid* s81(3)

¹⁵ *ibid* s81(4)

- The assessment of how to respond to the identified risks should be undertaken having proper regard to the Objectives of the Basin Plan and the state's obligations under s10.43;
- If this error of law has infected the NSW Government's approach to other elements of the WRP and WSPs, they should similarly be revisited and drafted in accordance with the law.

We note that a similar approach appears to have been taken in Appendix D (which is the Prerequisite Policy Measures Procedures Manual) which asserts that Prerequisite Policy Measures will only be implemented to the extent that detrimental impacts on access rights of licence holders can be mitigated or offset.

Failure to consider relevant requirements of Basin Plan

The *Basin Plan 2012* expressly states in section 10.43(3) that the WRP must be prepared having regard to the strategies identified in section 4.03.

The strategies in section 4.03 are expressly relevant considerations in deciding how to respond to risks under s10.43(1). A failure to have regard to these considerations may result in the decision being held to be invalid.

While Table 1 of the Risk Assessment cites section 4.03 a number of times, there is no reference to its requirements in the decision-making process detailed in section 8. It appears to us that the Risk Assessment has failed to have adequate (or any) regard to the requirements of s10.43(3) and 4.03.

NSW Water Management Act

Table 8-4 of the Risk Assessment identifies the following as a principle of the *Water Management Act 2000 (NSW)*:

"WSPs are required to balance social, cultural, economic and environmental needs of the community and catchments (this is a fundamental objective of water management in NSW and is described in the objects of the Act)."

This is wrong at law. The *Water Management Act 2000 (NSW)* does not, in any sense, authorise or require the environmental health of the system to be traded-off for economic or social objectives in some sort of 'balancing' exercise - in fact quite the opposite.

Section 3 of the *Water Management Act 2000 (NSW)* includes environmental, economic and social Objectives, however, it does not require or authorise those Objectives to be weighted equally. When read in the context of the balance of the Act (which is a fundamental requirement of statutory interpretation), it is clear that the Act recognises that the environmental health of the system must be protected in order to achieve its social and economic objectives (this is a pragmatic recognition of, among other things, the fact that the agricultural productivity of Basin is dependent upon natural systems and processes which provide services vital to water quality and availability).

This can be seen particularly in sections 5(3) and 9 of the Act which place a duty on decision-makers under the Act to give effect to the following priority order in making decisions about water sharing:

1. sharing of water from a water source must protect the water source and its dependent ecosystems, and
2. sharing of water from a water source must protect basic landholder rights, and
3. sharing or extraction of water under any other right must not prejudice the principles set out in paragraphs (a) and (b).

These provisions make it clear that, in preparing a water sharing plan, both the volumes of water allowed to be taken and the flow regimes created must firstly protect the water source and its dependent ecosystems, then ensure that basic landholder rights can be satisfied. Only after that process has been undertaken can any remaining water be made available for sharing under a bulk access regime (ie. under WALs).

These prioritisation requirements have been considered by the Court of Appeal¹⁶ and, more recently by the Natural Resources Commission¹⁷.

The *Water Management Act 2000 (NSW)* does not require any system of 'balancing' environmental, economic and social needs. To the extent the NSW Government has assumed that it does in responding to identified risks, it has erred at law and the resulting decisions may be invalid.

Non-statutory considerations

Table 8-4 of the Risk Assessment also identifies the following principles from a document called 'Delivering WRP Plans for NSW Roadmap 2016-2019':

- *"WRPs are cost neutral for NSW licence holders"*
- *"Development of WRPs minimises change to NSW WSPs within their initial ten year terms"*

These are not considerations which are relevant under the framework of either the *Water Act 2007 (Cth)* or the *Water Management Act 2000 (NSW)*.

While it may be lawful for the NSW Government to use these concepts as guidance in choosing between options which have been developed in a lawful way (ie. in accordance with s10.43 of the Basin Plan and having regard to relevant considerations only), they cannot be primary considerations and certainly can't be used to avoid taking steps required by the statutory framework or to override other obligations under the primary legislation.

The extent to which these irrelevant considerations have infected decisions on how to address identified risks is not clear, however, there is at least one example in the Risk Assessment document of a decision not to address a risk on the basis of avoiding changes to a WSP in its initial 10 years of operation. That example is on page 40 of the Risk Assessment which explains that the risk to the base flows needed to meet environmental watering requirements in the Albury region will not be addressed for the reason that:

"These risk results cannot be addressed during WRP development as NSW planning principles minimise change for WSPs within their initial ten year period to provide certainty for water users."

This example is expressly contrary to the requirements of section 10.43 of the *Basin Plan 2012* and is unlawful.

Key recommendations:

- ***The decisions under section 10.43 of the Basin Plan, as outlined in the Risk Assessment, must be put aside and decisions about how to respond to each risk must be re-made in a way that accords with s10.43(1) and (3) of the Basin Plan***

¹⁶ *Tubbo Pty Ltd v Minister Administering the Water Management Act 2000; Harvey v Minister Administering the Water Management Act 2000* [2008] NSWCA 356 per Spigelman CJ at [31]

¹⁷ see section 4.1 of *Natural Resources Commission, 2019, Final Report: Review of the Water Sharing Plan for the Barwon-Darling Unregulated and Alluvial Water Sources 2012*

Specific decisions in risk assessment - environmental watering requirements

As outlined above, the decisions available to the NSW Government under s10.43(1) in deciding how to address the identified risks categorised as medium or high are to:

- a. describe a strategy for the management of the water resources of the water resource plan area to address the risk in a manner commensurate with the level of risk; or
- b. explain why the risk cannot be addressed by the water resource plan in a manner commensurate with the level of risk.

The NSW government's other obligations in relation to environmental watering are to have regard to "*whether it is necessary for it to include rules which ensure that the operation of the plan does not compromise the meeting of environmental watering requirements of priority environmental assets and priority ecosystem functions*"¹⁸. If the outcome of that assessment is that such rules are necessary, they **must** be included in the WRP¹⁹ (s10.17(3)). We return to this point in more detail later in our submission, however, it is relevant to the way in which the Risk Assessment has responded to (or, more accurately failed to respond to) the risks to environmental watering requirements.

The following table summarises the outcomes for risks which were given an initial risk rating of High in Table 1 of the Risk Assessment in relation to three categories of risks, being:

- risks to environmental watering requirements;
- risk to delivery of water for the environment from climate change; and
- risk to other water uses from climate change.

In order to understand this analysis, it is important to understand the following points about how the Risk Assessment has approached addressing risks:

1. As discussed above, section 8.2.1 outlines that an approach under which the NSW Government as 'pre-defined' certain risks as 'tolerable'. As outlined above, we do not believe that this is lawful. The risks which have been pre-defined as tolerable primarily relate to a **choice** made not to attempt to meet certain environmental watering requirements in the regulated system - on the basis that ecologically significant flows would require modification of the way in which water is currently released from dams to meet orders from (primarily irrigation) users.
2. The vast majority of the risks given an initial risk rating of High have remained high risk following the application of the new strategies or mechanisms, however, the Risk Assessment has in many cases purported to accept the continuing high risk as 'tolerable'. In some cases there appears to be some argument presented that it is not possible to mitigate the risk for the purposes of section 10.43(1)(b), however, the justifications presented are quite minimal. For the remaining High Risks, it is not entirely clear what the statutory basis is for this finding, however, it seems unlikely to us that a failure to reduce the risk category could constitute a strategy to manage the risk commensurate with its risk rating for the purposes of section 10.43(1)(a).

¹⁸ *Basin Plan 2012*, s10.17(1)

¹⁹ *Ibid* s10.17(3)

Category of Risk	Total risks with initial rating of High (“High Risks”)	Total High Risks pre-determined as ‘tolerable’	Total High Risks with unchanged risk rating following new mechanisms or strategies	Total Number of High Risks mitigated
Risks to water available for the environment and ability to meet environmental watering requirements (section 4.3 RA)	69	20	48	1 (note that this risk appears to have been judged not to be a risk rather than actually mitigated)
Risks for water available for the environment due to climate change (section 4.6 RA)	8		8	0
Risks to water available for other uses due to climate change (section 7.3 RA)	1		1	0
Total	78	20	57	1 (arguably)

Of the 78 risks initially categorised as ‘High Risks’ across the three areas above, only one risk changed category. However, that risk was not actually mitigated; it was instead judged to not be ‘considered an actual risk’²⁰. As a consequence, on our analysis of Table 1 of the Risk Assessment **none of the risks initially placed in the High Risk category were successfully mitigated.**

The results for Medium Risks are not dissimilar:

- In relation to risks from climate change to environmental watering (s4.6 of the Risk Assessment), the two Medium Risks did not change to a different risk category (note that there were no Low Risks for this issue);
- In relation to risks from climate change to other uses (section 7.6 of the Risk Assessment), each of the seven risks assessed to be Medium Risks remained in that category (only three risks were assessed as Low);
- In relation to risks to water available to meet environmental watering requirements (s4.3 of the Risk Assessment) a large number of risks assessed as Medium remained unmitigated on the basis that:
 - they were pre-determined to be ‘tolerable’ risks;
 - the risk rating did not change following mitigation strategies; or
 - the ‘ability to mitigate is low and hence the risk was tolerable’.

²⁰ see page 5 of the Risk Assessment

Key recommendations:

- ***The process under s10.43 of the Basin Plan must be re-done lawfully to produce strategies which will ensure that the risks to environmental watering requirements and risks from climate change are mitigated to the 'Low' category, unless the risk cannot be mitigated.***
- ***Consequential changes to the WRP and WSPs must be made.***

WRP section 3.3: Strategies to address climate change related risks and risks to environmental watering requirements

Table 3-1 in section 3.3 of the draft WRP contains a list of strategies to address risks (noting, from the discussion above, that these strategies do not appear to be effective in addressing the identified risks, at least in relation to High and Medium Risks).

While table 3-1 of the draft WRP appears at first to be quite a comprehensive list of strategies, when viewed in the context of the outcomes of the strategies discussed above and the actions which make up each strategy, it is clear that ***the strategies to protect environmental water and to address climate risk are inadequate, ineffective or, in most cases, both.***

In order to understand the actions which make up each of the strategies listed in Table 3-1 it is necessary to go to table 8-7 of the Risk Assessment.

Strategy 3: Discretionary environmental watering events

Strategy 3 in table 3-1 of the draft WRP is to:

“Provide discretionary environmental watering events in the regulated river and downstream unregulated river (Darling Anabranches) sections of the WRP area.”

Table 8-7 of the Risk Assessment indicates that the discretionary environmental watering events are to be drawn from the Barmah-Millewa Allowance (BMA), Barmah-Millewa Overdraw (BMO), Murray Additional Environmental Allowance (Murray AEA), or the Lower Darling Environmental Water Allowance (each of which is defined in the relevant WSP).

While some element of discretion should be available to deploy environmental water in emerging situations, there is a significant risk that an allocation of environmental water will never be used if the extent of discretion available is too high. For example, page 97 of the draft LTWP identifies that two existing environmental water allowances (the Barmah-Millewa Overdraw and the Lower Darling Allowance) have never been used.

An examination of Table 1 of the Risk Assessment would also appear to indicate that the strategy of using this water is ineffective to alter the risk category of High and Medium risks to environmental watering requirements.

Strategy 4: Flow targets from LTWP

Strategy 4 in table 3-1 of the draft WRP is to:

“Manage environmental water to meet flow targets specified in the NSW Murray and Lower Darling LTWP”

The actions and mechanisms (outlined on page 221 and 222 of the Risk Assessment) which comprise this strategy don't appear to include any new actions above the environmental water allowances in the WSPs and actions NSW is already obliged to deliver under the *Water Act 2007* (ie. pre-requisite policy measures and relaxation of constraints) (the meaning of mechanism E8 is, however, somewhat unclear).

Further:

- This strategy is misleading to the extent that there has been a positive decision not to attempt to achieve a number of the flow targets in the regulated system derived from the LTWP (as outlined in table 8-3 of the Risk Assessment) as the risks have been pre-defined as tolerable; and
- Table 1 of the Risk Assessment suggests that the actions making up this strategy are unlikely to be effective in actually delivering many of the flow targets identified in the LTWP.

Strategy 14: Climate change

This strategy is identified in table 3-1 of the draft WRP as:

“Protect the environment and water users from the changes in flow attributable to climate change”

The actions and mechanisms which make up this strategy are:

- E1: Reserve all water above the long-term average annual extraction limit (**LTAEL**) for the environment as PEW (defined and managed by the listed WSPs).
- E2: Available Water Determinations (**AWD**) adjust extractive use according to water availability.
- E3: Sustainable Diversion Limits.

The LTAEL (which essentially allocates water to the environment above a defined extraction limit) is an existing approach based on the average of *historical* extractions and not a strategy for addressing the risks of lower water availability and a hotter, drier climate under climate change affected conditions. It is also a misleading indicator of the amount of water actually available for the environment, in that it is an average of many years. This has the result that the large amounts of water available in flood years disguise the fact that inadequate amounts of water may be available in normal and dry years²¹.

Available Water Determinations are an existing tool under which licence holders are given access to a proportion of the nominal volume or shares available under their licence, depending upon the relative availability of water in the particular year. It is an existing mechanism used to address climate *variability*; it is not a mechanism to address the long-term changes we can expect to experience as a result of climate change.

The Sustainable Diversion Limit under the Commonwealth *Water Act 2007* was expressly based on the historical record and does not incorporate climate change impacts²². It is not a tool which addresses climate change risk.

²¹ see discussion on page 4 of: *Natural Resources Commission, 2019, Final Report: Review of the Water Sharing Plan for the Barwon-Darling Unregulated and Alluvial Water Sources 2012*

²² see Young WJ, Bond N, Brookes J, Gawne B & Jones GJ, 2011, Science Review of the estimation of an environmentally sustainable level of take for the Murray-Darling Basin: Final report to the Murray-Darling Basin Authority, CSIRO:

As a consequence, the discussion above of the failure of this strategy to effectively mitigate climate change related risks is perhaps unsurprising.

The inclusion of this strategy in the WRP is misleading in that it suggests that there are mechanisms in place to address climate change risks, when clearly there are not.

Key recommendations:

- ***All risk mitigation strategies need to be re-visited and new mechanisms developed which actually address and mitigate the identified risks.***

“MDBA has modelled the likely impacts of climate change to 2030 on water availability and this modelling is robust. MDBA has not used this information in the determination of SDLs for the proposed Basin Plan but rather has determined SDLs using only the historical climate and inflow sequences.”

WRP Section 4: Environmental water

WRP s4.2 and 4.3: PEAs and PEFs

This section of the draft WRP purports to respond to section 10.17 of the *Basin Plan 2012*. As outlined above, this is a key section because it ensures that the high level Objectives of the *Water Act 2007* in relation to restoring the ecological health of the system (which are fleshed out in the EWS and LTWPs) are integrated into WRPs (as the operational documents which actually govern the flows in the rivers).

A failure to comply with this requirement could seriously compromise capacity to achieve the overall Objectives of the *Water Act 2007*.

Section 10.17 requires the NSW government, in preparing the WRP, to have regard to:

“whether it is necessary for it to include rules which ensure that the operation of the plan does not compromise the meeting of environmental watering requirements of priority environmental assets and priority ecosystem functions”²³

If the outcome of that assessment is that such rules are necessary, they **must** be included in the WRP (s10.17(3)).

As discussed above, PEAs and PEFs, and their respective environmental watering requirements, are defined in the BWEWS and LTWPs.

The draft WRP does not contain a document which sets out a separate assessment addressing section 10.17. The draft WRP instead refers to the Risk Assessment as the document which addresses this obligation.

In the Risk Assessment:

- section 8.2.1 outlines a positive decision not to attempt to meet the environmental flow requirements in the regulated system;
- Section 4.3 discusses risks to the environmental watering requirements identified in the LTWP, with tables 4-12 to 4-14 identifying the risks to achieving environmental watering requirements in the regulated system, Menindee Lakes and the unregulated system;
- Table 1 of the Risk Assessment (discussed above) shows any changes to the extent of these risks following the application of strategies to mitigate risk (as discussed above, there is almost no change in the risk ratings for High and Medium risks of failing to meet environmental flow requirements).

The Risk Assessment is probably adequate to comply with the first step of section 10.17 (that being to assess whether it is necessary to include rules which ensure that the operation of the plan does not compromise meeting EWRs).

However, we do not believe that the second step of section 10.17 has been complied with. In our view, the High and Medium risk ratings across many of the flow classes identified in the LTWP strongly suggest that rules are required to avoid compromising environmental watering requirements. That means the NSW Government is under an express obligation under s10.17(3) to include rules to avoid compromising environmental watering requirements.

²³ *Basin Plan 2012*, s10.17(1)

The decision outlined in section 8.2.1 not to attempt to achieve certain environmental watering requirements in the regulated system is, in our view, an express breach of the requirements of section 10.17(3).

It is further our view that the failure to mitigate many of the risks to achieving EWRs is similarly a breach of section 10.17(3).

Key recommendations:

- ***The WRP does not comply with section 10.17. The draft WRP and WSPs must be amended to include rules to avoid compromising environmental watering requirements.***

WRP s4.5 and Appendix C: No net reduction in the protection of PEW

Section 21(5) of the *Water Act 2007 (Cth)* provides as follows:

“The Basin Plan must ensure that there is no net reduction in the protection of planned environmental water from the protection provided for under the State water management law of a Basin State immediately before the Basin Plan first takes effect.”

This is reflected in the requirements for WRPs in section 10.28 of the *Basin Plan 2012*:

“A water resource plan must ensure that there is no net reduction in the protection of planned environmental water from the protection provided for under State water management law immediately before the commencement of the Basin Plan.”

The key points to note about this obligation are:

- The scope of what is meant by the ‘level of protection’ for PEW is not entirely clear, however, in our view it is likely to extend beyond the simple volume of water available to the environment to also include other environmentally significant characteristics of the water such as timing and ability to produce ecologically significant flows (eg. protection of the low flows which are critically important to maintaining connectivity and water quality in dry times);
- This is a ***minimum*** requirement only. It may well be the case that compliance with other requirements of the *Basin Plan 2012* (as discussed above) or compliance with the requirements of the *Water Management Act 2000 (NSW)* (in particular section 5(3) and 9, as discussed above) will dictate that (having regard to the outcomes of the protections available under the previous versions of the WSPs) additional or different protections for, and/or additional volumes of, PEW may be required.

This draft WRP purports to address this requirement in section 4.5 which:

- States that *“the rules and arrangements for planned environmental water in section 4.1.1 of this WRP are essentially the same as the rules in place immediately before the commencement of the Basin Plan”*. (ie. the NSW Government has elected to comply with the minimum requirement only); and
- States that the report in Appendix C demonstrates that there has been no net reduction in the protection of PEW.

There are two key issues with the NSW Government's approach to this issue:

- I. Under this approach the NSW Government has delivered the minimum requirements of the s10.28 of Basin Plan only; and
- II. The basis upon which it is claimed that there has been no net reduction in the protection of PEW is an assessment against the LTAAEL and the SDL which, it is contended in the report, have the result that "*over the long term the overall volume of PEW is not reduced*". This is a flawed approach firstly because it assumed, wrongly in our view, that protection of PEW refers only to volume (when there are many other important characteristics of PEW which require protection) and secondly because this approach misleadingly averages the availability of PEW over several years to produce an answer which says nothing about the availability of PEW in dry years and may cause the abundance of water available in flood years to disguise inadequate environmental water availability in normal to dry years.

Recommendation:

- **The analysis of whether the draft WRP maintains at least the same level of protection for PEW should extend beyond the LTAAEL to incorporate other ecologically significant criteria including availability of water in dry years and ability to provide ecologically important flows;**
- **The amendments to the WSPs should be informed by an assessment of the adequacy of PEW to ensure that the WSPs comply with section 5(3) of the *Water Management Act 2000*.**

WRP s7: Measuring and Monitoring

Section 10.46 of the *Basin Plan 2012* provides that a water resource plan must specify the monitoring of the water resources in area that will be done to enable the Basin State to fulfil its reporting obligations under section 13.14.

This obligation is addressed in section 7 of the draft WRP and schedule J (the “MER plan”).

Given that the Basin Plan has been explicitly prepared on an adaptive management basis²⁴, monitoring and evaluation of the outcomes of the Basin Plan is critically important, as is the link between WRPs and the monitoring and evaluation framework in Chapter 13 of the *Basin Plan 2012*.

While we can't comment on the adequacy of MER plan, we do note that it contains the following troubling text:

“Please note that implementation of any MER program is dependent on having a defined, long-term budget. Given WSPs span a ten-year period, and LTWPs aim for a 10 to 20-year life-span it is likely that budgets and priorities will change during this time. While effort will be made to maintain a MER program and report on environmental outcomes every five years, the ability to implement all aspects of this plan may be limited in future years.”

This appears to be a suggestion from the NSW Government that it may cease to comply with its obligations under s10.46 and Chapter 13 of the *Basin Plan 2012* in future years.

Key recommendation:

- ***The NSW Government must commit to the long term funding of a thorough and appropriate monitoring program for each WRP area.***

²⁴ *Basin Plan 2012*, ss5.02, 8.02, 8.40 and 13.04(4)



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Draft NSW Murray and Lower Darling Surface Water Resource Plan and Draft Water Sharing Plans

Murray Lower Darling Rivers Indigenous Nations (MLDRIN) submission

Thank you for the opportunity to comment on the Draft NSW Murray and Lower Darling Surface Water Resource Plan.

MLDRIN has a statutory role under the Basin Plan and *Water Act 2007 (Cth)* to provide assessment advice to the MDBA on the extent to which WRPs meet the requirements of Basin Plan Chapter 10, Part 14. The comments included in this submission do not constitute advice for the purpose of that assessment. MLDRIN reserves the right to amend or alter advice or commentary on this and other NSW Water Resource Plans.

This submission provides commentary on the extent to which the Plan addresses First Nations' water rights and interests in line with the requirements of Chapter 10, Part 14 of the Basin Plan, the MDBA's Part 14 Guidelines and other accepted models or guidelines for best practice consultation. We have organised our comments on the WRP according to the relevant sections of Basin Plan Chapter 10.

In addition, we have provided comments on the three draft Water Sharing Plans provided as part of the WRP package:

- Draft *WSP for the NSW Murray and Lower Darling Regulated Rivers Water Sources 2020*.
- Draft amended *WSP for the Murray Unregulated Water Sources 2011*.
- Draft amended *WSP for the Lower Murray-Darling Unregulated Water Source 2011*.

These comments should be read in conjunction as the WSPs are critical components of the WRP package and are required to give effect to the provisions of the WRP.

We ask that DPIE provide a written response detailing how the questions, concerns and recommendations we have provided in this submission will be considered and addressed in the WRP and WSPs.

Draft Murray Lower Darling Surface Water Resource Plan (WRP)

First Nations Consultation

MLDRIN is greatly disappointed that the Draft MLD WRP has been put out to public exhibition before consultation with all Nations in the WRP area has been completed. MLDRIN has consistently raised concerns with the NSW Government about the progress of consultation with First Nations and we believe NSW has had more than ample time to complete meaningful consultation.¹

There are a number of significant issues arising from this deficiency. The Basin Plan requires WRPs to be prepared in consultation with First Nations. This entails giving proper, genuine and realistic consideration to the views provided by *all* First Nations in the accredited and supporting text of the Plan. We submit that all text in the Draft WRP purporting to demonstrate how ‘regard’ has been had to the view of Indigenous Nations is invalid and must be redrafted following completion of consultation with *all* Nations. As it currently stands, the WRP is incomplete and should not have been provided for public exhibition before the relevant sections of the plan could be informed by consultation undertaken with all relevant Nations. Presenting the plan for public feedback in this incomplete state represents disregard for the principle of free, prior and informed consent and means First Nations in the plan area have missed an opportunity to review the description of consultation undertaken and the final presentation of objectives, outcomes, values, uses and risks.

More generally, the continued failure of NSW to undertake appropriate engagement, despite having more than five years of lead-in time, demonstrates a breakdown in planning and coordination, which, we fear, has resulted in a poorly prepared and drafted WRP. We have serious concerns about the quality and depth of consultation that will be undertaken with the remaining Nations given the urgent timelines.

We seek clarification on how the NSW Government has accounted for the status of Aboriginal organisations, Traditional Owners and community members in undertaking consultation and developing the WRP. Page 23 of the Draft WRP states that ‘Where appropriate, consultation with other Aboriginal organisations (land councils and native title claimant groups etc.) has been undertaken as part of, or separate to, the Nation-based consultation.’ Further details should be provided, including which organisations, and when and how they were consulted. How did other Aboriginal organisations contribute to the identification of Objectives and Outcomes? How did they contribute to NSW’s preparation for the plan and response to Basin Plan Chapter 10, Part 14 requirements?

¹ For example, in submissions on Status and Issues Papers for the Murray Lower Darling and Murrumbidgee WRPs provided in 2017.

Additionally, the WRP text in section 1.7.1.1 (p. 24) states ‘this workshop put forward the opportunity for the Wadi Wadi Nation Traditional Owners, along with other Wadi Wadi Nation members...’ The distinction made here is unclear and confusing. How do Wadi Wadi Nation Traditional Owners differ from other Wadi Wadi Nation members?

We request that NSW provide clarification of these issues to assist with our assessment role under the Basin Plan.

Basin Plan Chapter 10, Part 14 requirements

10.52 (1) – Objectives and Outcomes based on Indigenous values and uses

The accredited text at section 1.3.2 of the WRP (p.5) states that the objectives and outcomes of Aboriginal people in relation to the management of water resources in the WRP area are listed in Table 1-2 and Table 1-4 of the WRP. First, we note that these tables include Objectives and Outcomes for two Nations only and so do not meet the requirements for accreditation.

Second, we wish to highlight the consistent confusion between the categories of ‘Objectives’, ‘Outcomes’, and ‘Values’ throughout the WRP. The Basin Plan is clear about the requirement to ‘identify’ Objectives and Outcomes and ‘have regard to’ values and uses. The Tables 1-2 and 1-4 list a series of objectives and identify related ‘values’. However, these ‘values’ are presented as outcomes, the result of the objectives having been achieved. It is unclear why they are listed as ‘values’. Based on the current order of headings in the tables, the WRP does *not* identify Outcomes as required under clause 10.52 of the Basin Plan. We view this as a drafting error and advise that it be rectified to avoid further confusion.

We advise that NSW conduct a review of the whole document to clarify usage of the terms ‘values’, ‘objectives’ and ‘outcomes’ in line with the Basin Plan requirements.

10.52 (2) – Having regard to values and uses

We note there is no accredited text in the document addressing the requirement to have regard to Indigenous values and uses. We presume a response to this requirement is to be inferred from the descriptions of consultation undertaken. We question whether the WRP material demonstrates that proper, genuine and realistic consideration has been given to the social, spiritual and cultural values and uses of the First Nations of the Plan area.

The WRP at section 1.3.2 states that ‘This plan...endeavours to apply the values and uses which they have expressed throughout the consultation process’. The accredited text at 1.3.2 (p.5) also states that ‘This Plan aims to support and strengthen the protection of Aboriginal values and uses that have been developed through culturally appropriate consultation...’

These statements appear to indicate a commitment to respond to, address or support the values and uses identified through consultation. However, the plan lacks any commitments, strategies, targets or performance indicators to demonstrate how proper, genuine and realistic consideration for these values and uses has been incorporated into arrangements for the management of water resources in the WRP area. In the absence of any clear commitments in the accredited text of the WRP, these statements appear as empty assertions.

10.52 (3) – Strengthening the protection of Indigenous values and uses

Likewise, there is no accredited text in the WRP responding to the option of identifying opportunities to strengthen the protection of Indigenous values and uses.

10.53 – Consultation and preparation of water resource plan

The accredited text at section 1.7 (p.22) indicates that the requirements of Basin Plan 10.53 are addressed through The Consultation report (Schedule C).

The content of the Consultation Report provides cursory discussion of the matters enumerated under 10.53, and does not provide sufficient detail to demonstrate how genuine, proper and realistic consideration has been had for the *views* of participating Traditional Owners on these matters.

For example, the Consultation Report provides a summary of consultation outcomes for Wadi Wadi and Ngiyampa First Nations. The text of the Consultation Report dealing with 10.53(1)(a) notes that discussions were held regarding native title rights, native title claims and Indigenous Land Use Agreements provided for by the *Native Title Act 1993* in relation to the water resources of the WRP area, and in one case notes the existence of a joint native title claim. However, it does not outline how the *views* of Traditional Owners on the relationship between these native title matters and the management of the water resources of the plan area have been considered. Likewise, a search of the Consultation Report for Wadi Wadi Nation did not identify any relevant references to Native Title, or Indigenous Land Use Agreements.

Likewise, for 10.53(1)(b) the Consultation Report notes that discussions were held regarding cultural heritage but does not document how the *views* of Traditional Owners on this important subject were considered.

In MLDRIN's view, the WRP has **not** demonstrated how genuine, proper and realistic consideration has been had for the view of relevant Traditional Owners in relation to the matters enumerated under clause 10.53 of the Basin Plan.

We also suggest that the plan be redrafted to ensure that the references to risks identified by Nations (in Tables 1-3 and 1-5) are identified in the accredited text addressing clause 10.53(1)(f). At a minimum, the accredited text at section 1.3.2 of the WRP (p.5) should state that 'for the purpose of 10.53(1)(f), the risks to values and uses are included in Table 1-3 and Table 1-5.'

10.54 – Cultural Flows

There is no meaningful accredited text in the Draft WRP addressing the requirement to have regard to the views of First Nations regarding cultural flows.

The supporting text under section 4.6 (pp.56-58) outlines various views and issues regarding environmental and cultural flows which are not necessarily arising from, or relevant to, the Nations within the WRP. The specific views of those Nations regarding cultural flows have not been identified or discussed.

The WRP at page 58 refers to an ‘ongoing process that will explore opportunities’ to progress recognition of First Nations procedural and substantive water rights. A number of points are included enumerating these ‘opportunities’. However, there are no tangible commitments, strategies or targets associated with these ‘opportunities’ and they are not included in the accredited text.

The WRP does not clearly identify the views of First Nations regarding cultural flows nor does it identify any tangible pathways or strategies to respond to these. In MLDRIN’s view this is a deficiency which should be addressed, in light of public commitments to develop an Aboriginal Water Policy and pursue opportunities for transfer of water rights to First Nations in other WRP areas.²

10.55 – Retention of current protection

We note the accredited text at section 4.6 of the WRP (p.56) invoking various clauses in relevant Water Sharing Plans as evidence that the WRP offers the ‘same level of protection’ as preceding plans for the purposes of Basin Plan clause 10.55. Please refer to comments under ‘Water Sharing Plans’ (below) regarding changes and inconsistencies between relevant clauses of WSPs. Specifically, these inconsistencies relate to differing provisions to amend WSPs following a native title determination, and to amend WSPs to protect water-dependent Aboriginal cultural assets.

We note that the supporting text at section 4.6 of the WRP (p.57) makes misleading and unsubstantiated claims regarding the protection of cultural values: ‘The plan provisions that allow for Aboriginal access to water that were in place when the Basin plan was made are still in place, and therefore Aboriginal values and uses in place at that time are protected.’ In MLDRIN’s view the supporting text here makes an unsubstantiated connection between the plan provisions and the protection of Aboriginal values and uses. Despite the existence of plan provisions relating to access for native title, granting of cultural access licences and other measures, the cultural values that were in existence when the Basin Plan was made are undergoing accelerated deterioration. This is most starkly demonstrated by the loss of cultural

² NSW Government response to the Vertessy Report and the Natural Resources Commission’s review of the Barwon-Darling Water Sharing Plan, September 2019. Available at: https://www.industry.nsw.gov.au/_data/assets/pdf_file/0008/279080/NSW-Government-response-to-NRC-report.pdf

values and amenity along the Lower Darling due to increasing cease to flow events, blue-green algae outbreaks and mass fish deaths. The protection of values and uses has continued to deteriorate since 2012 despite the existence of WSP provisions. This statement is simplistic and inaccurate and should be amended or removed.

Other Basin Plan matters

10.41 – Risk Assessment

The Basin Plan (cl.4.02) outlines risks to the condition, or continued availability, of Basin water resources, and consequential outcomes (cl.4.02(2)(b)) including that: *‘insufficient water is available, or water is not suitable to maintain social, cultural, Indigenous and other public benefit values.’*

Water Resource Plans must be prepared having regard to these identified risks. Water Resource Plans must also be prepared having regard to: *‘strategies to manage or address identified risks’, (cl.4.03(3)), including (g) ‘to improve knowledge of water requirements within the Murray- Darling Basin ... relating to the social, spiritual and cultural uses of Basin water resources by Indigenous people.’*

There does not appear to be any consideration of risks to the condition and availability of water to support Aboriginal cultural values in the Risk Assessment (Schedule D) or in the WRP. At section 6.6 and 7.5 of Schedule D, the risk assessment states that risks to the suitability [and availability] of water for other public benefit values (Indigenous, socio-economic) have ‘not been assessed in this analysis due to a lack of data’ and ‘Aboriginal cultural requirements will be addressed in a separate document.’

At both sections, a box provides a note to link to a document ‘containing assessment of risk of insufficient or unsuitable water to maintain Indigenous values’. No link or reference is provided.

It is not clear what data sources NSW believes are required to conduct the assessment, what document will be developed, what the time frame for development will be or how the plan will be amended to reflect this.

It would appear that the WRP has failed to have regard to risks to the condition or availability of water to maintain Aboriginal values and uses. This is despite clear and consistent advice from First Nations throughout the plan area regarding risks to the viability of their values and uses arising from use and management of the water resources. This is also despite the risks and threats clearly identified by Nations in the consultation reports under Schedule C and those presented in Tables 1-3 and 1-5 of the main WRP document.

For example, at page 58 of the WRP: ‘The consultations captured the great concern for the current state of waterways, which were described as “murky” due to pollution from recreational boats, racing boats and paddle steamers with diesel engines; and poor stewardship, less native plants, more weeds, erosion and a rapid

decline in fish stocks due to lack of breeding space.’ It is not clear why this data has not been considered in the identification of risks for the purpose of addressing Chapter 10, Part 9.

As a consequence of ignoring risks to the condition and availability of water for Aboriginal values and uses, there are no strategies in place to address what are likely to be high risks. A precautionary approach should be applied, whereby risks to the condition and availability of water for Aboriginal values and uses are identified as ‘high’ given the apparent lack of data. This would ensure that preliminary strategies could be incorporated into the WRP in order to mitigate impacts and reduce declines in values and uses.

Furthermore, at section 4.4 (p.137) of the Risk Assessment (Schedule D), where risks to water for extraction under basic landholder rights are considered, it is stated that ‘There are currently no native title rights to water in NSW; however, these rights may be activated during the term of a WSP’. That there are ‘no native title rights to water in NSW’ is blatantly incorrect, and something that Barkandji native title holders, their representatives and others have raised with NSW Government repeatedly for over four years.³ This statement, in fact, contradicts with the content of two of the Water Sharing Plans that form part of this very Water Resource Plan (see below). This text must be corrected, and risks to native title rights – both those that have already been recognised, and those to be recognised into the future – need to be considered in this risk assessment.

MLDRIN requests that DPIE urgently clarify:

- Why the Risk Assessment does not include any consideration of threats/impacts and risks associated with the condition and availability of water to support Aboriginal cultural values, and to native title rights;
- How these deficiencies will be rectified (i.e. through development of a ‘document’ referred to at sections 6.6 and 7.5 of the risk assessment); and,
- How the WRP will be amended to include this material

Draft Water Sharing Plans (WSPs)

The NSW Murray and Lower Darling Surface Water Resource Plan includes three draft Water Sharing Plans (WSPs):

- [replacement] *WSP for the NSW Murray and Lower Darling Regulated Rivers Water Sources 2020* – replaces the *WSP for the NSW Murray and Lower Darling Regulated Rivers Water Sources 2016*.
- [amended] *WSP for the Murray Unregulated Water Sources 2011* – former name was *WSP for the Murray Unregulated and Alluvial Water Sources 2011*.

³ Lana D. Hartwig, Sue Jackson and Natalie Osborne, ‘Recognition of Barkandji water rights in Australian settler-colonial water regimes’ (2018) 7(1) *Resources* 16; Natural Resources Commission, *Review of the Water Sharing Plan for the Barwon-Darling Unregulated and Alluvial Water Sources 2012*, Document No D19/4123 (2019) 130-131.

- [amended] *WSP for the Lower Murray-Darling Unregulated Water Source 2011* – former name *WSP for the Lower Murray-Darling Unregulated and Alluvial Water Source 2011*.

MLDRIN has reviewed these WSPs and identified key changes of significance to First Nations. We offer the following assessment informed by our experiences and our long-standing advisory and advocacy role in water management, and existing reviews and assessments of water planning and management in NSW. In particular, we draw from the recent Natural Resources Commission's (NRC's) Review of the *WSP for the Barwon Darling Unregulated and Alluvial Water Sources 2012*. This WSP shares some similarities with those examined here – including a water source (i.e. the Darling River), as well as structural features and components. MLDRIN is of the view, therefore, that many of the NRC's recommendations are transferrable here. The structure of our assessment follows concerns and themes we identified within the WSPs.

Vision statement, objectives, strategies, performance indicators and evaluation

We note that the vision statement, objectives, performance indicators and evaluation methods have been updated in the draft WSPs in line with NSW's policy positions and other amended WSPs across the State. We commend that these now include more elements that are more specific and targeted to Aboriginal peoples than current WSPs, but we have the following concerns:

- The broad Aboriginal cultural objective in each draft WSP⁴ reads: 'The broad Aboriginal cultural objective of this Plan is to maintain the spiritual, social, customary and economic values and uses of water by Aboriginal peoples.'⁵ However, the more specific objectives, strategies and performance indicators of the draft WSPs that follow this broad objective make no mention of 'economic values and uses'. How NSW will address this part of the broad objective is therefore absent and incomplete and requires further attention in these supporting aspects of the draft WSPs.
- The draft WSPs⁶ note that 'Monitoring, evaluation and reporting (MER) plans have been developed for the water source and are available on the Department's website,' however, we are unable to locate these. These must offer clear direction about how the Aboriginal cultural objectives of the draft WSPs will be monitored, evaluated and reported on, with greater detail

⁴ Clause 10, draft *WSP for the NSW Murray and Lower Darling Regulated Rivers Water Sources 2020*; clause 12, draft *WSP for the Murray Unregulated River Water Sources 2011*; clause 10, draft *WSP for the Lower Murray-Darling Unregulated River Water Source 2011*.

⁵ This parallels the object of the *Water Management Act 2000* (NSW) to 'recognise and foster... benefits to the Aboriginal people in relation to their spiritual, social, customary and economic use of land and water' (see section 3(c)).

⁶ See Notes at Part 2 of draft *WSP for the NSW Murray and Lower Darling Regulated Rivers Water Sources 2020*; Part 2 of draft *WSP for the Murray Unregulated River Water Sources 2011*; Part 2 of draft *WSP for the Lower Murray-Darling Unregulated River Water Source 2011*.

beyond that currently listed. They should also actually be available, as suggested in the draft WSPs.

- MLDRIN notes the WRP contains a 'Monitoring, Evaluation and Reporting Plan', but this appears to be directed at guiding the Basin Plan's and WSPs' environmental objectives and associated reporting requirements, rather than the WSPs holistically. While this WRP MER Plan barely addresses Aboriginal or cultural needs, it identifies there are other 'proposed cultural and socio-economic MER Plans' (p.5) that form part of a coordinated or integrated approach to MER in NSW. These should be developed in partnership with First Nations and should be available for feedback.

Native title recognition and accommodation

In mid-2015, the native title rights and interests of the Barkandji and Malyangapa Peoples were legally recognised by the Federal Court of Australia, with rights and interests to additional areas added in mid-2017. The recognised native title area includes a 400km stretch of the Darling River (from Tilpa to the northern end of the Great Darling Anabranch), and several other water courses and lagoons⁷ covered by two draft WSPs in this WRP. Other native title determinations may arise into the future concerning the water sources governed by these draft WSPs.

We are pleased to see that the draft WSPs now (finally) correctly and appropriately identify that native title rights and interests do exist within the water sources they govern, and that these native title interests require water. However, we note several issues remain unaddressed despite this recognition, and require clarification about how existing and future native title rights and associated water needs are to be identified and accommodated in WSPs. We mirror the concerns raised by the NRC in their review of the Barwon-Darling Unregulated Water Sharing Plan here.

Recognition of existing native title holders and rights:

[These comments concern only the draft *WSP for the NSW Murray and Lower Darling Regulated Water Sources 2020* and the draft *WSP for the Lower Murray-Darling Unregulated Water Source 2011*.]

- The draft WSPs only recognise the Barkandji Traditional Owners as native title holders. The native title determinations that the draft WSPs reference recognise that both the Barkandji *and* Malyangapa People hold native title. NSW Government should confirm with the native title holders about preferred identification in these Plans.
- The National Native Title Tribunal reference for the Barkandji Traditional Owners #8 Part B in both draft WSPs is incorrect. It should be corrected to NCD 2017/001.
- Like the NRC in their review of the Barwon-Darling WSP, we are concerned 'that existing native title rights have not been recognised in a timely manner, despite provisions within the Plan that allow for amendments to reflect

⁷ *Barkandji Traditional Owners #8 v Attorney-General of New South Wales* [2015] FCA 604.

native title determinations.’⁸ Of particular concern, clause 19 the *WSP for the NSW Murray and Lower Darling Regulated Rivers 2016* stated that ‘At the commencement of this Plan, there are no native title rights in these water sources,’ despite the Barkandji’s Part A native title determination – which included clear rights to water – being handed down more than 12 months before this Plan commenced.⁹ If these draft plans are approved and commence in mid-2020, that will have been a five-year delay to updating the WSPs following the Barkandji’s successful native title determination, which itself took nearly 18 years to finalise in the first place. These unacceptable long-delays to correcting WSPs should not be repeated in the future.

Provisions for accommodating future native title determinations:

- The draft WSPs state that ‘the requirement for water to satisfy native title rights is the water that may be taken in the exercise of native title rights.’¹⁰ We note that this language has the potential to be more inclusive than that of the former WSPs. In particular, it may enable native title holders to access water for native title needs in the time between those rights being recognised by the Australian judicial system, and the NSW Government amending the relevant WSPs.
- We are concerned, however, that this approach may follow a somewhat circular logic that is unlikely to effectively accommodate, protect or reserve the water required to satisfy native title needs (those recognised already and any into the future). This can work to impact and/or undermine exercising native title rights as a form of basic landholder rights and/or impact on other, existing water entitlement holders.
- Greater clarification about if and how the draft WSPs can be amended following a native title determination is required. Currently there are inconsistencies between the Plans in this regard. The native title clause¹¹ in each WSP includes a note (not a clause) specifying that the ‘Plan may be amended if there is an additional or change to a native title determination in accordance with the *Native Title Act 1993* of the Commonwealth by which water is required.’ However, only the two Unregulated WSPs retain a clause in Part 12 that specifically allows for this kind of Plan amendment to give effect to a native title determination: ‘This Plan may be amended following the granting of a native title claim pursuant to the provisions of the *Native Title Act 1993* (Cth) to give effect to an entitlement granted under that claim.’¹² This clause was included in the existing regulated 2016 WSP¹³ but

⁸ Natural Resources Commission, *Review of the Water Sharing Plan for the Barwon-Darling Unregulated and Alluvial Water Sources 2012*, Document No D19/4123 (2019) 130.

⁹ Lana D. Hartwig, Sue Jackson and Natalie Osborne, ‘Recognition of Barkandji water rights in Australian settler-colonial water regimes’ (2018) 7(1) *Resources* 16.

¹⁰ Clause 19, draft *WSP for the NSW Murray and Lower Darling Regulated Rivers Water Sources 2020*; clause 20, draft *WSP for the Murray Unregulated River Water Sources 2011*; clause 18, draft *WSP for the Lower Murray-Darling Unregulated River Water Source 2011*.

¹¹ *Ibid.*

¹² Clause 74(4), draft *WSP for the Murray Unregulated River Water Sources 2011*; clause 73(3), draft *WSP for the Lower Murray-Darling Unregulated River Water Source 2011*.

appears to have been removed from the remade draft 2020 WSP without explanation. We strongly recommend this provision be added back into the 2020 Plan not only for internal consistency, but consistency with other WSPs too. MLDRIN sees that addressing this issue will be important for meeting the clause 10.55 requirement of the Basin Plan.

- Each draft WSP acknowledges that basic landholder rights requirements (which includes native title requirements) may increase during the duration of the Plan.¹⁴ The draft WSPs manage this through provisions that manage the sharing of water within the limits of water availability (i.e. Part 6 in each WSP). The draft Plans are, though, unclear about how exactly any native title water requirements – or increases to that over a Plan’s life – are accommodated for in this Part. Each WSPs’ Part 6 appears to predominantly concern determining measures for long-term water use and extraction and calculations for compliance rather than the accommodation of new water uses and needs. We seek further clarification on this issue.
- Similarly, we are concerned that the way native title water needs are currently accounted for (i.e. ‘water to satisfy native title rights is the water that may be taken in the exercise of native title rights’) may see native title water uses contribute to extraction or use beyond the limits of water availability and, therefore, contribute to assessments of non-compliance under Part 6 of these WSPs. We seek clarification on how these issues will be addressed.

The NRC recently recommended the following timeframes and procedures for improving native title related engagement and outcomes: (a) amending WSPs following future native title determinations and Indigenous Land Use Agreements within three months, and (b) undertaking detailed engagement, final amendment and allocation process within a further 12 months.¹⁵ We see that this model should be adopted across NSW WSPs, including the three that this submission concerns.

Aboriginal water access beyond native title

Many have noted the challenges associated with securing native title recognition through Australia’s judicial system,¹⁶ particularly in NSW which is arguably the longest and most severely impacted by colonisation. Aware of the challenges and

¹³ Clause 72(3), *WSP for the NSW Murray and Lower Darling Regulated Rivers Water Sources 2016*.

¹⁴ See note to clause 17, draft *WSP for the NSW Murray and Lower Darling Regulated Rivers Water Sources 2020*; clause 18(3), draft *WSP for the Murray Unregulated River Water Sources 2011*; clause 16(3), draft *WSP for the Lower Murray-Darling Unregulated River Water Source 2011*.

¹⁵ Natural Resources Commission, *Review of the Water Sharing Plan for the Barwon-Darling Unregulated and Alluvial Water Sources 2012*, Document No D19/4123 (2019) recommendation 14.

¹⁶ See, for example, Elizabeth Macpherson, ‘Beyond recognition: Lessons from Chile for allocating Indigenous water rights in Australia’ (2017) 40(3) *University of New South Wales Law Journal* 1130; Lisa Strelein and Tran Tran, ‘Building Indigenous governance from native title: Moving away from ‘fitting in’ to creating a decolonized space’ (2013) 18 *Review of Constitutional Studies* 19.

limitations inherent to the native title framework, First Nations' advocates, lawyers, and scholars have argued for other alternative options to facilitate Aboriginal water access.¹⁷ MLDRIN sees that while the draft WSPs contain some alternatives, we are concerned that these do not go far enough to provide adequate Aboriginal water access on Aboriginal-determined terms. We share these concerns with many others.¹⁸

Aboriginal-specific licencing arrangements

The three draft WSPs contain provisions for cultural water access licences up to 10ML per application, consistent with previous versions of these WSPs and indeed all WSPs across NSW. These licences, are subject to restrictive conditions that set volumetric limits, water use options, and prohibit water trade. To our knowledge, no Aboriginal communities or organisations in the WSP areas have applied for these licences or accessed water through them. Others have identified factors likely contributing to this lack of uptake, including lack of access to infrastructure (e.g. pumps, pipes, etc.), lack of access to land, issues with licence application processes, the above-mentioned licence conditions, and (prior to 2014) water licencing fees.¹⁹

Other Aboriginal-specific licences, like community development licences (or any equivalent mechanisms to recognise and foster economic benefits to Aboriginal people) or Aboriginal environmental licences are not included in these WSPs. MLDRIN has repeatedly raised concerns about the acceptability – and accessibility – of these entitlements. MLDRIN understands that the NSW Government was recently conducting a review on this Aboriginal water access licence framework. Outcomes from this review, and how long-standing concerns are to be addressed, have not yet been made available.

¹⁷ Jason Behrendt and Peter Thompson, 'The recognition and protection of Aboriginal interests in NSW rivers' (2004) 3(3) *Journal of Indigenous Policy* 37; Tony McAvoy 'Water – Fluid perceptions' (2006) 1(2) *Transforming Cultures eJournal* 97.

¹⁸ For example, Jason Behrendt and Peter Thompson, 'The recognition and protection of Aboriginal interests in NSW rivers' (2004) 3(3) *Journal of Indigenous Policy* 37; Council of Australian Governments, *National Water Initiative* (2004); Natural Resources Commission, *Review of the Water Sharing Plan for the Barwon-Darling Unregulated and Alluvial Water Sources 2012*, Document No D19/4123 (2019); Sue Jackson and Marcia Langton, 'Trends in the recognition of Indigenous water needs in Australian water reform: The limitations of 'cultural' entitlements in achieving water equity' (2012) 22(2-3) *The Journal of Water Law* 109; Poh-Long Tan and Sue Jackson, 'Impossible dreaming – does Australia's water law and policy fulfil Indigenous aspirations?' (2013) 30 *Environmental and Planning Law Journal* 132.

¹⁹ For example, Natural Resources Commission, *Review of the Water Sharing Plan for the Barwon-Darling Unregulated and Alluvial Water Sources 2012*, Document No D19/4123 (2019); Sue Jackson and Marcia Langton, 'Trends in the recognition of Indigenous water needs in Australian water reform: The limitations of 'cultural' entitlements in achieving water equity' (2012) 22(2-3) *The Journal of Water Law* 109; Brad Moggridge, Lyndal Betteridge and Ross Thompson, 'Integrating Aboriginal cultural values into water planning: A case study from New South Wales, Australia' (2019) 26(3) *Australasian Journal of Environmental Management* 273.

The NRC recommended that the NSW Government simplify and clarify these licences and application processes to ensure better access to water for Aboriginal peoples. Additionally, the NRC stressed that these licences – or other mechanisms – must provide for a diverse range of Aboriginal water preferences, including economic development opportunities.²⁰ We see extending these recommendations across all WSPs in NSW will help to meet the objectives of the *Water Management Act 2000* (NSW) and of individual WSPs.

Identifying and accommodating Aboriginal water values and objectives

The NRC identifies that ‘Aboriginal cultural values and objectives have not been effectively and explicitly detailed in water planning to date.’²¹ Indeed, we have already commented about how NSW has so far sought and recorded only some values, uses, objectives and outcomes of the Nations within the overarching WRP, as well as issues associated with those that have been recorded (see earlier in our submission). But, the draft WSPs also include objectives to ‘maintain’ and ‘enhance’ these kinds of values and uses, and thus attention at the WSP level is also warranted. Upholding existing provision in WSPs, as well as ensuring access to water, is necessary so that Aboriginal water values, uses, and objectives can be enjoyed, protected, maintained and enhanced.

First, we note there are inconsistent provisions for the protection of water-dependent Aboriginal cultural assets across the three WSPs. The two draft unregulated WSPs retain the Part 12 clause that allows for Plan amendment to include rules that protect water-dependent Aboriginal cultural assets.²² The draft 2020 regulated plan, however, has removed this clause which was present in the 2016 version.²³ The new 2020 draft regulated plan must be altered to ensure there are provisions that enable appropriate protection of these assets, and for consistency. MLDRIN sees addressing this issue will be important for meeting clause 10.55 of the Basin Plan.

Second, following the NRC’s recent recommendations,²⁴ we suggest the NSW Government commit to providing interim flows and/or allocations for each Nation in the WSPs’ areas. Doing so delivers ‘clear and immediate support for water rights that responds to a long period of inaction.’²⁵ Interim allocations should be built upon with an intentional and rigorous research process with First Nations to identify and document these values and uses, which then will inform an agreed appropriate flow

²⁰ See also Productivity Commission, *National water reform inquiry*, Report No 87 (2017).

²¹ Natural Resources Commission, *Review of the Water Sharing Plan for the Barwon-Darling Unregulated and Alluvial Water Sources 2012*, Document No D19/4123 (2019) 133.

²² Clause 74(5), draft *WSP for the Murray Unregulated River Water Sources 2011*; clause 73(5), draft *WSP for the Lower Murray-Darling Unregulated River Water Source 2011*.

²³ Clause 72(5), *WSP for the NSW Murray and Lower Darling Regulated Rivers Water Sources 2016*.

²⁴ Natural Resources Commission, *Review of the Water Sharing Plan for the Barwon-Darling Unregulated and Alluvial Water Sources 2012*, Document No D19/4123 (2019)

recommendation 14.

²⁵ *Ibid*, 136-137.

allocation to be reserved and secured within the WSP(s). In establishing an appropriate methodology, MLDRIN recommends drawing from the work of Aboriginal Waterways Assessments²⁶ and/or the National Cultural Flows Research Project outcomes,²⁷ as well as working with First Nations representative groups like MLDRIN and NBAN (where appropriate).

Procedural concerns with amending and developing the WSPs

We also have concerns with the NSW Government's approach to altering the Regulated WSP as part of WRP development. A new 2020 WSP has been produced rather than amending the existing 2016 WSP. This approach interrupts the auditing and reviewing mechanisms built into the *Water Management Act 2000*,²⁸ that are intended to offer greater transparency to water planning, management and implementation. With no audits of this regulated WSP publicly available, there is already little transparency on if and how the WSP has met its objectives to date.²⁹

The regulated WSP (in its 2003 version) was last reviewed by the NRC in 2012-13 alongside 30 other WSPs within and outside the MDB.³⁰ The 2016 WSP was due to be audited by the Natural Resources Commission in 2021 and then reviewed by 2026. This upcoming independent audit and formal review would have enabled crucial and timely examination and assessment of the Plan, including formal input from First Nations. By making a new 2020 Plan, this process is now delayed, without an alternative or concessional third-party examination offered in lieu.

The two draft unregulated WSPs are only amended, and therefore this third-party examination process is not delayed. Both unregulated WSPs are still due to be reviewed by the NRC in 2021.³¹

²⁶ Available at <http://www.mldrin.org.au/what-we-do/aboriginal-waterways-assessment/>

²⁷ Available at <http://www.culturalflows.com.au/>

²⁸ Section 43-44, *Water Management Act 2000* (NSW).

²⁹ Recent Sydney Morning Herald recent article, 'NSW water-sharing plans in disarray' by Kylar Loussikian highlights these issues. Available at <https://www.smh.com.au/politics/nsw/nsw-water-sharing-plans-in-disarray-20191003-p52xdo.html>

³⁰ Natural Resources Commission, *Review of 2004 water sharing plans*, Document No D13/1651 (2013).

³¹ NSW Department of Planning, Industry and Environment, *Proposed amendments to the Water Sharing Plan for the Lower Murray-Darling Unregulated and Alluvial Water Sources 2011* [factsheet] Publication No 19/377 (2019) 2-3; NSW Department of Planning, Industry and Environment, *Proposed amendments to the Water Sharing Plan for the Murray Unregulated and Alluvial Water Sources 2011* [factsheet] Publication No 19/376 (2019) 2-3.

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1. **Confirmation of primacy of the NSW Water Sharing Plan (WSP):** One of the most significant risks associated with NSW formally moving to the Basin Plan/Water Resource Plan model is that the WSP might be misconstrued as being subordinated to the Basin Plan or the Commonwealth’s other water legislation, regulations and Instruments. This is highly problematic, as the WSP remains the only instrument that protects, and has the opportunity to enhance, the rights of water users. As a policy instrument, the WSP is also much better suited to the type of adaptive management that is fundamentally necessary within the southern Murray-Darling Basin.

REQUEST: Include the following set of words within Part 1 (Introduction), of the WSP:

The Water Act 2007 of the Commonwealth, the regulations and other instrument made under it do not exclude, or limit in any way, concurrent operation of this Plan.

(**NOTE:** These words are intended to reflect, and reinforce, Part 11A (Interactions with State Laws) of the *Water Act 2007* (Cth), pursuant to which the Commonwealth’s water legislation is not intended to exclude or limit the concurrent operation of any law of a State.)

2. **Confirmation that implementation of the WSP, or the NSW Murray and Lower Darling Surface Water Resource Plan (WRP) will not in any way diminish existing water user rights:** There is already strong anecdotal evidence that the Murray-Darling Basin Authority (MDBA) will set highly unreasonable, and potentially unrealistic, expectations for the accreditation and subsequent implementation of all WRPs. Chapter 10 of the Basin Plan contains fifty-five specific obligations for WRP content, many of which overlap and potentially overreach obligations contained elsewhere in the Plan. This poses a significant risk for all water users, in terms of the protection of their existing rights, as well as their ability to enhance those rights where reasonable and possible under the WSP.

REQUEST: Include the following set of words within Part 1 (Introduction), of the WSP:

Nothing in this Plan requires a change in the reliability of water allocations.

(**NOTE:** These words reflect and reinforce section 6.14 of the Basin Plan (Risks arising from other changes to the Basin Plan).)

3. **Confirmation that any ‘new’ inclusions in Part 2 will not be legally binding under the Basin Plan:** It’s positive to see a vision statement that contains such a wide range of desirable outcomes, all of which can be worked towards either under this WSP, or elsewhere in the NSW water management framework. However, within Part 2 of the WSP, there are ten pages of objectives, strategies and indicators for achieving the vision statement, a number of which seem to be go beyond existing state arrangements. It’s unclear if these are intended to extend the current NSW water management framework in some way, or more concerningly, whether these inclusions are expected to become additional, legally binding obligations under the Basin Plan. It’s important the vision be confirmed as attainable using existing state arrangements, and that no ‘new’ content in Part 2 changes this understanding.

REQUEST ONE: Include the following set of words within Part 2 of the WSP:

This Part does not, in or of itself, require any person to take particular action or refrain from taking particular action. Failure to achieve anything in this Part does not, in itself, mean that:

(a) a person has acted inconsistently with the Basin Plan; or

(b) a person is required to take particular action or refrain from taking particular action in response to the failure.

(NOTE: The second sentence reflects the intent of section 9.11 of the Basin Plan (Failing to achieve a target), which specifies that failing to achieve a particular water quality or salinity target does not automatically mean the Basin Plan has been contravened, or that action must be taken.)

REQUEST TWO: Add new objectives, strategies and performance indicators to specifically address maintaining or improving the reliability of water allocations for holders of access licences.

4. **Confirmation that the strategies for reaching the targeted environmental objects under Part 2, clause 8, subclause 3, do not exceed the consumptive limits in place under the long-term average annual extraction limit and the long-term average sustainable diversion limit (SDL):** Efforts to return water to the environment have been underway for many years, and have a much longer history than the more recent Basin Plan. Previous versions of this WSP have achieved a number of successes in this area, and all this WSP should do is reflect the additional water recovery specified under the Basin Plan SDL. The strategies listed for reaching the WSP’s targeted environmental objects have the potential to go much further than this. It is important that it be clarified that all these strategies do is reinforce the existing extraction limit and give effect to the new SDL, and that no water volumes beyond this will effectively be ‘gifted’ by default to the environment. On this basis, the currently listed strategies should be re-written as follows:
- (a) (current) ~~reserve all water volume in excess of the long-term average annual extraction limit and the long-term average sustainable diversion limit for the environment~~
(revised) *meet the long-term average annual extraction limit and the long-term average sustainable diversion limit, as specified under this Plan*
 - (b) (current) ~~reserve a portion of natural flows to partially mitigate alterations to natural flow regimes in this water source~~
(revised) *permit a supplementary water event to occur once the provisions in clause 49 of this Plan have been met*
 - (c) (current) ~~reserve a portion of natural flows to maintain hydrological connectivity between this water source and riparian zones, wetlands and floodplains connected to this water source~~
(revised) not required as covered in (b) above
 - (d) (current) ~~reserve a share of water to support environmental watering events in streams, riparian zones, floodplains and wetlands connected to this water source~~
(revised) *give effect to Division 1 and Division 2 of Part 10 of this Plan*
 - (e) (current) ~~contribute to critical environmental and water quality events in downstream water sources~~
(revised) not required as covered in (d) above.

The same comments apply in respect of the corresponding paragraphs of clauses 10 and 11.

5. **Confirmation that the economic objectives, strategies and performance indicators under Part 2, clause 9, will be updated to reflect the most contemporary thinking on this topic:** Part 2, clause 9 hits all of the fundamentals necessary for successful irrigated agriculture: (i) stable and predictable water sharing; (ii) flexible water access; (iii) clear rules for managing extraction limits; and (iv) the ability to trade. However, the future of irrigated agriculture will not stop there. Opportunities to further optimise water access and use under this WSP should continue to be encouraged. A number

of critical Murray-Darling Basin (MDB) reviews are currently underway that speak directly to this, in particular: (i) the Independent Panel for the assessment of social and economic conditions in the MDB; and (ii) the ACCC inquiry into markets for tradeable water rights in the MDB. It's important that the findings of these reviews be incorporated into Part 2, clause 9 before the WSP is gazetted.

REQUEST: Confirm the following commitment in relation to Part 2, clause 9 of the WSP:

Prior to the gazettal of this Plan, clause 9 will be updated to reflect the most contemporary thinking on outcomes for the productive and economically efficient use of water resources. Draft text will be placed on public exhibition prior to its finalisation.

6. Confirmation that greater clarity will be provided within this WSP regarding the operation of Part 6, Division 4, clause 34, as it relates to any potential non-compliance with SDLs:

The formal shift from existing compliance arrangements to those under the Basin Plan is expected to be challenging. Confirming compliance with new SDLs, year-to-year, is likely to take time to perfect. The possibility of non-compliance 'errors' is expected to be high. It is important that water users under this WSP are not unfairly penalised as any teething problems associated with SDL compliance are sorted-out.

REQUEST ONE: Inclusion of a simplified table (e.g. as a new Appendix), that outlines the following:

- How non-compliance under the long-term average annual extraction limit is confirmed.
- How non-compliance under the new long-term average sustainable diversion limit is confirmed.
- Key differences between the two approaches in terms of the risk of a breach occurring 'in error'.

REQUEST TWO: Inclusion of a clearly stepped-out process, within this WSP, that:

- Confirms, that in the event of SDL non-compliance, the first step will be a detailed analysis and report on whether the reasonable excuse provisions under section 6.12 of the Basin Plan apply.
- Confirms that this exercise will be undertaken in full consultation with affected communities.

7. Confirmation, within the WSP itself, that operation of Part 10, Division 4, clause 72 will not in any way diminish existing water user rights:

MIL acknowledges the agreement of Basin Governments to implement pre-requisite policy measures (PPMs). It's also noted that PPM implementation in NSW will be subject to continued refinement, including after the WSP has been gazetted and the WRP has been accredited by the Commonwealth Water Minister. The PPMs could have material detrimental effects of available water determinates for general security access licences, for example (1) if environmental water were called from storage when there is water in the river downstream which could be used to fill the water order more efficiently, thereby increasing conveyance losses which will be socialised or (2) if the volume of return flows from environmental sites were to be overestimated. MIL confirms its understanding of the NSW Government's intention that implementation of PPMs will: *maximise environmental outcomes under the Basin Plan, without impacting on the reliability of other water users.*¹ It is important that this intention become a formal commitment within the WSP, backed by specific evidence of no impact.

REQUEST ONE: Inclusion of the following set of words within Part 10, Division 4, clause 72 of the WSP:

Implementation of PPMs must not impact on the reliability of other water users.

REQUEST TWO: Inclusion of a clearly phased process, under Part 10, Division 4, clause 72, that:

¹ NSW Government. *Prerequisite Policy Measures: Procedures for the NSW Murray and Lower Darling Regulated Rivers*. p. 1.

- Immediately seeks to assess through detailed analysis and reporting, whether implementation of PPMs within NSW has already had an impact on the reliability of water allocations for holders of access licences.
- Commits to update the analysis and reporting as PPM implementation in NSW is further refined.
- Confirms that this work will be undertaken in full consultation with affected communities.

REQUEST THREE: In order to limit third party impacts, the call of held environmental water from storage during regulated and unregulated flow events should be subject to an annual cap to be determined in consultation with affected stakeholders, including holders of general security access licences.

REQUEST FOUR: In order to mitigate third party impacts, crediting environmental return flows for downstream environmental use should be done on a conservative basis. For example, if environmental usage estimates were estimated with an accuracy of, say, plus or minus 20%, an additional 20% usage should be added to environmental water orders and debited from the relevant water allocation account.

REQUEST FIVE: On the face of it, the PPMs seem to be a way of using above-the-choke water both above and below the choke. It is not clear how this could work with the Barmah Choke water trading restrictions. This needs to be addressed. If the river were full and an environmental water holder were to order water to pass through the Barmah Choke, thereby causing additional conveyance losses, the conveyance losses must be debited from the environmental water holder and not socialised.

REQUEST SIX: Any requirements regarding measures to mitigate or offset the impact of the PPMs on third parties should have the force of law and be included in the same document as the PPMs themselves.

REQUEST SEVEN: Clause 44(4) implies that all conveyance losses for environmental flow reuse will be socialised. This clause needs to recognise that there must be no third party impacts on other water users.²

REQUEST EIGHT: Clause 44(5) implies that all conveyance losses for piggybacking will be socialised, although there is a possibility of the Minister mitigating third party impacts by establishing a debiting protocol (but there is no obligation for the Minister to do so). This is contrary to the NSW Government's promise not to implement the PPMs without mitigating third party inputs.

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- 8. A commitment, within the WSP, to a review aimed at optimising the yield of general security access licences, across all water-use types:** This request highlights an important issue for MIL, where changed patterns of water use downstream of the Barmah Choke are seen to be significantly eroding the reliability of general security access licences within our water source. There is also significant concern that changed patterns of water-use are materially influencing the historical linkages between inflows, bulk storage operation, state water shares and expected access licence allocations. Options to improve this situation in the NSW Murray require further investigation. MIL is not seeking a review that is in any way intended to diminish existing water user rights under the WSP.

REQUEST: Inclusion of a clearly stepped-out process, within this WSP, that:

- Immediately commences a review, aimed at optimising the yield of general security licences.
- Confirms that nothing in the review is intended to diminish existing rights under the WSP.
- Commits to undertaking the review in full consultation with all affected water-users.

² This needs to be made consistent with the combination debiting mitigation proposal pursuant to which estimated losses must, in some circumstances, be debited from the water allocation account of the person who ordered the water.

9. **River Murray Increased Flows (RMIF):** The Minister’s note in the draft WSP (p. 20) seeks feedback on the process for recognising RMIF within the WSP. MIL is presupposing that the inclusion of RMIF will have no negative impact on existing water user rights under the WSP, especially on the reliability of general security access licences. On this basis, MIL’s preference would be for the option that best reinforces this ‘no negative impact’ starting point.

10. **Barmah-Millewa Environmental Water Allowance:** It would be useful for the WSP to provide a simple description of the operation of the Barmah-Millewa Allowance, including confirmation that clause 49(3) will have no third party impact on supplementary licence holders. The description should be updated if the Allowance changes under the SDL Adjustment Mechanism process.

11. **Commitment and identification of planned environmental water (Part 4, clause 15, subclause 3):** Similar to comments made earlier in this submission, it is important that subclause 3 be better clarified to confirm that all it does is reinforce the Government’s commitment to the existing long-term average annual extraction limit and new SDLs. No water volumes beyond this should be ‘gifted’ by default to the environment.

A re-drafting of subclause 3 is required to ensure this is clear.

REQUEST: That the following words replace the current drafting:

meeting the long-term average annual extraction limit and the long-term average sustainable diversion limit, as specified under this Plan.

12. **Wakool-Tullakool Sub-Surface Drainage Scheme:** When active, this scheme is operated by MIL in partnership with NSW. Chapter 9, section 9.11, of the Basin Plan is very clear that a person cannot be required to take particular action in order to achieve a particular water quality or salinity target. It is important that this be emphasised, to confirm MIL will not be legally obliged to operate this scheme in order to achieve certain outcomes under either the WRP or the WSP.

REQUEST: That the following words be considered.

This Plan does not regulate the operation of the Wakool-Tullakool Sub-Surface Drainage Scheme.

(NOTE: These words are intended to reinforce Part 2, Division 1, subsection 22(10) of the *Water Act 2007* (Cth), which clarifies that the Basin Plan has no effect on land use or the control of pollution).

13. **Lower Darling River Flow Restart Allowance:** The Minister’s note in the draft plan (p. 54) seeks feedback on a proposal to create a 60 GL restart allowance for the Lower Darling. It is suggested that the allowance will be credited from ‘operational’ water, and not from existing reserves in storage. While the intent of the allowance is certainly admirable, nothing in pages 54 or 55 of the draft plan appear to explain how this proposal may impact on existing water rights under the WSP:

REQUEST: That the following be included in the WSP.

- A statement under clause 73 confirming that the allowance won’t diminish existing rights.
 - Commitment to the immediate commencement of a review, to verify there are no impacts on existing rights under the WSP, which is to be completed before the allowance starts.
-

- Confirmation that the review will be undertaken in consultation with all affected water-users.
-

14. New carryover prohibition: Clause 45(1)(d) of the draft WSP introduces a new prohibition on carrying over water allocation in the water allocation account of a regulated river (conveyance) access licence. This prohibition is not found in clause 53 of the *Water Sharing Plan for the New South Wales Murray and Lower Darling Regulated Rivers Water Sources 2016* (NSW).

REQUEST: This is a material and disadvantageous change, which takes away a property right of holders of regulated river (conveyance) access licences, and it should be rejected or compensation should be paid.

15. Deliveries to the Murrumbidgee River: WaterNSW uses MIL's infrastructure to deliver water into Yanco Creek and the Murrumbidgee River. This method of delivery incurs fewer losses than the alternative. It reduces conveyance losses in the Murrumbidgee Regulated River Water Source but increases conveyance losses in the New South Wales Murray Regulated River Water Source.

REQUEST: This should be taken into account in the sustainable diversion limits for each of those water sources.

16. Calculation of limits on the availability of water: The calculations under Part 6 should take into account assignments of rights under section 71Q of the *Water Management Act 2000* (NSW). They should also account for situations where a person in this water source purchases, say, a high security Victorian water share in the Victorian "*Murray water system*" and applies to have it tagged to a water supply work in this water source. Additionally, why does clause 27(3) refer only to reductions in the long-term average annual extraction limit? Trade under section 71U could result in increases in the long-term average annual extraction limit.

REQUEST: Calculations under Part 6 take into account the types of trade described above.

17. Uncontrolled flows: **REQUEST:** Clause 47 should state that water taken from uncontrolled flows within the limited prescribed in clause 47(2) will not be debited from the water allocation account.

18. Amendment of share component dealings (change of water source): Clause 52 of the draft WSP is more restrictive than clause 60 of the 2016 WSP. Why is this the case?

SUBMISSION: MURRAY AND LOWER DARLING SURFACE WATER RESOURCE PLAN

Context

The Commonwealth Environmental Water Holder (CEWH) appreciates the opportunity to provide a submission on the draft Murray and Lower Darling Surface Water Resource Plan (Murray-Lower Darling WRP) and accompanying documents.

This submission is made in the context of potential risks to the CEWH's statutory responsibilities, and proposes strategies to mitigate residual risks, consistent with the risk-based approach embedded within the Basin Plan (Chapter 10, Part 9). The CEWH's statutory responsibilities regarded in formulating this submission include:

- the *Water Act 2007* and Basin Plan 2012, to protect and restore priority environmental assets and ecosystem functions of the Murray-Darling Basin;
- the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), to ensure the efficient and effective use of Commonwealth resources (held environmental water); and
- advice with regard to Matters of National Environmental Significance protected under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), including wetlands of international importance (Ramsar wetlands), listed threatened species and endangered ecological communities and species of migratory waterbirds protected under international agreements.

Mitigating future risks

The Commonwealth Environmental Water Office (CEWO) has sought assurance through the NSW Stakeholder Advisory Panels (SAP) that the operation of the WRP and water sharing plan (WSP) will not compromise the statutory responsibilities of the CEWH (noted above). The NSW Department of Planning, Industry and Environment (Department) has used the feedback provided during the SAP process in finalising the current draft of the WRP and WSP. However, there remains some issues that should be addressed, and areas that would benefit from clarification to improve transparency and understanding.

Structure of the submission

Part A: Catchment specific issues

1. Planned environmental water
2. Operational strategies and transparency
3. Other matters

Part B: State-wide issues

4. Extreme events
5. Public assurance of best available information
6. SDL non-compliance
7. Monitoring, reporting and accounting
8. Water Quality Management Plan

Part C: Clarifications and corrections

PART A: CATCHMENT SPECIFIC ISSUES

1. Planned environmental water

Planned environmental water (PEW) represents the volume and flow characteristics that existed at the establishment of the Basin Plan settings for the Sustainable Diversion Limits (SDLs) and water recovery for the environment. The efficient and effective use of the Commonwealth water holdings are predicated on PEW being protected as per the intention of the Basin Plan (s10.28). Any changes which reduce the protection of PEW could increase the risk to priority environmental assets and the capacity of the CEWH to support targeted outcomes in the Murray Lower Darling catchment. To provide certainty to the management and protection of environmental water, further refinement of operational arrangements, improved transparency and clarification may be necessary. Suggestions to this effect are provided below.

Increased discretionary powers being provided to the operator

The draft NSW Murray-Lower Darling Regulated WSP (draft regulated WSP) includes amendments that introduce discretionary powers for river operators in making releases of water from the Barmah-Millewa Allowance and Murray Additional Allowance. The draft regulated WSP states that 'unless the operator otherwise determines, the operator is to make releases...at the request of the Environmental Water Manager'¹. This introduced discretion appears to reduce the legal protection of the environmental water allowances (EWA).

The environmental outcomes of the Basin-wide watering strategy and the Long Term Watering Plans are underpinned by PEW provisions managed consistent with the operating rules as originally devised. The 'rules' by their nature provide certainty for water planning, particularly for environmental water holders to determine the most effective use of held environmental water (HEW). Increased discretion in the operation of 'rules based' allowances creates uncertainty in the planning and coordination of environmental water and poses risks to the effective and efficient use of HEW.

The strategic use of PEW allowances and HEW is identified as a key risk management strategy throughout the draft WRP Risk Assessment and draft Water Quality Management Plan (WQMP). The effectiveness of environmental water for mitigating the identified risks is reduced where the use of rules-based water allowances become discretionary with an increased expectation on the use of HEW to ensure that the operation of the WRP/WSP does not compromise the priority environmental assets and functions².

The case for instituting increased operational flexibility for the management of EWA has not been clearly outlined within the draft Murray-Lower Darling WRP, however should this discretion be considered necessary the circumstances for the operator to not release EWA should be made explicit. If it is necessary to introduce operational flexibility, the EWA should be made available unless in accordance with the Incident Response Guide (IRG) (extreme

¹ Draft Murray Lower Darling Regulated WSP – Clause 60(2), Clause 62(3), Clause 63(4).

² Basin Plan s10.17

event management) or operational capacity limits, and in agreement with the NSW Environmental Water Manager.

We request that:

- the text at s60(2) of the draft regulated WSP is amended to require the river operator to make the release of the EWA at the request of the Environmental Water Manager unless determined otherwise in accordance with the Incident Response Guide (IRG) and capacity constraints, and in agreement with the NSW Environmental Water Manager; and
- accredited text is introduced within the Murray-Lower Darling WRP—at section 7.2 (Monitoring water resources)³, related to Basin Plan reporting under Schedule 12, Matter 9—requiring the annual reporting of occurrences where river operator discretion has been exercised resulting in a change to the release of the EWA from that planned/ordered by the NSW Environmental Water Manager.

Barmah-Millewa Environmental Water Allocation

The draft Murray-Lower Darling WRP states that “for transparency, it is proposed that the WSP be amended at clause 60(1) to specify that the EWA would be managed in accordance with the Barmah-Millewa operating rules and any procedures developed by the [state] Minister”. The proposed amendment aims to enable the formalisation of new operational rules to give effect to proposed changes under the Sustainable Diversion Limit (SDL) Adjustment Mechanism.

The Barmah-Millewa Forest EWA (B-MF EWA) SDL supply measure proposes a “*rule change to vary the rules associated with the water set aside by Victoria and New South Wales in an environmental account...to allow the use of other environmental water to target the environmental requirements set out in the Basin Plan. This measure proposes to not initiate or continue release from the B-MF EWA if a four monthly flood has already occurred.*”⁴ The draft Murray-Lower Darling WRP⁵ describes the proposed changes to the B-MF EWA operating rules as a formalisation of current practice. There have been no instances of the proposed rule to limit the use of the EWA being implemented in past operating practice. The flexible operation of the B-MF EWA is a core feature of the current Operating Rules⁶, as an enabling feature, and this should be reflected in the WSP.

³ Basin Plan s10.46

⁴ Sustainable Diversion Limit Adjustment Mechanism: Draft Determination Report, MDBA 2017; p36

⁵ Draft Murray Lower Darling WRP page 55

⁶ Operating Rules for the Barmah-Millewa EWA (2006) – cl10

The changes to the operating rule for the B-MF EWA poses several areas of concern for the CEWH:

- the rule change proposed, if prescribed in practice, does not enable watering to occur consistent with the draft Murray-Lower Darling Long Term Watering Plan (LTWP)⁷⁸, that notes overbank events may trigger waterbird breeding requiring additional watering “generally to the end of January”, to ensure breeding and recruitment success;
- reduction in the effectiveness and long term volume of PEW may result in increased risks to the ecological character of the Barmah Forest and NSW Central Murray Forests Ramsar sites – reducing the effectiveness of the “strategic use of the Barmah Millewa EWA” as a risk mitigation strategy⁹.

Changes to the operation of the PEW (B-MF EWA) should not be reliant on the substitution of HEW to mitigate environmental risks from the proposed changes. The substitution of HEW for B-MF EWA would appear contrary to the *Intergovernmental Agreement on Implementing Water Reform in the Murray Darling Basin*¹⁰.

The mechanism for amending EWA operational rules should include a consultative and evidence-based process that instils public confidence in the protection of the environmental outcomes from PEW provisions. Consistent with the 2006 Barmah-Millewa Operating Rules, proposed changes to the EWA should be subject to an assessment of negative impacts by the Murray-Darling Basin Authority.

For the purpose of transparency, and to mitigate the potential future risks from the proposed changes to the B-MF EWA, we request that:

- a quantitative assessment of net change in volume and effectiveness of the B-MF EWA is conducted and reported within section 4.4 of the Murray-Lower Darling WRP and detailed in Appendix C (*No net change in the protection of PEW* report);
- the Murray-Lower Darling WRP describe the process for amending the Operating Rules for the B-MF EWA and other procedures, including a commitment to consultation through the Environmental Water Advisory Group, and that changes would be made subject to agreement with the environmental water managers and rigorous assessment by the Murray-Darling Basin Authority consistent with cl10(b) of the 2006 Barmah-Millewa Operating Rules;
- the regulated WSP include text in Part 10 (System Operating Rules) that outlines the release triggers, release targets and the process for amending these targets and triggers consistent with the 2006 Barmah-Millewa Operating Rules (clauses 8, 9 and 10 respectively);

⁷ Murray Lower Darling Long Term Watering Plan Part B, p16-17

⁸ Basin Plan s10.26

⁹ NSW Murray and Lower Darling Surface WRP Risk Assessment, p.10

¹⁰ Intergovernmental Agreement on Implementing Water Reform in the Murray Darling Basin (June 2013), clause 3.5

- changes to operating rules are assessed in the context of future risk for meeting the environmental water requirements, with a risk mitigation strategy included within the WRP (section 3.3) requiring the operation of the B-MF EWA to be consistent with the Murray-Lower Darling LTWP;
- text to be included within Clause 60 of the draft regulated WSP identifying the NSW Environmental Water Manager being the NSW representative responsible for the operational use of the B-MF EWA (noting that the management of the Barmah-Millewa Allowance is a shared responsibility between NSW and Victoria); and
- accredited text is introduced at section 7.2 of the Murray-Lower Darling WRP (Monitoring water resources)¹¹, related to Basin Plan reporting under Schedule 12, Matter 9, requiring the annual reporting of occurrences when restrictions are made to the release of the EWA related to the introduction of new or temporary operating rules.

Water Quality Allowance in Lower Darling

The CEWH supports the proposed amendment to broaden the permissible uses of the Lower Darling EWA to mitigate any water quality issue in the water source¹². The previous clause that only enabled use of this water to address blue-green algae issues was unnecessarily restrictive. By increasing flexibility in the utilisation of this volume a greater number of water quality incidents can potentially be mitigated.

Restart volume in Lower Darling

The CEWH supports the proposed amendment to include a 60 GL restart allowance for the Lower Darling for the purpose of mitigating impacts to water quality in refuge pools when the Lower Darling River is re-started.¹³

To ensure the operating rule for the Restart Allowance is effective for the intended purpose and to avoid harmful water quality impacts such as de-oxygenated refuge pools, we request that the operating rule be developed consistent with the Murray-Lower Darling LTWP¹⁴. We encourage the Department to consult with the Environmental Water Advisory Group in developing the new operating rule.

¹¹ Basin Plan s10.46

¹² Draft Murray Lower Darling Regulated WSP – Clause 65(3)

¹³ Draft Murray Lower Darling Regulated WSP – Clause 73(3)

¹⁴ Murray Lower Darling LTWP Part B, p. 73

2. Operational strategies and transparency

Operational capacity of the Barmah Choke

The regulated capacity of the River Murray for supplying water through the Barmah Choke has progressively declined over successive years, creating a risk for water licence holders in accessing water allocation downstream of the Choke. The decline in regulated water supply capacity is symptomatic of the deterioration of the River Murray channel, and poses increased risk to the ecology of the Barmah-Millewa forests. This risk to water available for the environment and other water users has not been identified within the draft WRP Risk Assessment.

Operations that either restrict the supply of water for meeting environmental water requirements (i.e. shortfall), or result in flows in exceedance of tolerable thresholds for threatened species such as Murray Cod, may compromise the priority assets and ecosystem functions documented within the Murray-Lower Darling LTWP. Restrictions on water supply do not enable environmental watering between water resource areas¹⁵.

The likelihood of reoccurrence and high consequence of this issue would appear to result in a medium to high risk that warrants the inclusion of additional strategies to be included within the Murray-Lower Darling WRP. We note the public commitment of governments to address related issues of water supply within the southern connected basin and suggest that the Murray-Lower Darling WRP could include an acknowledgement of risk treatment options that are under current consideration or in early phase of implementation; this may include measures to improve environmental water delivery by the implementation of measures under the constraints management strategy.

We request that:

- the Murray-Lower Darling WRP and WRP Risk Assessment are revised to include risks related to the loss of operational capacity through the Barmah Choke to supply water for meeting environmental and other water supply;
- effective risk management strategies that are under current consideration or in early phase of implementation are described within the Murray-Lower Darling WRP, commensurate with the anticipated medium/high risk rating; and
- text is included at section 4.4 of the Murray-Lower Darling WRP acknowledging the importance of implementing measures for the relaxation of operational constraints to enable environmental watering between connected water resource areas.

Connectivity between water resource plan areas

The Lower-Darling and Barwon-Darling water resource plan areas are inextricably linked, the latter bearing particular importance for allowing environmental objectives to be met

¹⁵ Basin Plan s10.27

downstream in the Lower-Darling, and for the broader River Murray system. The decline in hydrological connectivity between these water resource areas is evident¹⁶, and the criticality for re-establishing hydrological connectivity is epitomised by the recent fish kills¹⁷, critical water quality events and the inability to supply critical human water needs for communities within the Lower-Darling River.

The Natural Resource Commission's (NRC) *Review of the Water Sharing Plan for the Barwon-Darling Unregulated and Alluvial Water Sources 2012* identified a range of recommendations to improve the management of connectivity¹⁸ across water resource plan areas in the northern Basin—fundamental to meeting the objectives of the Basin Plan¹⁹

The CEWH fully supports the recommendations of the NRC and acknowledges the positive work by the Department in developing improved operating rules and arrangements aimed at protecting HEW and PEW within the Northern Basin. The development of effective operating arrangements will need on-going development and refinement, however a key measure of success to these new water resource management arrangements will be the reoccurrence and volume of end-of-system flows measured as inflow into the Menindee Lakes system and increased security of supply for flows in the Lower Darling downstream of Weir 32. We encourage the Department to set out outcomes based targets that are Specific, Measurable, Attainable, Realistic and Timely (SMART) targets within the Murray-Lower Darling unregulated WSP and the regulated WSP that would guide the development, and later evaluation, of upstream water planning instruments. Targets should aim to provide shepherding of environmental flows to provide hydrological connectivity between the unregulated Barwon-Darling and the Lower Darling River water resource areas.

The draft WRP Risk Assessment appropriately identifies the need to protect a portion of high flow events in the Barwon-Darling²⁰. The CEWH suggests that this could be further strengthened by including explicit references to: protection of HEW; and the protection of a low-medium flows (PEW) specific to the minimum flow targets noted above and in alignment with the Murray and Lower Darling LTWP.

The protection of increased flows resulting from water recovery as part of the Basin Plan through the Menindee Lakes system and into the Lower Darling River is dependent on the final design of the Menindee Lakes SDL Supply Project. This project may provide opportunities, however also presents challenges that at present creates an uncertainty that

¹⁶ Carlile, P. 2017 Hydrological impacts of water management arrangements on low flows in the Barwon Darling system - <http://www.environment.gov.au/water/cewo/publications/hydrological-impacts-water-management-arrangements-low-flows-barwon-darling-river-system>

¹⁷ Vertessy et al. 2019 Assessment of the 2018-19 fish deaths in the Lower Darling - https://www.mdba.gov.au/sites/default/files/pubs/Final-Report-Independent-Panel-fish-deaths-lower%20Darling_4.pdf

¹⁸ Natural Resource Commission Review of the Water Sharing Plan for the Barwon-Darling Unregulated and Alluvial Water Sources 2012 – Recommendation: 8(b), 13(a)(b), G(a)(b)(c)

¹⁹ Basin Plan s10.27

²⁰ Draft Murray and Lower Darling WRP Risk Assessment – p. 5-6

is unassessed within the draft WRP Risk Assessment. The inclusion of future risks associated with the Menindee Lakes SDL Supply Project in the WRP Risk Assessment would provide guidance to the on-going project development and seed public confidence by providing recognition of the future challenges within scope for management.

We ask the Department to:

- establish SMART targets within the Murray-Lower Darling Regulated WSP and the Murray-Lower Darling Unregulated WSP to facilitate improved hydrological connectivity and security of supply for flows in the Lower Darling River;
- include explicit references to: protection of HEW; and the protection of a low-medium flows (PEW) with specific minimum flow targets to be included in the WRP/WSP;
- provide an assessment of future risks associated with the Menindee Lakes SDL Supply Project in the WRP Risk Assessment; and
- include accredited text at section 4.4 of the Murray-Lower Darling WRP providing a commitment to the revision of the regulated Murray-Lower Darling WSP to give effect to the implementation of the Menindee Lakes SDL Supply project.

Pre-requisite Policy Measures Implementation

Implementation of Pre-requisite Policy Measures (PPMs), referred to as unimplemented policy measures under the Basin Plan (s7.15) are a fundamental component of the SDL adjustment mechanism (supply measures). The objective of these measures are to provide for better environmental outcomes using less HEW than would otherwise have been necessary to recover; they allow for the efficient and effective use of HEW. Assessment that there has been effective implementation of PPMs is expected to be a matter for consideration in the 2024 SDL Reconciliation, required under the Basin Plan (s7.21).

The PPM Procedures Manual for the NSW Murray and Lower Darling Regulated Rivers (Procedures Manual) has the intended purpose to outline the detailed operating arrangements that would give practical effect to the policy objective of the PPMs. The CEWH has welcomed the Department's active engagement of the CEWO in its process for developing the Procedures Manual and our continued involvement in the on-going process of improvement.

The Procedures Manual provides a useful framework for adaptive management and includes initial operational settings that on paper provide a basis for the future practical implementation of effective measures. Commitment to a resourced program of work is essential to provide the CEWH confidence in on-going improvement; to ensure the efficient and effective use of water held for the environment; and to ensure a balanced approach to the management of operational risks.

To support on-going improvement, we list below the following issues arising from our review of the Procedures Manual:

- The accounting of environmental water use within the River Murray and Edward-Wakool System debits the environment for a portion of total system losses that historically would have been part of standard conveyance loss. The efficient use of

HEW requires an approach that applies only the losses incurred that are greater than under baseline system operations, and that can be directly attributed to the use of HEW i.e. incremental loss.

- Losses applied to environmental water that are overly conservative do not provide the intended protection from extraction, substitution or re-regulation. Opportunity for the extraction of environmental water may result in an exceedance of the SDL and resulting compliance issues.
- The treatment of risk should be commensurate with the actual risk relating to calculating use/loss of HEW. In cases, conservative approaches to minimise the chance of risk to other water users may be warranted, however there are currently no procedures outlined within the Procedures Manual for how risks are assessed or how the Department determines the appropriateness of risk treatments without the environment being disproportionately impacted. The application of risk treatments must be supported by credible evidence.
 - Evidence has not been available to support the current approach being applied by the Department to determining losses (environmental water use).
 - Additional risk treatments are required to be developed that aim to provide an equitable approach to the management of risks for all water users.

The establishment of a pathway for resolving these issues has been a positive initiative by the Department and we look forward to continued collaboration to ensure the implementation of fully operational and effective PPMs by 2024.

Conversion of licences

The Department is considering an option to allow the limited conversion of high security licences in the regulated river system to upstream unregulated access licences in connected upstream unregulated river water sources²¹. We question whether changes of this nature are likely to have an effect on water availability within the storages, impacting allocation determinations for downstream licence holders and planned environmental water provisions.

Without further detail regarding clarity on the rationale, potential impacts on other water licence holders and assessment of risks to the capacity to meet downstream environmental watering requirements, the CEWH does not support this proposal.

The CEWH supports the Department's commitment to undertake further assessment of the environmental impacts of this proposal and continue stakeholder consultation to inform the consideration of this provision. Specific analysis should be conducted on potential impacts on PEW, reliability of water licences, and impacts on hydrological connectivity between unregulated and regulated systems within the Murray-Lower Darling.

²¹ Draft Murray and Lower Darling Regulated WSP – Clause 50

3. Other matters

Access licence dealing rules

The CEWH supports the simplification of the existing dealing (trade) rules in the draft Regulated WSP²² consistent with the Murray-Darling Basin Agreement. The CEWH also supports the codification of the Inter-Valley Trade Procedures to facilitate the operation of an effective and efficient water market and to enable improved reporting required under the Basin Plan²³. We note that the Inter-Valley Trade Procedures referred to in clauses 53, 54, and 55 of the draft regulated WSP are to be codified in 2019²⁴. Without codification in either the WRP or the Regulated WSP we are concerned that these procedures would not be subject to external review processes.

Changes to water access dealing rules that improve the transparency of water market operations and minimise third party impacts to market participants are supported. The CEWH therefore does not support amendments to trade rules which promote the use of pre-approved ‘tagged trades’ as the preferred method of trade between water sources—unless those trades are identified and reported in public water registers and are treated with the same level of priority as trades that are undertaken in accordance with s.71T and s.71V of the Water Management Act 2000. To the full extent permissible, the CEWH encourages the establishment of reporting that provides a high level of transparency for all water trading.

The CEWH supports the review, codification and public release of the Inter-Valley Trade Procedures that would provide full transparency and enable reporting of matters regarding water allocations dealings under Schedule 12, matter 16 of the Basin Plan.

We request that clarification is provided within the WRP of the process for codifying the Inter-Valley Trade procedures, which should include opportunity for external consultation.

²² Draft Murray and Lower Darling Regulated WSP – Clause 51, Clause 53, Clause 54, Clause 55

²³ Basin Plan – Schedule 12, Item 16

²⁴ Draft Murray and Lower Darling WRP – s2.2, pg. 33

Aboriginal cultural access licence

The CEWH supports improving water access and outcomes for Indigenous people and addressing the social and economic impacts of the Murray Darling Basin, in accordance with the Basin Plan Commitments Package²⁵.

As agreed by Basin governments in the Basin Plan Commitments Package, the CEWH encourages further consideration of the opportunities through the WSP to improve water access and outcomes for Indigenous communities in the Murray-Darling Basin.

PART B: STATE-WIDE ISSUES

4. Extreme events

Managing risks to the maintenance of water supply

The draft WRP Risk Assessment identifies high and medium risks related to water available for the environment and for other water users due to climate change, with acknowledgement that there has been a *sustained and statistically unambiguous* increase in temperatures across the Murray-Darling Basin with surface water availability expected to decline²⁶. The Department has determined the residual risk to be tolerable and relies on the method for determining allocation and the sustainable diversion limit to ensure sustainable water management and protection of PEW/system water against unintended impacts.

Ensuring the maintenance of water supply is set out within the regulated WSP, requiring operators to manage the water supply system “in a way that water would be able to be supplied during the repeat of the worst drought”²⁷. The draft regulated WSP defines the *worst drought* by hydrological information up until 1 July 2004. The draft WRP (Measures in response to extreme events, p. 80) notes that the lowest annual inflows recorded occurred in 2006-07, and with inflows during the period from 2006 to 2010 being half the previously recorded minimum (prior to 2004). More recently, inflows into Menindee Lakes for the current period have been noted as the lowest on record. The management of water supply based on an inflow sequence that is not conservative to climate variability and extreme events creates a risk for the over-allocation of available resources.

The CEWH is concerned that the limitations set by the draft regulated WSP on the data used to determine water resource supply does not provide for sustainable water allocation policy, or an effective strategy for managing future risks under extreme climate events. The quarantining of allocation from accounts, as outlined in the draft IRG, should not be used as a default to enable the effective operation of the WRP and the supply of critical human water needs as a result of not considering worst inflows in the management of water supply. The

²⁵ Basin Plan Commitments Package – Clause 3

²⁶ Draft Murray and Lower Darling WRP Risk Assessment section 4.6, p. 149

²⁷ Draft Murray and Lower Darling Regulated WSP – Clause 67

quarantining of allocation from accounts limits the ability of individual water licence holders to manage their respective risks with certainty by using account provisions such as carry over. The CEWH plans the carry-over of HEW with consideration of water requirements for maintaining drought refuges during extreme events.

We request that:

- text is included within section 3 of the regulated WRP and the WRP Risk Assessment that provides commitment to a review of the method used under Clause 67 in the regulated WSP, of its effectiveness as a strategy for managing future risks to the environment and other water users;
- consideration is given to amending the text at Clause 67(2) in the regulated WSP to define the *worst drought* as the worst period of low inflows into the water source within the total record of flow information held by the Department; and
- the IRG and Extreme Events Policy are amended with regard to the recommendations above, enabling a precautionary approach to the management of water resources during extreme events.

Incident Response Guide

The draft Murray-Lower Darling WRP includes an IRG that aims to provide transparency in water resource sharing during extreme events²⁸. The IRG outlines the priorities and the management responses for each critical level. The “environment” has been identified as a high priority during extreme events.

The critical environmental needs that would be supported by operational procedures during critical dry periods are not sufficiently defined to guide water resource priorities relevant to each critical stage and to enable an assessment of residual risk from operational decisions.

The Murray-Lower Darling LTWP could support the implementation of the IRG by defining the critical environmental needs, and by including explicit cross references between both documents. Further, including a reference to how PEW would be treated during periods of water shortage and WSP suspension would create certainty in the management of critical environmental needs during extreme dry periods.

Stage 2 management actions outlined in the IRG include the use of measures such as block water deliveries. Operational measures under extreme conditions are necessary to maintain security of supply, however these may have undesirable environmental consequences by reducing hydrological connectivity and water quality within refuge habitat. Procedures for the management of block releases and other operational measures would benefit from being

²⁸ Draft Murray and Lower Darling Incident Response Guide - Table 2-1 Stages of the IRG framework

documented within a procedures manual, in association with strategies for mitigating potential environmental risks under extreme events.

To strengthen the Murray-Lower Darling IRG and implementation of the NSW Extreme Events Policy we request that:

- explicit reference to the LTWP during critical periods, in particular the critical environmental watering requirements;
- outline the process for documentation of operational procedures and assessment of risk associated with water resource management during extreme events; and

To provide increased certainty in the management of extreme events, we would also encourage:

- that the communications and engagement plan is disseminated at the earliest opportunity indicating how water licence holders will be consulted during critical periods; and
- detailed information is included in the IRG that outlines the process for reinstating resource allocations as conditions improve and criticality decreases.

5. Public assurance of best available information

Hydrological models are a foundational tool for informing decision-making, and it is important that there is confidence in the resulting information. Models can provide “best available” information, but quality assurance requires a transparent and independent process of evaluation. A public statement of assurance presenting an independent evaluation of the models (e.g. BDL and SDL model scenarios) being used to support consideration of key policy and operational issues would provide increased confidence in the modelling information, and importantly minimise dispute in instances of SDL non-compliance. The evaluation should be consistent with the criteria provided within the MDBA WRP position Statement 3C.

We request that a statement of assurance of the Murray and Lower Darling planning model covering the regulated and unregulated river systems be attached to the WRP as non-accredited supporting material.

6. Make good actions in response to SDL non-compliance

The draft regulated WSP²⁹ specifies that the take of environmental water through licences managed by the CEWH are not to be included in the assessment of Annual Permitted Take (SDL).

The draft regulated WSP³⁰ also specifies the actions to be taken following the non-compliance with either the 'long-term average annual extraction limit' or the 'long-term average Sustainable Diversion Limit'. The restorative actions specified in the draft regulated WSP³¹ provides the Minister with the authority to restrict the available water determinations of particular entitlement classes following breach of extraction limits. The CEWO notes that the application of restorative actions for SDL compliance that restrict allocation against HEW may not be effective in bringing extractive take back into compliance with the SDL. Rather, it may constrain the ability of the CEWH to access water and mitigate the environmental impacts from any growth in water extraction. As a principle, we believe restorative actions should target the source of SDL non-compliance. Treatments applied to address non-compliance should be demonstrated to be effective in returning take under the SDL back into compliance.

We request that the Department consider whether the restorative actions specified in Clause 34 of the draft regulated WSP should be revised to explicitly refer to entitlements within the SDL.

7. Monitoring, Reporting and Accounting

The Basin Plan requires monitoring and formal reporting on the use of environmental water, relating to both PEW and HEW³². This responsibility for reporting water accounting information extends to both state governments and environmental water holders.

The CEWH notes that the Transition Period Water Take report 2017-18 has identified 'inaccuracies in environmental data', issues with environmental water accounting and supports further work towards building a best practice in environmental water accounting³³.

The methods used for environmental water accounting reflect the type and scale of operations for the management of environmental water delivery. Environmental water extracted from the river and pumped into a wetland is metered in the same manner as irrigation water take. Environmental water delivered through irrigation channels is accounted to the same standard as required by irrigation water delivery. The accounting of environmental flows through the river system are reliant on the same services and standards

²⁹ Draft Murray Lower Darling Regulated WSP – Clause 32

³⁰ Draft Murray Lower Darling Regulated WSP – Clause 34

³¹ Draft Murray Lower Darling Regulated WSP – Clause 34(2)

³² Basin Plan - s10.46, Schedule 12, s13.14,

³³ MDBA Transition Period Water Take Report 2017-18, p. 163-164

as applied to bulk water management. Environmental water accounting, irrespective of the method used is reliant on the services provided by external parties and the oversight provided by the Department as the state regulatory authority.

As with all forms of water take, we encourage on-going improvement in the accuracy, reliability and credibility of environmental water accounting information. We look forward to continuing to collaborate with the Department to establish a program of work for improving the monitoring, reporting and accounting of environmental water use, related to the on-going improvement in PPM implementation.

We request that the WRP refers to a process for continuous improvement in environmental water accounting through the development of operational procedures to give effect to State and Commonwealth reporting obligation under the Basin Plan (s10.46, 13.14, Schedule 12).

We request that text within the WRP (with respect to Basin Plan s10.46) is included that outlines a commitment by the Department to the on-going improvement in the methods and practices underpinning environmental water accounting, to provide public accountability in the management of all water resources.

8. Water Quality Management Plan

The Water Quality Management Plan (WQMP) aims to provide a framework to protect, enhance and restore surface water quality, supporting the draft Murray-Lower Darling WRP and draft Murray-Lower Darling LTWP.

The CEWH notes that due to insufficient information³⁴ various risk assessments have not been undertaken for several types of water quality degradation outlined in the Basin Plan³⁵ including hypoxic low flow and blackwater events, water temperature outside of natural ranges, elevated pathogen counts, and elevated levels of pesticides and other contaminants. These risks have the potential to negatively impact environmental outcomes and should be assessed to provide assurance that the mitigation strategies in the WQMP will meet the requirements of the Basin Plan (Chapter 10, Part 7). We encourage the Department to consider including within the WRP a requirement for periodic reassessment of water quality risk as a key mitigation strategy.

Operational strategies aimed at treating identified water quality risks and maintaining basic river health should be considered a basic function of the WSP and be protected by normal operating rules. The effective operation of the WSP/WRP should not rely on strategies that presume the use of Commonwealth HEW³⁶. Decisions on the use of Commonwealth HEW will be made consistent with the statutory function of the independent CEWH under the

³⁴ Water Quality Management Plan – Table 3-1, Table 4-3

³⁵ Basin Plan 2012 – Ch 9, s9.02

³⁶ Water Quality Management Plan – Table 4-3, pg. 24, 26, 28-30

Commonwealth Water Act. As water quality risks are often exacerbated during extreme events, a cross reference with the IRG could strengthen both documents.

The following changes would strengthen the WQMP for supporting the water quality and river health objectives:

- include mechanism for the periodic review of emerging and existing risks to provide for the effective treatment of risks, and the basis for considering the need for new operating rules; and
- include explicit links between the WQMP and other WRP documents, i.e. IRG and LTWP.

PART C: CLARIFICATIONS AND CORRECTIONS

Below are several minor clarifications and corrections for consideration in finalising the WRP and WSP:

EWAG/SCBEWC reference in WSP

The draft regulated WSP includes new references to Environmental Water Advisory Groups (EWAGs) and the Southern Connected Basin Environmental Water Committee (SCBEWC) which does not accurately reflect the groups roles and responsibilities. We recommend that where these references occur the text is revised to reflect the respective terms of reference.

The text 'Significant wetlands within this water source...are primarily managed by the EWAG and the SCBEWC, according to the conditions of this Plan' should be amended to reflect the role of the NSW Environmental Water Manager.³⁷ We suggest that the text is revised to: 'Significant wetlands within this water source...are primarily managed by the NSW Environmental Water Manager in consultation with the EWAG and the SCBEWC, according to the conditions of this Plan'

The text 'environmental water allowances are managed by an Environmental Watering Advisory Group according to the rules in this Plan, and guided by the Murray and Lower Darling Long-term Watering Plan, and the EWAG and SCBEWC Annual Watering Plans' does not accurately reflect responsibilities of the EWAG.³⁸ The text should be revised to be consistent with the text in Part 10, Note 3 of the regulated WSP.

³⁷ Draft Murray Lower Darling Regulated WSP – Clause 8(2)(a)(i) Note 3

³⁸ Draft Murray Lower Darling Regulated WSP – Clause 8(2)(b) Note

Volumes of CEWH incorrect in Table 4-1 of draft Murray Lower Darling WRP

Murray Darling Basin Authority TLM water is included under the reported volume of CEWH-owned NSW Murray General Security in Table 4-1 of the WRP (pg 43); this representation of the TLM holdings creates confusion and is inaccurate. It is requested that a separate column is included in Table 4-1 identifying TLM water separately.

Typographic error

The MDBA has identified three sites within the NSW Murray and Lower Darling WRP area as key environmental assets, which are important for determining the environmental water requirements of the Basin. These are: Barmah-Millewa Forest, Edward-Wakool River System, and Lower Darling River System. Gunbower-Koondrook-Pericoota Forest was overlooked in this paragraph and we request for it to be included³⁹.

³⁹ Draft Murray and Lower Darling WRP – p. 47

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SUBMISSION

Draft NSW Murray and Lower Darling Surface Water Resource Plan

October 2019



Introduction

The NSW Irrigators' Council (NSWIC) is the peak body representing irrigation farmers and the irrigation farming industry in NSW. Our Members include valley water user associations, food and fibre groups, irrigation corporations and commodity groups from the rice, cotton, dairy and horticultural industries. Through our members, NSWIC represents over 12,000 water access licence holders in NSW who access regulated, unregulated and groundwater systems.

NSWIC engages in advocacy and policy development on behalf of the irrigation farming sector. As an apolitical entity, the Council provides advice to all stakeholders and decision makers.

Irrigation farmers are stewards of tremendous local, operational and practical knowledge in water management. With over 12,000 irrigation farmers in NSW, there is a wealth of knowledge available. To best utilise this knowledge requires participatory decision making and extensive consultation to ensure this knowledge can be incorporated into best-practice, evidence-based policy. NSWIC and our Members are a valuable way for Governments and agencies to access this knowledge.

NSWIC welcomes this public exhibition as an opportunity to share local, practical and operational knowledge and expertise in water management. NSWIC offers the expertise from our network of irrigation farmers and organisations on an ongoing basis to ensure water management is practical, community-minded and follows participatory process.

This submission represents the views of the Members of NSWIC with respect to the draft *NSW Murray and Lower Darling Surface Water Resource Plan (WRP)*. We particularly wish to acknowledge the following Member Organisations in the WRP area who have contributed to this submission:

- Murray Irrigation Limited,
- Murray Valley Private Diverters,
- Ricegrowers' Association of Australia Inc,
- South West Water Users,
- West Corrgan Private Irrigation District,
- Western Murray Irrigation Ltd.

Whilst this submission captures a number of critical issues for this WRP, and WRPs generally, NSWIC requests the Department work with our Member organisations in each specific valley to determine outcomes that best suit the unique needs, expectations and requirements of the local area.

Each NSWIC member reserves the right to independent policy on issues that directly relate to their areas of operation, expertise or any other issues that they deem relevant.



NSW Irrigators' Council's Guiding Principles

Integrity	Leadership	Evidence	Collaboration
Environmental health and sustainable resource access is integral to a successful irrigation industry.	Irrigation farmers in NSW and Australia are world leaders in water-efficient production with high ethical and environmental standards.	Evidence-based policy is essential. Research must be on-going, and include review mechanisms, to ensure the best-available data can inform best-practice policy through adaptive processes.	Irrigation farmers are stewards of tremendous knowledge in water management, and extensive consultation is needed to utilise this knowledge.
Water property rights (including accessibility, reliability and their fundamental characteristics) must be protected regardless of ownership.	Developing leadership will strengthen the sector and ensure competitiveness globally.	Innovation is fostered through research and development.	Government and industry must work together to ensure communication is informative, timely, and accessible.
Certainty and stability is fundamental for all water users.	Industry has zero tolerance for water theft.	Decision-making must ensure no negative unmitigated third-party impacts, including understanding cumulative and socio-economic impacts.	Irrigation farmers respect the prioritisation of water in the allocation framework.
All water (agricultural, environmental, cultural and industrial) must be measured, and used efficiently and effectively.			Collaboration with indigenous nations improves water management.



Overview

WRPs, as well as the subsequent changes to Water Sharing Plans (WSPs), are of critical importance for the irrigation farming industry and rural communities. This submission addresses key concerns in both the WRP and WSP, given the documents are inextricably linked to form the framework for managing water resources in the valley.

NSWIC acknowledges that the development of WRPs is a key commitment of the NSW Government's obligations under the Murray-Darling Basin Plan (Basin Plan).

It is unfortunate that NSWIC members are extremely disappointed with the process which has occurred for developing WRPs. In particular, members have expressed concern due to insufficient opportunity to review many of the rules contained in the WSP component of the WRP, a lack of genuine empowerment to contribute, insufficient resources, and a loss of confidence in the SAP process.

This submission is divided into 3 Key sections:

1. Impacts on Consumptive Water Use
2. Further Key Policy Matters for the Murray and Lower-Darling
3. General Matters

Some of the critical recommendations detailed in this submission include:

- Consideration of how the WSP rules can be improved to ensure that the level of take is at or near the Sustainable Diversion Limit (rather than on average being significantly less than the Diversion Limit, as has occurred to date – allowing for a significant 'Cap Credit' to develop in the NSW Murray Valley and elsewhere across the state).
- Any reduction in consumptive water (whether intended, or simply, in effect due to restricting access, availability, duration, timing, utility or reliability) must be accounted for, transparent, and justly compensated.
- Ensure water users (and others) have the opportunity to review the final WRP (and subsequent WSP changes) by making the final documents publicly available prior to finalisation / progression to the MDBA for accreditation.
- Social and economic objectives must genuinely be given equal value with measures to drive the irrigated agricultural sector and communities forward to best prosper within water management arrangements.
- New models of community empowerment are needed given stakeholders have lost confidence in existing processes which have proved to be ineffective and highly disappointing.



Submission

Impacts on Consumptive Water Use

Confirmation of primacy of the NSW Water Sharing Plan

With NSW formally moving to the Basin Plan/WRP model, one of the greatest risks is that the NSW WSP is misconstrued as being subordinated to Commonwealth legislation and regulatory instruments (e.g. the Basin Plan). This is deeply concerning given the WSP is the only instrument that protects, and has the opportunity to enhance, the rights of water users. The WSP is also a significantly better suited policy instrument to the type of adaptive management that is fundamentally necessary within the southern Murray-Darling Basin.

Recommendation: Include the following set of words within Part 1A (Introduction), of the WSP: *The Water Act 2007 of the Commonwealth, the regulations and other instrument made under it do not exclude, or limit in any way, concurrent operation of this Plan.*¹

Planned Environmental Water and Plan Limits

NSWIC trusts that the Departmental Staff reviewing this submission are cognisant of the ongoing issue which NSWIC is progressing with the NSW Department and the MDBA regarding Plan Limits. NSWIC has submitted to both the Department and the MDBA that no WRP is progressed to the Commonwealth for accreditation until the matter is resolved.

NSWIC has progressed correspondence to the Department and the MDBA, following a meeting on 3 October 2019, and both agencies have committed to providing a response, which we are currently awaiting. That correspondence is copied at Appendix 1.

In summary, water users have not been accessing up to the NSW Plan Limit, which is set in NSW WSPs, resulting in a large volume of under-used consumptive water within the available 'bucket' for consumptive usage. Water users, through the SAP process, have sought to progress rule changes which allow usage up to the legal limit, but these rule changes were either immediately dismissed or not progressed. As a result, consumptive water usage has been locked well below allowed Plan Limits (to the extent of approximately 2000GL of cap-credits).

There are historically different interpretation of Planned Environmental Water (PEW) between the *Water Management Act (2000)* (WMA) and *Water Act (2007)*. Now, the NSW Department has adopted the interpretation of PEW that any water not specified for consumptive use (thus including the underused water) becomes PEW by default. This means that the underused water - locked out from access from consumptive use due to inability to progress rule changes (despite being in the 'consumptive bucket') - will be permanently lost from the consumptive bucket as it becomes PEW by default. This is an unacceptable further reduction in water access well beyond the agreed water recovery under the Basin Plan.

¹ NOTE: These words are intended to reflect, and reinforce, Part 11A (Interactions with State Laws) of the Water Act 2007 (Cth), pursuant to which the Commonwealth's water legislation is not intended to exclude or limit the concurrent operation of any law of a State.



NSWIC seeks that the recommendations previously submitted to the Department on 3 October 2019 are adopted, as well as any additional recommendations contained in this submission.

Table 1 – Resolutions to Plan Limits Matters

Recommendation	Detail
<p>1. Provide confidence and assurance to water users through a position statement on Plan Limits and PEW.</p>	<p><i>Plan Limits are the baseline for implementation of the Murray-Darling Basin Plan in NSW.</i></p> <p><i>In NSW, the Sustainable Diversion Limit (SDL) is equal to the NSW WSP Plan Limit minus the agreed water recovery in each valley.</i></p> <p><i>Water users can access up to the SDL, and WRPs should not restrict access below the SDL.</i></p> <p><i>Water below the SDL is not considered Planned Environmental Water and is thus not subject to PEW requirements (such as an effectiveness test).</i></p> <p><i>Basin State Governments must make all reasonable efforts to ensure rules are in place to allow optimal (maximum efficiency, effectiveness and utilisation of) water use up to the SDL.</i></p> <p><i>A Water Resources Plan must demonstrate:</i></p> <ul style="list-style-type: none"> <i>a) That the effective quantity of reduced water usage is at maximum the SDL volume.</i> <i>b) That the legal protection, utility and effectiveness of water usage below the SDL is at minimum maintained by the WRP.</i> <i>c) That there is flexibility for adaptive management such as through rules changes for improved water management where the SDL remains respected.</i> <i>d) That states have mechanisms in place for underusage below the SDL (SDL credits) that does not change the balance between social, economic and environmental outcomes.</i>
<p>2. The simplification of the Planned Environmental Water Rules;</p>	<p>For example, the definition of PEW in Queensland is significantly more simple and clear on specifically not including consumptive water.</p> <p>Definition of PEW in QLD WRPs: <i>“The WRP defines planned environmental water (PEW) as the remaining share of the water resource that is not in the consumptive water share (i.e. permitted to be taken under the Act and water plan) and sets out rules and arrangements within the relevant legislative instrument for its management.”</i></p>
<p>3. Consideration of how the Water Sharing Plan rules can be improved to ensure that the level of take is at or near the Sustainable Diversion Limit (rather than on average being significantly less than</p>	<p>This should involve the development of an SDL Credit Mechanism, whereby:</p> <ol style="list-style-type: none"> 1. A clause in all WSPs (and the NSW WMA) to allow an amendment of the rules to allow consumptive usage to be able to reach the long-term average annual extraction limit. E.g. If after the first 3 years of a plan, actual water take is below the SDL, the minister must review, and implement rules (an SDL credit mechanism) to allow use up to plan limit, in consultation with water users.



<p>the Diversion Limit, as has occurred to date – allowing for a significant ‘Cap Credit’ to develop in the NSW Murray Valley).</p>	<p>2. NSW Minister allows for provisions in WSPs to trial options considered by the SAP, to allow flexibility and opportunity for improved water management.</p>
<p>4. Consultation through the SAP process on any variants and rule changes excluded from consideration as a result of this matter.</p>	<p>a. (i) Insertion into all NSW WRPs that amendments to the WRP will be provided by NSW following further consultation with SAPs on proposed rule changes which were otherwise excluded from consideration in the development of WRPs. (ii) Accreditation of WRPs only subject to NSW-DPIE consulting with SAPs to provide proposed rule changes to the MDBA for consideration to ensure water users can most optimally use up to the SDL in each valley and to ensure WRPs do not impact on water use below the SDL.</p> <p>b. The NSW Department, at the completion of the WRP development process should review the SAP framework and other internal government processes such as the interagency panel process</p>
<p>5. Consideration of how the Planned Environmental Water Rules can be modified to allow for the achievement of improved environmental outcomes, as well as improved water management for all water users.</p>	<p>This should also include understanding how the current arrangements would prevent even highly beneficial and necessary changes to water management for town water supply, river operations, and environmental water management.</p>

Confirmation that consumptive limits are respected in the Murray and Lower Darling

NSWIC members seek confirmation that the strategies for reaching the targeted environmental objects (under Part 2, clause 8, subclause 3) do not exceed the consumptive limits in place under the long-term average annual extraction limit and the long-term average sustainable diversion limit.

NSWIC notes that mechanisms to transfer water from irrigation farmers to the environment has a long history, predating the Basin Plan. Previous versions of this WSPs have achieved a number of successes to that effect, and now, all this revised WSP should do is reflect the additional water recovery specified under the Basin Plan SDL. However, the strategies listed for reaching the WSP’s targeted environmental objects have the potential to go much further than this. It is important that it be clarified that all these strategies do is reinforce the existing extraction limit and give effect to the new SDL, and that no water volumes beyond this will effectively be ‘gifted’ by default to the environment.

NSWIC notes that two new objectives have been included in the draft WSP (see Section 8(1) and (2)), which align with the draft Murray-lower Darling Long-Term Water Plan (LTWP) – see NSWIC Submission (Oct 2019). Under the LTWP (Chapter 5, p96) it is noted that total water volumes available



for the environment are insufficient to meet environmental needs, and thus coordinated delivery with natural events and operational water is proposed to assist with meeting target flows. We note that the use of PEW for these purposes has not historically occurred, particularly to meet Basin Plan objectives involving other States such as South Australia. NSWIC is concerned that this purpose can only be achieved by increasing the volume of PEW – thus decreasing the water availability for other water users (particularly through supplementary events). However, we note that the draft WRP does not suggest PEW is used to achieve Basin Plan Objectives (see P 41 which has no mention of PEW). NSWIC is concerned that in aligning the draft WSP with the LTWP (which will necessarily involve an increase in PEW) – as scheduled to this WRP – there will be a stealth additional impact on NSW water users, as well as shifting water management authority to the Commonwealth.

On the basis of the above concerns, the currently listed strategies should be re-written as follows in Table 2.

Table 2: Ensuring consumptive limits are respected in the Murray and Lower-Darling.

Current	Revised
(a) reserve all water volume in excess of the long-term average annual extraction limit and the long-term average sustainable diversion limit for the environment	<i>meet the long-term average annual extraction limit and the long-term average sustainable diversion limit, as specified under this Plan</i>
(b) reserve a portion of natural flows to partially mitigate alterations to natural flow regimes in this water source	<i>permit a supplementary water event to occur once the provisions in clause 49 of this Plan have been met</i>
(c) reserve a portion of natural flows to maintain hydrological connectivity between this water source and riparian zones, wetlands and floodplains connected to this water source	not required as covered in (b) above
(d) reserve a share of water to support environmental watering events in streams, riparian zones, floodplains and wetlands connected to this water source	<i>give effect to Division 1 and Division 2 of Part 10 of this Plan</i>
(e) contribute to critical environmental and water quality events in downstream water sources	not required as covered in (d) above.

The same comments apply in respect of the corresponding paragraphs of clauses 10 and 11.

NSWIC is also concerned by the phrases “reserve a portion of natural flows” and “reserve a share of water”. **Clarification is required** of the intent and further explanation, including: how much water is required to be reserved to comply with these requirements, what will be the impact on water entitlements, and will there be full and just compensation for those impacts?

NSWIC assumes that this is referring to PEW rules under Part 10 of the Plan. This must be clarified and explicitly stated, as the current wording risks being interpreted as an *additional* parcel of water. This must also occur to the further uses of this phrase in the plan. If this is referencing to PEW – it is also



problematic, given this is a new prescriptive requirement which was not included in the 2016 WSP (see the equivalent section 9(2) of the 2016 WSP). Any additional reserve of water requirement is an additional requirement to be met before water allocations are made to licence holders. This means it will have a full and direct impact on water users.

Further, NSWIC Members are not comfortable with LTWPs, nor WRPs, including flow regimes that have not undergone public consultation, given the significant impacts on riparian landowners and all water users. NSWIC Members have asked that these be removed from the documents until consultation has occurred on this component.

Reduced Supplementary Water Access

NSWIC is deeply concerned at the risks to supplementary water access under draft changes to the WSP.

For example:

Clause 8 (3)

(b) reserve a portion of natural flows to partially mitigate alterations to natural flow regimes in this water source, and

Notes. 1 Flow regimes is defined in the dictionary 2 The provisions in clause 49 of this Plan partially mitigate alterations to natural flow regimes in this water source by permitting a supplementary water event to occur once all requirements for planned environmental water have been met. These provisions contribute to the objectives in subclause (2).

(c) reserve a portion of natural flows to maintain hydrological connectivity between this water source and riparian zones, wetlands and floodplains connected to this water source, and

Notes. The provisions in clause 49 of this Plan contribute to maintaining the hydrological connectivity between the water source and connected wetlands by permitting a supplementary water event to occur once the connectivity requirements outlined in clause 49 for planned environmental water have been met.

The new requirements will certainly impact on the frequency and duration of supplementary water events, and the reliability for water licence holders. In effect, this reduces the water use by water users, and increases environmental water access by stealth.

Clause 8(3) suggests that a supplementary allocation will not be made available until “all” PEW requirements are met. NSWIC Members have concerns that this may be interpreted in future years in a manner that fully restricts access to supplementary water. This wording is arbitrary given the breadth of interpretation for meeting PEW requirements. Supplementary water is a significant part of the water portfolio for irrigation farmers, and if any reduction in access is to occur, it must be transparent (communicated), consulted on and justly compensated.



Recommendation: Any additional transfer of water from the consumptive pool to the environment (whether intended, or simply, in effect due to restricting access, availability, duration, timing, utility or reliability) must be accounted for, transparent, and justly compensated.

Clause 49(3) also broadly states “*or other Murray Water Source riverine ecosystem*”. This lacks definition and scope, and is alarmingly open to significant interpretation. The significant room for interpretation could significantly impact on the existing water rights of water users. Water users fear that supplementary water access will be cut off if there is even the slightest perceived beneficial outcome (albeit it, unmeasured or untargeted) elsewhere in the system. This is a highly unacceptable basis for determining supplementary water access. These changes were not discussed with the SAP.

Clause 49 (3) *The Minister must not announce a supplementary water event in the Murray Water Source between 1 April and 30 October, if, in the Minister’s opinion, the taking of the water will reduce beneficial flooding of the Barmah Millewa forests or other Murray Water Source riverine ecosystem.*

NSWIC Members have expressed disappointment with the prescriptive language in Clause 49(3) which dictates “The Minister must not...”. This does not provide any flexibility to the Minister to adaptively and responsively manage the system.

If there is no intention to reduce supplementary water access, then the language in the WSP should not change. If there is an intention to reduce supplementary water access, then meaningful consultation with the SAP and water users is required with the intention of developing options for solutions, and ensuring impacts are mitigated or offset, and the property rights of water users are justly compensated.

Recommendation: Remove these clauses from the WSP until appropriate consultation has occurred with water users. Conduct meaningful consultation with the SAP around supplementary water access with the intention of developing options for solutions.

Vision Statement

NSWIC Members are pleased with a broad and encompassing vision statement in the draft WSP. However, NSWIC Members are concerned that the listed means to realise the vision statement reach beyond the existing water management framework in NSW. **Clarification is required** as to whether the new inclusions in Part 2 of the WSP are intended to be legally binding Basin Plan obligations, and if they could lead to non-compliance or inconsistency with the Basin Plan.

Recommendation: Include the following set of words within Part 2 of the WSP:
This Part does not, in or of itself, require any person to take particular action or refrain from taking particular action. Failure to achieve anything in this Part does not, in itself, mean that:
 (a) *a person has acted inconsistently with the Basin Plan; or*
 (b) *a person is required to take particular action or refrain from taking particular action in response*



to the failure.²

NSWIC Members are concerned that the draft WSP favours Environmental Objectives (Section 8) over other objectives such as Economic (Section 9), Aboriginal cultural (Section 10) or Social and Cultural Objectives (Section 11), more so than in the 2016 Plan. For example:

- Section 8(1) provides that the broad environmental objective of the Plan is to *'protect and where possible enhance'* the ecological condition of the water source and its water dependent ecosystems.
- In comparison, Section 9(1) provides that the broad economic objective of the Plan is to simply *'maintain'* access to water to optimize economic benefit for irrigation, water dependent industries and local economies.

Recommendation: NSWIC recommends that the same verb is used for each objective to ensure that the reader understands that these objectives are of equal importance, as is required.

Recommendation: NSWIC recommends that that the 'targeted economic objectives' listed in Section 9(2) should also include the matters addressed in sub-Sections 10(1)(a) and (b) of the 2016 Plan, as follows:

- (a) support viable and sustainable water dependent industries over the long term,*
- and*
- (b) encourage economic efficiency in the management and use of water.*

Section 9(3) should include *'minimise the adverse impacts of water delivery on economic uses'*, similar to Section 10(3)(e) in the draft WSP.

Currently, one of the most critical issues in the Murray Valley is the persistent lack of General Security allocation, which is having detrimental ripple effects throughout local communities and economies. As part of realising social and economic outcomes in the valley, it would be apt for the objectives and performance indicators of the WSP to also include the reliability of water allocation for water access licence holders.

Recommendation: Add new objectives, strategies and performance indicators to specifically address maintaining or improving the reliability of water allocations for holders of access licences.

Recommendation: Include in the WSP a clearly stepped-out process to immediately commence a review aimed at optimising the yield and reliability of general security licences (without impacting on the yield and reliability of high security licences) to ensure the agricultural sector and communities can best prosper within water management arrangements. This review should be conducted in full consultation with water users.

Further Key Policy Matters for the Murray and Lower-Darling

² **NOTE:** The second sentence reflects the intent of section 9.11 of the Basin Plan (Failing to achieve a target), which specifies that failing to achieve a particular water quality or salinity target does not automatically mean the Basin Plan has been contravened, or that action must be taken.



Non-compliance with SDLs

NSWIC recognises that in transitioning from current compliance arrangement, to the new compliance arrangements with the SDLs, there are likely going to be some transitional issues as a result of shifting accounting and management systems. It is critical that any SDL compliance issues resulting from the transition, are not unduly inflicted as penalties onto water users, whilst the most appropriate systems are developed.

Water users are concerned about the high risks of non-compliance against the SDLs whilst the transition occurs, and what the impacts on water users would be. NSWIC thus **seeks that clarity** regarding the operation of Part 6, Division 4, clause 34, as it relates to any potential non-compliance with SDLs, is provided through the WSP.

Recommendation: Include explanation in the WSP of:

- How non-compliance under the long-term average annual extraction limit is confirmed.
- How non-compliance under the new long-term average sustainable diversion limit is confirmed.

Key differences between the two approaches in terms of the risk of a breach occurring 'in error'.

Recommendation: Include a clearly stepped-out process, within this WSP, that:

- Confirms, that in the event of SDL non-compliance, the first step will be a detailed analysis and report on whether the reasonable excuse provisions under section 6.12 of the Basin Plan apply.
- Confirms that this exercise will be undertaken in full consultation with affected communities.

System Operation Rules

NSWIC Members are disappointed that water users have not been given opportunity to review the environmental water allowance rules or general system operation rules set out in Divisions 1, 2, and 4 of Part 10.

Recommendation: NSWIC suggests that an additional provision be included in Part 12 to provide for amendments to the environmental water allowance rules or general system operation rules set out in divisions 1, 2 and 4 to Part 10. NSWIC seeks that public consultation occurs with the aim to:

- Simplify the rules so that they are more readily understandable and therefore acceptable by the general public; and,
- Improve the operation of the rules to maximise the environmental outcomes that can be achieved through their implementation.

Barmah Millewa Allowance



The Barman Millewa Allowance was established by agreement between NSW and Victoria to water the Barmah Millewa Forest under the MDBC.

NSWIC is concerned about the clause:

(3) Water may be released from the Barmah-Millewa Allowance for environmental purposes other than beneficial outcomes for the Barmah-Millewa Forest, provided the volume to be released is not required to provide environmentally beneficial outcomes for the Barmah-Millewa Forest under any relevant interstate agreement.

NSWIC is concerned that using the Barmah Millewa Allowance for purposes outside of the Barmah-Millewa is against the original intent of the Barmah Millewa Allowance. Whilst the original 2003 WSP clause included “for other environmental purposes” it is understood that this intent was for “other environmental purposes” within the Barmah Millewa Forest.

NSWIC understands that the reason for “other environmental purposes” was to provide for a more holistic approach to environmental water management, beyond simple specification of types of outcomes such as forest revegetation for fish flows, or other species.

NSWIC is concerned about this clause particularly given that once this water leaves the Barmah Millewa Forest, it is reregulated and contributes to water allocations in the valley.

Recommendation: Barmah Millewa Allowance releases should require concurrence between the NSW Environmental Water Holder and Minister for Water for use for environmental purposes within the Barmah Millewa Forest.

Recommendation: Provide clarity around the site-specificity of the Barmah Millewa Allowance to be for outcomes in the Barmah Millewa Forest, by correcting this likely misinterpretation. This may involve removing the words “for environmental purposes other than beneficial outcomes for the Barmah-Millewa Forest” or replacing those words with “*within the Barmah Millewa Forest or in immediate geographical proximity*”.

Recommendation: For clarity (as is already the case under the Barmah Millewa Operating Rules) include a clause, in reference to the Operating Rules, clarifying that flows returning from the Barmah Millewa Forest are reregulated and made available for NSW Murray allocation.

A clear description of the operation of the Barmah Millewa Allowance, including assurance that Clause 49(3) will have no negative third-party impacts on supplementary licence holders, would also be beneficial to the WSP.

River Murray Increased Flows

River Murray Increased Flows (RMIF) refers to water recovered through the ‘Water for Rivers’ program for environmental needs in the River Murray, consisting of 70 GL per year shared 50/50 between NSW and Victoria. Whilst RMIF water has been subject to temporary management arrangements since 2011, NSWIC understands that the Minister has requested consultation “to determine the characteristics of NSW’s share of this water, as PEW or other entitlement, and formally include it in the



amended Water Sharing Plan for the NSW Murray and Lower Darling Regulated Rivers Water Sources 2020”.

As a principle, NSWIC supports the option that best respects existing water user rights, with no negative unmitigated impacts.

Key considerations include:

- Licence Type – NSWIC is concerned that RMIF currently has no licence type, and the characteristics of this water are unknown. There are particular concerns about the possibility of RMIF becoming a new licence type, and the impacts of this on existing water users.
- Channel Capacity – NSWIC Members feel that as RMIF is, in effect, ‘new water’, that its required share of channel capacity should only be made available after all existing water entitlement holders have had their delivery needs satisfied. RMIF water management would be most effective if coordinated with the water usage across other water users. This may involve using the off-peak times for channel capacity (May – August), or through a WSP clause specifying that spare channel capacity is required for an RMIF release. That would allow optimal outcomes across water users, whilst respecting the principle of no negative unmitigated impacts on existing water rights.
- Water holder – NSWIC Members see it as most appropriate for the NSW share of this water to be held by NSW, not the CEWH.
- Fees and Charges – RMIF water should be subject to the same fees and charges that other water users are subject to. Given that RMIF water has characteristics that most closely reflect High-Security water, NSWIC Members believe that RMIF water should be subject to high-security water fees and charges.
- Spillage – As RMIF water can only be carried over for 1 year, **clarification must be provided** through the WSP that in flood years where environmental water needs are satisfied, that the water remains in the available resource.

Recommendation: The release and management of RMIF water must require concurrence with the NSW Minister for Water and NSW environmental water manager.

Available water determinations for High Security, Conveyance and General Security water

NSWIC Members are concerned by Clause 38.

Clause 38 **Available water determinations for regulated river (high security) access licences**
 (4) The Minister must not make an available water determination under subclause
 (1), (l) or (3), unless sufficient water is available for all of the following:
 (a) to meet the environmental water provisions in Divisions 1 and 2 of Part 10 that
 are relevant to the respective water source,

Note: Divisions 1 and 2 of Part 10 relate to aspects of Planned Environmental Water.

Currently, the minister can make a determination for High Security allocation without needing to meet these provisions, and General Security allocation can reach 30% before requiring repayment. NSWIC Members **seek clarification** of whether Clause 38 changes the current prioritisation of water access.



This clause says that the Minister must not make water available until these EWA buckets are dealt with, which contradicts what is actually written in Divisions 1 and 2 of Part 10.

We again reiterate the point that “the Minister must not” is inappropriate language and should be returned to “should not” to allow for flexible and adaptive management.

Recommendation: Clause 38 should be removed, and clarification around the intent is required.

New Carryover Provisions

NSWIC is concerned about the new prohibition on carrying over water allocation in the account of a regulated river (conveyance) access licence (clause 45(1)(d)). This prohibition is not found in clause 53 of the WSP for the *New South Wales Murray and Lower Darling Regulated Rivers Water Sources 2016 (NSW)*.

Recommendation: As a fundamental principle, any infringement on a property right must be subject to full and just compensation. This is a fundamental constitutional right which must be respected.

Pre-requisite policy measures

NSWIC acknowledges agreement by Basin Governments to implement Pre-requisite Policy Measures (PPMs), noting that implementation of PPMs in NSW is subject to further refinement following the WSP gazettal and WRP accreditation.

PPMs must not impact on the reliability of supply to other water entitlement holders. NSWIC notes that in the relevant PPM Procedures³, PPMs will: *maximise environmental outcomes under the Basin Plan, without impacting on the reliability of other water users.*

This intention must be reflected in the WSP to give confidence and assurance to water users that this intention will be respected. Water users also require evidence to support the claim that there will be no impact on reliability, and for this evidence to be regularly reviewed to ensure impacts do not arise into the future.

Transparency and accountability in the implementation of PPMs is also essential to provide confidence that water entitlement holders are not being negatively impacted. NSWIC questions the adequacy of the proposed procedures manual for managing Pre-requisite Policy Measures (PPMs), and **seeks that further work is undertaken** to improve the framework for implementing the PPMs.

Recommendation: Inclusion of the following set of words within Part 10, Division 4, clause 72 of the WSP: *Implementation of PPMs must not impact on the reliability of other water users.*

Recommendation: Inclusion of a clearly phased process, under Part 10, Division 4, clause 72, that:

³ NSW Government. *Prerequisite Policy Measures: Procedures for the NSW Murray and Lower Darling Regulated Rivers*. p. 1.



- Immediately seeks to assess through detailed analysis and reporting, whether implementation of PPMs within NSW has already had an impact on the reliability of water allocations for holders of access licences.
- Commits to update the analysis and reporting as PPM implementation in NSW is further refined.
- Confirms that this work will be undertaken in full consultation with affected communities.

Recommendation: Further develop the proposed procedures manual for managing PPMs, to ensure transparency and accountability in the implementation of PPMs, and to ensure the reliability of supply to water entitlement holders is not impacted.

Lower Darling River Flow Restart Allowance

NSWIC acknowledges the Minister's note seeking feedback on the proposal for a Lower Darling River Flow Restart Allowance of 60GL. This measure is designed to enable an initial pulse release to flush stagnant water, so that normal regulated flows can resume safely.

NSWIC notes that the allowance will be triggered once the Lower Darling River at Weir 32 (GS 425012), near Menindee, ceases to flow for at least 10 consecutive days. NSWIC also notes that the 60GL will be operational water and will become available from future inflows to the Menindee Lakes, not from existing reserves in storage.

NSWIC strongly welcomes the intent of this measure. NSWIC does **seek clarification and further information** on how the proposal would impact on existing water rights and access for water users. Existing water user rights must be respected, and any impacts must be identified, mitigated or offset.

Lower Darling River

NSWIC Members on the Lower-Darling are concerned by the lack of connectivity through the system. The relationship between WRPs, and thus WSPs, is critical to ensure objectives can be met across the system. In this circumstance, it is critical that planning for the Barwon-Darling WRP area and Lower-Darling WRP appropriately align, and that sufficient connectivity in planning is enabled to achieve appropriate outcomes in both valleys.

There are also concerns that carryover arrangements for the Lower-Darling are a replication of the Murray and are not consistent with the needs and requirements of the Lower-Darling, particularly relating to the operations of Menindee Lakes.

NSWIC requests that the Department contact our member organisation South West Water Users to address the issues in the Lower-Darling.

General Matters

Flexibility of language

NSWIC is concerned about changes to the wording in the draft WSP that restrict the Ministers flexibility in decision-making. Flexibility for the Minister to manage the water resources in the optimal



manner should not be curtailed by restrictive language. For example, changes to wording such as “should not” to “must not” (see Clause 49) are significant changes which must be clearly highlighted, as they significantly impact upon the Ministers ability to manage the water resources flexibly and adaptively.

Changes to wording which (whilst appearing minor) have significant impacts for water management, should be clearly highlighted (for transparency) and justified (for accountability).

Consultation with Water Users

Consultation has been unacceptable.

Water users feel frustrated that their concerns and proposals are not progressed and are dismissed. Water users have lost faith in the SAP process and have no confidence that proposals will even be considered. This has resulted in stakeholders feeling fatigued and frustrated and totally disempowered and isolated in water management decisions.

In particular, NSWIC Members have reported the SAP being highly unproductive and very unsatisfactory. Examples of the reasons for this view, which NSWIC Members have reported, include:

- The Department did not have a suitable model (Source Model) for the NSW Murray and Lower Darling valleys to enable proposed rule changes to be modelled to the degree of accuracy required to provide NSW Government staff and stakeholders with any level of confidence. Consequently, water users have been unable to consider rule changes with potential impacts on water availability. Whilst we understand that the Department is now developing this model, it will not be available until after the review timeframe. This is unacceptable.
- The resources dedicated to WRP development, particularly for this valley, are insufficient, given NSW is responsible for developing 22 Water Resource Plans and are clearly under time pressure.
- There is a perceived reluctance/resistance to consider any substantial changes to the Plan rules, due to a perceived risk to the final accreditation of the Plan, including the requirement to meet the Murray-Darling Basin Plan objectives.
- SAP members have reported that there is a lack of local knowledge in the process and lack of people who are able to provide detailed responses to local management issues.
- SAP members are frequently told “we will get back to you on that” but the matters are reported to be not followed up. This means there remains a lack of clarity in the matters the SAP are to be discussing.

Recommendation: NSWIC is calling for an audit of the SAP process with new standards for transparency and accountability (record keeping, reporting, and clearly established processes) including providing reasons for decisions made.

Recommendation: NSWIC seeks a written undertaking by 31 October 2019 that WRPs will not be submitted to the Murray Darling Basin Authority until the community and SAPs have had the opportunity to resolve grievances in both the WRP and the WSP component, and these have been appropriately addressed.

Review Period



Whilst the NSW Murray and Lower Darling WSP commenced in 2014, thus being due for review/renewal in 2014, the Department postponed the review until 2016. Despite the best efforts from industry, that review did not occur, and the WSP was renewed in 2016 without consultation. This has rattled stakeholder confidence in reviews, which is simply unacceptable in the context of a policy framework built on adaptive management.

NSWIC Members are now concerned that the review period has been extended by another 3 years. Long time periods before reviews are inadequate as it does not allow adaptive management and responsiveness to the effectiveness/ineffectiveness of measures contained within the Plan. This extended timeframe for the review is particularly inappropriate given that it was not discussed by the SAP, and there are changes in the plan which were not consulted on.

Recommendation: The WSP must be subject to a 5-year review to ensure adaptive management is feasible and responsiveness to issues.

Recommendation: By 30 November 2019, NSWIC seeks a written statement confirming that many of the rules contained in the Water Sharing Plan component of the Water Resource Plans will be reviewed comprehensively in 2020 (specifically to give effect to the issues raised in Table 1).

Outstanding Issues

NSWIC is also deeply concerned that there are a number of outstanding issues (in a number of valleys) which have not yet been addressed through the WSP/WRP process. Whilst commitments have been provided verbally, there has been no written statement to give confidence to water users that the outstanding issues are being progressed, and how they will be progressed.

Recommendation: NSWIC Members in the Murray-Valley request a letter giving assurances of the progression of outstanding issues by 30 November.

WSP/WRP Changes

NSWIC Members have expressed concern about the volume of changes in the draft WSP which may slip under the radar.

NSWIC submits that (for transparency) stakeholders must have opportunity to view and provide feedback on any changes from the draft WRP to the final WRP prior to being progressed for accreditation.

Recommendation: To ensure transparency and ease of review, a tracked changes version of the draft WSP should be provided to the SAP as soon as possible.

Recommendation: The final WRP should be made publicly available prior to progression to the MDBA for accreditation, and any changes must be consulted upon.



Overarching Objectives

NSWIC recommends that the Overarching Objectives (Box 1-1) that are recognised by this WRP must be measurable, are re-ordered to reflect the priority or importance of the objectives. Measurable objectives, with a well-defined baseline, are required to assess the degree of change.

The current leading objective regarding giving effect to relevant international agreements (whilst fundamental to the legal architecture of the Basin Plan) appears as a weak objective, particularly given the context of a relatively water insecure region to which this WRP applies.

NSWIC recommends that the final objective *“to improve water security for all uses of Basin water resources”* should be the priority objective. That objective is critical for all within the Basin, and spans the agricultural sector, the environment and communities.

NSWIC further recommends that it is important that the objectives of this WRP align with the objectives of the WSP.

Recommendation: The objectives must be measurable, and ordered to reflect the priority or importance, with *“to improve water security for all uses of Basin water resources”* being the key overarching objective.

Economic Objectives

NSWIC continues to be concerned that the economic objectives and indicators being used in the WRP process are highly insufficient, rudimentary, and do not reflect contemporary thinking about the economic value of water.

The indicators used to measure economic objectives require expansion to reach beyond just market indicators and trade. Broader economic indicators are required to understand the flow-on, or multiplier effects, arising from water use in a region. Economic objectives should include indicators of economic and social development in a region, for example: employment, average household incomes, and Gross Regional Product. Consideration should be given to the economic objectives for the agricultural industry, the supporting industries and rural communities supported by agricultural water use.

There is currently work being undertaken by the Australian Farm Institute (AFI) looking at how the economic value of irrigated agriculture in NSW can be quantified. NSWIC encourages the Department to liaise with AFI to investigate measures/indicators to better understand and quantify the economic objectives of WRPs.

Furthermore, as aforementioned, there needs to be a measure of impacts on reliability, with metrics such as General-Security allocation in July, October, February and June.

Recommendation: Further work is needed to expand the economic indicators used to measure the economic objectives, to ensure the multiplier effect of socio-economic development of regional communities and related industries are included. This should also include economic impacts of reliability of water allocations.



Recommendation: The WRP needs a clear and well-defined statement of desired economic outcomes with appropriate and contemporary economic indicators. Economic objectives must be considered as equally important objectives which the plan genuinely strives to achieve.

Recommendation: NSWIC recommends that mechanisms to monitor and respond to changing socio-economic conditions as a result of implementing the Basin Plan at a local and valley-level are put in place. This should include regular Socio-Economic Impact Assessments, with flexibility to implement measures in response to the findings.

Within this draft WSP, Part 2, Clause 9 does address some of the fundamental requirements for irrigated agriculture in the valley. However, the WSPs and WRPs should also look to the future of irrigated agriculture, and how industry and communities can best be supported to prosper securely and sustainably into the future. Given that this topic is the focus of many current inquiries⁴, the findings from these inquiries must be appropriately utilised by being incorporated into the WSP and WRP where appropriate.

Recommendation: Confirm the following commitment in relation to Part 2, clause 9 of the WSP: *Prior to the gazettal of this Plan, clause 9 will be updated to reflect the most contemporary thinking on outcomes for the productive and economically efficient use of water resources. Draft text will be placed on public exhibition prior to its finalisation.*

Socio-Economic Assessment

It is widely documented that water recovery under the Basin Plan, has significant impacts on rural communities and economies. These real human impacts cannot be overlooked, and strategies must be in place at all levels to understand and minimise these impacts. Continual monitoring of socio-economic conditions, with adaptive management principles in place, is essential to ensuring the Basin Plan can be implemented with the least possible negative impacts on communities.

At present, the Commonwealth Government is undertaking the Independent Assessment of Social and Economic Conditions in the Basin. NSWIC recommends that flexibility is maintained so that the findings from this assessment, and other identified socio-economic impacts, can be incorporated into water resource planning at a local and valley level.

Recommendation: NSWIC recommends that mechanisms to monitor and respond to changing socio-economic conditions as a result of implementing the Basin Plan at a local and valley-level are put in place. This should include regular Socio-Economic Impact Assessment, with flexibility to implement measures in response to the findings.

Readability

Improved readability is needed to ensure clarity, transparency and reduced likelihood of misinterpretation of the WRP.

⁴ (i) the Independent Panel for the assessment of social and economic conditions in the MDB; and (ii) the ACCC inquiry into markets for tradeable water rights in the MDB.



The WRP (and other WRPs) are overly complex, requiring extensive cross-referencing. NSWIC raised this concern in the first tranche of WRPs that were on public exhibition earlier this year. NSWIC understands that the reason for this approach was to allow flexibility for supporting documents to be amended as required, without needing to amend the WRP itself. However, greater attention is needed to simplify the information, explain the relationship between various planning instruments, and to ensure public consultation on all the components referred to by the WRP if those components are to have effect through the WRP.

NSWIC is particularly concerned that the WRP references a number of supporting documents which have not been through public consultation. This complexity means stakeholders have a limited ability to fully assess and review the impacts.

Whilst it is understood that the intended audience of this document is largely for accreditation by the MDBA, in the interests of transparency and clarity, as well as public confidence, a core principle of WRPs should be accessibility and comprehension by a broader audience. NSWIC is aware that the WRPs of other Basin States are significantly shorter, clearer and simpler and we question why the NSW WRPs cannot be the same.

Recommendation: Reduce the complexity of the WRP and improve the readability. Ensure public consultation has occurred for all the documents referenced, and given effect, through the WRP.

Conclusion

Transitioning to Basin Plan and WRP models of water management is an incredibly testing process for water users, given the premise of reducing consumptive water use to meet the SDLs. WRPs, and the consequent changes to WSPs, must be developed with the utmost consideration to avoid any additional impacts on water users beyond the requirements under the Basin Plan.

Given both state and federal water management legislation gives equal weighting to social and economic outcomes, WRPs and WSPs must both strive for excellence in productive water use, to ensure the agricultural industry and communities can flourish as productively, efficiently, and sustainably as possible.

NSWIC welcomes further engagement to coordinate and articulate views from our members throughout the WRP process.

Kind regards,

NSW Irrigators' Council.



Appendix 1

Copy of Correspondence to NSW D-PIE and MDBA (3 October 2019)

[EXCERPT]

Process to resolutions: Allowing consumptive water use up to the Sustainable Diversion Limit

Objective:

To ensure under-utilised consumptive water is not converted to Planned Environmental Water and provide practical resolution to the issue of assessment for rule changes made in State Water Sharing Plans (WSPs) and therefore Water Resource Plans (WRPs).

Aims:

1. To allow usage up to the Sustainable Diversion Limit, as committed as Plan Limits minus water recovery.
2. To ensure adaptive management is possible, with flexibility to change rules if desirable through an agreed and transparent process.
3. To provide clarity, certainty, transparency and definitiveness to future decision-making.

Summary of Issue:

The Sustainable Diversion Limit (SDL) is (as was committed) Plan Limits minus the required water recovery.

Consumptive water users have not been accessing up to the NSW Plan Limit, which is set in NSW Water Sharing Plans (WSPs). This resulted in a large volume (approx. 2000GL) of under-used consumptive water.

Underusage is a result of the Millennium Drought, a long haul of water trading reforms, new carryover provisions, as well as rules that restrict usage under certain conditions.

Until recently, the NSW Government and Murray-Darling Basin Authority (MDBA) interpret provisions that relate underused water very differently according to the differences in the *Water Management Act (2000)* (WMA) and *Water Act (2007)* in determining Planned Environmental Water. Under the Water Act, any water not specified for consumptive use (thus including the underused water) becomes Planned Environmental Water (PEW) by default. The NSW Government in the Fact Sheet relating to PEW have adopted the MDBA position that this unused water is PEW and any change to Water Sharing Plans to allow access up to SDL would result in a reduction in PEW. This position is inconsistent with NSW WMA which specifies all water above Plan Limit is PEW, or water that is specified.

The difference in PEW protection creates a problem due to the interpretation that no net reduction requires an “effectiveness test”⁵ relating to the protection of PEW (and thus, restricts access to the underused water) as a result of any changes to the rules in place at the time of signing the Basin Plan (Nov 2012). The NSW WMA does not legally recognise this water as PEW, the use of an *effectiveness test* and the interpretation of its legal standing is currently not substantiated.

⁵ s 10.28 of the Basin Plan



The rigidity of the effectiveness test has stopped SAPs from progressing viable and constructive rule changes. NSWIC Members have reported that SAP members came to the conclusion that there was neither opportunity nor appetite to change rules for improved conditions for productive water use (or for other usage such as town water supply, drought resilience or improved environmental outcomes), and consequently many rule changes were either withdrawn, not put forward, or not progressed.

What this means:

- 1) Water users will be locked out of underused consumptive water as it becomes PEW by default. This is in addition to the agreed water recovery under the Basin Plan. This has potential to undermine NSW ability to efficiently manage water resources into the future.
- 2) The consultation process for WRP development was flawed, as viable options were not considered by the SAP (as many were immediately dismissed by NSW, for a range of reasons but one being not being capable of passing the MDBA effectiveness test).

Water users respect Sustainable Diversions Limits and have participated in the water recovery to reach those lower limits in good faith, but this ceding of an additional 2000GL is not acceptable, nor is the reluctance to allow for improved water management within the consumptive pool. A way forward is needed.

SUMMARY OF NECESSARY ACTIONS

1. **Position Statement** from the NSW Government and MDBA.
2. Amend the **Definition of PEW** in NSW WRPs to be consistent with QLD.
3. NSW must develop an **SDL Credit Mechanism**:
 - a. A clause in all WSPs (and the NSW WMA) to allow an **amendment of the rules** to allow consumptive usage to be able to reach the long-term average annual extraction limit. E.g. If after the first 3 years of a plan, actual water take is below the SDL, the minister must review, and implement rules (an SDL credit mechanism) to allow use up to plan limit, in consultation with water users.
 - b. NSW Minister allows for provisions in WSPs to **trial options** considered by the SAP, to allow flexibility and opportunity for improved water management.
4. **Consultation** through the SAP process on any variants and rule changes excluded from consideration as a result of this matter:
 - a. (i) **Insertion** into all NSW WRPs that amendments to the WRP will be provided by NSW following further consultation with SAPs on proposed rule changes which were otherwise excluded from consideration in the development of WRPs.
(ii) Accreditation of WRPs **only subject to** NSW-DPIE consulting with SAPs to provide proposed rule changes to the MDBA for consideration to ensure water users can most optimally use up to the SDL in each valley and to ensure WRPs do not impact on water use below the SDL.
 - b. The NSW Department, at the completion of the WRP development process should review the SAP framework and other internal government processes such as the interagency panel process
5. Provide a **test case** for NSW using a realistic example rule change (e.g. *Namoi - current package of rules including supplementary rule change*, as attached) to determine how the effectiveness test can be practically implemented demonstrating the principle of access up to BDL for



consumptive take. MDBA test this package PRIOR to any NSW WRP being submitted for accreditation.

DETAILED AGENCY ACTIONS

1) CONFIRMATION and CLARIFICATION through a Position Statement

For the avoidance of doubt, and to provide certainty and transparency, NSWIC seeks a formal Position Statement from both the NSW Department and the MDBA.

Example of required position statements from NSW Government and MDBA:

Plan Limits are the baseline for implementation of the Murray-Darling Basin Plan in NSW.

In NSW, the Sustainable Diversion Limit (SDL) is equal to the NSW WSP Plan Limit minus the agreed water recovery in each valley.

Water users can access up to the SDL, and WRPs should not restrict access below the SDL.

Water below the SDL is not considered Planned Environmental Water and is thus not subject to PEW requirements (such as an effectiveness test).

Basin State Governments must make all reasonable efforts to ensure rules are in place to allow optimal (maximum efficiency, effectiveness and utilisation of) water use up to the SDL.

A Water Resources Plan must demonstrate:

- a) That the effective quantity of reduced water usage is at maximum the SDL volume.*
- b) That the legal protection, utility and effectiveness of water usage below the SDL is at minimum maintained by the WRP.*
- c) That there is flexibility for adaptive management such as through rules changes for improved water management where the SDL remains respected.*
- d) That states have **mechanisms in place for underusage below the SDL** (SDL credits) that does not change the balance between social, economic and environmental outcomes.*

NSWIC welcomes the statement from Minister Pavey that "NSW Government has made it clear that we will be allowing take up to plan limits"⁶.

NSWIC also welcomes verbal statements by the MDBA that the MDBA recognises Plan Limits as the base case for implementation of the Basin Plan.

2) Amend the Definition of PEW in NSW WRPs to be consistent with QLD WRPs

Definition of PEW in QLD WRPs:

*"The WRP defines planned environmental water (PEW) as the remaining share of the water resource that is **not in the consumptive water share** (i.e. **permitted to be taken under the Act and water plan**) and sets out rules and arrangements within the relevant legislative instrument for its management."*

3) MECHANISMS to RESPOND

3a) SDL CREDIT MECHANISM: Provisions which allow usage up to the SDL

⁶ <https://www.theland.com.au/story/6403594/commonwealth-water-ownership-rule-rewrite-sparking-backlash/?cs=4956>



The NSW Department (to give effect to part D above), must add a clause to all WSPs (and the *NSW Water Management Act*) to allow an amendment of the rules to allow consumptive usage to be able to reach the long-term average annual extraction limit. This is an opportunity to action rule changes that were not progressed due to this new interpretation or a lack of time and resources during this development phase.

Whilst there are provisions that describe actions that will reduce take in the event of use being below the SDL; WSPs are currently silent on actions that allow increased take (still below the SDL), in the event of use being restricted below the SDL.

Inclusion in all NSW WSPs and the NSW Water Management Act:

If after the first 3 years of a plan, actual water take is below the SDL, the minister must review, and implement rules (an SDL credit mechanism) to allow use up to plan limit, in consultation with water users.

The specific SDL credit mechanism would be unique to each valley and thus must be developed on a valley-specific basis.

At present, there is a 20% threshold for the accumulation of SDL credits, after which, the remainder is forfeited. This is unacceptable as it results in substantial negative impacts to regional NSW communities above and beyond the SDL. Prior to this threshold being reached, NSW must include a trigger within WSP/WRPs to ensure access to consumptive water is maintained.

3b) RULE CHANGE MECHANISM: Provisions which allow rule changes and to test assumptions

If the NSW Government wants viable options to improve water security, flexible mechanisms need to be built into existing WSPs to allow for trials to take place in future to test these new options. It is critical that the NSW Government maintains flexibility to adaptively manage river systems as new knowledge, experiences and scenarios develop over time.

NSWIC specifically asks that the NSW Minister allows for provisions in WSPs to trial options considered by the SAP.

For example, a clause to the effect of:

*(XX): Subclause (YY) establishes a decision-making framework whereby rules changes considered to have a **reasonable likelihood** of leading to **improved management** or **outcomes** towards plan objectives, can be applied on a trial basis for a period of x months. The outcomes of any trial will inform longer term rules to be negotiated for these water sources that is consistent with the requirements of the Murray-Darling Basin Plan.*

(YY): To give effect to Clause XX, determination of a reasonable likelihood of leading to improved management or outcomes, must:

(a) Demonstrate a neutral or beneficial impact on social, economic, environmental outcomes; or

(b) Where YY(a) cannot be demonstrated in full, or if a negative outcome is foreseeable, demonstrate avoidance, appropriate full mitigation or just compensation for:

- Otherwise unmitigated third-party impacts;
- Changes to fundamental characteristics of any licenced water, including the outcomes on reliability, utility and accessibility of water.
- Compensate water users for reduction in reliability and access



(c) Consideration must also be given to the likelihood, extent and significance of:

- Community acceptability and willingness;
- Variants since the time of publication of this Plan (including, but not limited to, new knowledge);
- The degree of foreseeable benefits of the trial.

(ZZ) Upon completion of the x months the trial becomes incorporated into the WSP, unless otherwise negotiated.

4) Consultation through the SAP process on any variations and rule changes not considered as a result of this matter

4a) NSW Recognise limitations on SAP consultation

DPIE Water should collate the list of rules that were overlooked for each valley and provide these to SAPs as a record of rules to considered. They should also provide a report to each SAP on the variants resulting from the base case being Plan Limits (rather than the 2012 rules or conditions which the SAPs were informed of).

The SAP are to be given an opportunity to consider:

- i) existing options (e.g. rule changes) which were not progressed to the NSW Government as a result of the misinformed understanding;
- ii) new options which may now be both beneficial for improved water management, but also possible under a correct understanding of Plan Limits.

In order to allow the timeframe for submission of WRPs to be possible, an overarching provision permitting the SAPs to bring forward rule changes in the short term to not hold up the finalisation of WRP accreditation should be inserted.

(i) Insertion into ALL NSW WRPs:

“Amendments to this WRP will be provided by NSW following further consultation with Stakeholder Advisory Panels on proposed rule changes which were otherwise excluded from consideration in the development of WRPs, these will be brought forward in the first 12 months of the plan by 30th June 2021”.

(ii) MDBA Position in advising the Minister for approval of the WRP:

“subject to NSW-DPIE consulting with Stakeholder Advisory Panels to provide proposed rule changes to the MDBA for consideration to ensure water users can most optimally use up to the SDL in each valley and to ensure WRPs do not impact on water use below the SDL.”

4b) Process for review the SAP consultation

The NSW Department, at the completion of the WRP development process should review the SAP framework and other internal government processes such as the interagency panel process, as part of the evaluation of their engagement. The process should look to identify stakeholder involvement and satisfaction and to highlight ways to improve the process moving forward. This should also include the process that resulted in NSW and the MDBA working collaboratively on developing WRPs.

[EXCERPT ENDS]

**DRAFT NSW MURRAY AND LOWER DARLING SURFACE WATER
RESOURCE PLAN**

MURRAY VALLEY PRIVATE DIVERTERS

PUBLIC SUBMISSION

October 2019

Introduction

Murray Valley Private Diverters (MVPD) represents private entity pumpers in the NSW Murray Valley and its tributaries including the Edward, Wakool and Niemur River systems.

Our organisation participated in the formal consultation process via the NSW State Advisory Panel (SAP) for the Murray and Lower Darling. We appreciate the opportunity to now formally respond to the NSW Government's draft NSW Murray and Lower Darling Surface Water Resource Plan.

Irrigator Members of the SAP have continually expressed disappointment and concern over the lack of detail on the real effects of proposed changes to WSP through new requirements of the Water Resource Plans. There is a high level of concern that the Water Resource Plan will create additional Murray Darling Basin Authority (MDBA) conditions that NSW will have to comply with in order for plans to be accredited. MVPD believes the ramifications have not been fully explained, are non-transparent and not well understood by the NSW Government.

SAP processes have provided power point presentation on aspects and requirements to be considered in Water Resource Plans, but there has been a distinct lack of transparency on the implications to rural communities affected by the decisions.

Aspects of the SAP process appear to have focussed on presentation of information without context and in many cases, accompanied by an inability to respond to specific questions.

MVPD acknowledges the challenges the NSW Departments have in relation to requirements imposed on them by the Water Act 2007 and Basin Plan and the internal NSW departmental changes that have occurred in similar time period. This has created additional risks to NSW Murray and Lower Darling WSP regions due to the 'non continuity' of experienced Murray Valley specific staff to identify, respond to issues of concern.

SAP Consultation:

Recommendation:

- **That NSW does not proceed with the Murray and Lower Darling Water Resource Plan in its current form until further explanation and detailed consultation on proposed changes outlined in the draft plan occurs.**

Background: Water Act 2007 and The Murray Darling Basin Plan

The Federal Water Act established the political strategies for management and use of water in the Murray Darling Basin.

Continued criticism of the Murray Darling Basin Plan's failures can be traced to the wording in the Water Act 2007 and its legal interpretation by the Murray Darling Basin Authority when formulating the Murray Darling Basin Plan.

The Basin Plan in its current form does not meet the objects of the Water Act 2007 and these include the objectives for social, economic and environmental interests) (*Refer Appendix A*)

The Basin Plan places higher social, economic and environmental risks on the Southern Basin, primarily in the NSW Murray Valley and in the Lower Darling.

Up to 83% of water recovered to date under the Basin Plan has occurred in the Southern Basin. Maximum impact on irrigated agriculture has occurred in NSW Murray and the Lower Darling and also in Northern Victoria's Goulburn Valley.

Negative impacts also extend to future Government/MDBA decisions on how the Murray and Edward Wakool River systems are operated as the Water Act 2007 and the Basin Plan implementation reaches full maturity and beyond.

It is not possible to meet the Basin Plan objectives by using the Murray and Edward Wakool System as the primary mechanism to deliver environmental flows to South Australia Lower Lakes and to new irrigation developments downstream of the Barmah Choke.

NSW Murray and Lower Darling Water Sharing Plan

The Murray Darling Basin Plan should not take primacy over existing State rights and State priorities for NSW State Water Sharing Plans.

The Basin Plan sets the Sustainable Diversion Limits and guides water recovery across the Basin. The Murray Darling Basin Authority (MDBA) should not exceed its powers/role to now set additional requirements for NSW under accreditation requirements of Water Resource Plans and the implication of such conditions being a requirement in Water Sharing Plans.

Recommendation:

- *NSW acknowledge and include components of the Basin Plan that are consistent with the MDBA's Sustainable Diversion Limits (SDL) but retains the right to reject or amend MDBA additional targets that are being imposed as additional conditions for WRPs accreditation.*

Part 2, Vision, Objectives, strategies and performance indicators of the Murray and Lower Darling WRP/ WSP

MVDP is concerned that the proposed WRP places higher priority on the environment and does not adequately safeguard the social and economic interests of human stakeholders in the valley.

The Vision and Objectives include reference to:

- a) Health and enhancement of water sources and its water dependent ecosystems
- b) Productive and economically efficient use of water resources
- c) Social & cultural benefits to urban and rural communities
- d) Spiritual, social, customary and economic benefits to Aboriginal communities

Environmental Objectives include:

- (1) Protect, enhance the ecological condition of the water sources and their dependent ecosystems (instream, riparian, floodplain ecosystems over the term of this plan.
- (2) Targeted environmental objectives refer to **target objectives and targeted ecological populations and processes as defined in the Dictionary**
- (3) The strategies for reaching targeted environmental objectives of the plan:
 - a. Reserve all water volumes in excess of long-term average annual extraction limits and SDL limits for the environment
 - b. Reserve a portion of natural flows to partially mitigate alterations to natural flows
 - c. Reserve a portion of natural flows to maintain hydrological connectivity between this water source, floodplains, wetlands, riparian zones.

Recommendation:

- **NSW revises the WRP /WSP to ensure a balance of social, economic, and environmental values**
- *NSW does not support targeted objectives and targeted ecological populations as defined in a dictionary that is not transparent and has not been consulted upon*
- *NSW does not support the inclusion of MDBA Long Term Watering Plans and NSW Office of Environment and Heritage (OEH) Long Term Watering Plans that raise the Murray River to new flow regimes above its natural bank capacity prior to any consultation or agreement on NSW Government's position on Constraints Management Strategy*
- *NSW deletes any reference to actual flows (ML per day) for the Murray and Edward River until the resolution of issues around the Constraints management Strategy*
- *NSW acknowledges the ongoing and unresolved issues of ecological damage to the Murray and Edward Wakool River banks, increased carp populations, and elevation of flooding risks to private property as a result of MDBA proposed flow regimes for the mid Murray*

- *NSW does not leave open ended positions for the environment in a WRP/WSP that can be non-transparent and open to revision or interpretation through the life of the plan*
- *NSW review performance indicators for meeting social and economic objectives as the draft Plan does not adequately provide any real meaning or protection to social and economic values*
- *NSW does not support the MDBA's position that all water not defined by NSW Planned environmental protections limits in a WSP, and Basin Plan SDL limits or extractive entitlements is then automatically categorised as 'environmental planned water'*

NSW State Water rights & management obligations:

The draft of the WRP and implications for WSP appears to diminish the responsibility of the NSW Water Minister and increases MDBA control over decisions on water in the state of NSW.

Language that define 'the Minister must not' suggests that the Minister's powers are reduced and ultimate decisions are defined by rigid rules that may not provide sufficient flexibility to enable informed decision making that is reflective of NSW conditions.

Recommendation:

- ***Amend draft plan to re-state Ministerial decisions and revert to words such as 'should not' as reflected in previous NSW legislation, regulation and Water Sharing plans***

Response to NSW Government summary of proposed changes to Water Sharing Plan arrangement

Changes to Water sharing rules:

Pre-requisite Policy Measures (PPMs)

The MDBA has stated that NSW must include mandatory rules relating to the PPMs in the WRP /WSP. This allows options to piggyback environmental flows on regulated or unregulated Murray River events and also provision for environmental flow re-use to occur along multiple sites along the rivers and between river systems.

The PPM rules will be linked to a Procedure Manual (appendix D of WRP) and this also suggests an adaptive framework and continual improvement.

It is not transparent what the Procedural Manual conditions will be and/or could be with any future amendments. Therefore, this has major implications for how operational losses will be determined and/or attributed and has resource implications for irrigation entitlements (allocations).

Major risks already identified are:

- Environmental flow loss calculations are not considered accurate on the Murray system.
 - Commonwealth Environmental Water Holder (CEWH) losses have been assessed on desktop modelling with a loss factor of 20% and thus a calculation of 80% return factor to the river
 - In questions raised SAP meetings, which include Federal and State Representatives, it appears only two sites (Barmah Millewa and Perricoota) have actual return flows and any other environmental sites further downstream (eg Living Murray) and or nominated Basin Plan Murray indicator sites, do not have defined return flows
 - On this basis, the application of a 20% loss factor and 80% return flow factor from the Hume Dam to Murray Mouth appears not substantiated. Further there has been no transparency from the MDBA or CEWH on how the 20% loss factor was derived or applied.

The MDBA policy paper for PPMs notes at the bottom of the policy page (NSW/MDBA) that PPMs could be utilised by 'other users'. This same language is now inserted in WRP/WSP rules. When questions were raised both external and internal to SAP meetings, responses by NSW indicated that this was not of concern and it was just a mandatory requirement of the MDBA, but may not be allowed (NSW).

MVPD is concerned that it is not appropriate to include PPM wording in NSW WRP and /WSPs allowing provision for 'other users' to utilise this facility in future. Therefore any reference to any 'other water users' (eg consumptive users) downstream of the Barmah Choke that utilises this provision should also not be permitted due to unacceptable river losses then being borne by Murray Valley GS irrigators.

Recommendation:

- *NSW does not support mandatory inclusion of PPMs where actual details are subsequently defined in a future Procedure Manual have not been disclosed or consulted on*
- *NSW does not support inclusion of the MDBA PPMs policy document to include potential application for non-environmental purposes (note: other users/consumptive users)*
- *NSW does not support enactment/application of PPMs above the natural river bank capacities in the absence of any agreed outcomes with affected parties subject to the Constraints Management Strategy*
 - *Resolution to inadequate determination of loss factors*

Planned Environmental Water (PEW)

MVPD does not support MDBA requirements for all water not defined as extraction or covered by rules, to be redefined as planned environmental water.

NSW Water Sharing Plans do have provisions to protect and conserve portions of water to protect the environment. These are extensive and have priority over extractive uses. Such protections when combined with other external factors/rule changes, have led to under use by NSW Murray GS entitlement holders in relation to CAP considerations.

MDBA proposal overrides relevant state environmental protection provisions. If PEW proposals are included, any revision relating to environmental protection/and or extractions, will be impossible to amend.

The Water Act 2007 and the Basin Plan has made substantial changes in the Murray Valley. Some are notable and recognised, others are incremental changes over time. NSW Murray GS allocations have been detrimentally impacted and this also includes any changes to the River Murray Agreement and extraction rule changes in the Northern basin.

Recommendation:

- *NSW rejects the MDBA requirement relating to categorisation of planned environmental water*
- *MVPD notes that such restrictions also prevent any adjustment/or amendments subject to new information (new science or improved recognition by Governments of adverse social, economic and environmental impacts)*

Long Term Watering Plans

MVPD strongly rejects the inclusion of OEH and MDBA Long Term Watering Plans in the NSW Murray and Lower Darling Water Resource Plan and Water Sharing plan.

SAP questions have been met with NSW responses that such objectives are described as 'aspirational only' and therefore are nothing to be concerned about.

MVPD does agree with these statements, particularly given that indications are that Long Term Watering Plan objectives have greater significance and implications that department staff may be aware of.

Clauses in the plans do refer to Long Term Watering Plan and objectives might also be described in manual/or procedures. So, while actual flow targets are not defined, the legal implications are through reference to manuals and procedures.

Long term Watering plans note flow regimes for the Murray and Edward River well above regulated capacity.

This is prior to any commencement of any agreed positions on the Constraints Management Strategy or progression of SDL business cases.

Both processes are now still described by Governments as investigative and preliminary. If that is the case why and how can such prescribed flow regimes be included in the plans.

For example:

- Murray River – Hume to Yarrawonga (40,000 ML/d)
- Yarrawonga to Wakool Junction (flows minimum of 40,000 ML/d with infrastructure buffers for flows to 50,000 ML/d)

Recommendation:

- *NSW does not include or commit through manuals or reference to flow targets in Long Term Watering Plans to any new flow figure for the Murray and Edward Rivers above existing regulated capacity at this point in time*
- *Define the process for stakeholder consultation on changes to procedure manual and demonstrate no reliability impact to other water users /and/or private property*

NOTE:

- *NSW GOVERNMENT SUBMITTED THE YARRAWONGA TO WAKOOL JUNCTION SDL/CMS BUSINESS CASE ON THE BASIS OF INVESTIGATION OF FLOWS UP TO 30,000 ML/D.*
- *ANY REFERENCE TO A FIGURE OF 50,000 ML/D WAS PURELY FOR COSTING PURPOSES (IN ABSENCE OF ANY OTHER SUBSTANTIATED COSTINGS) TO ENSURE FULL RECOGNITION THAT INFRASTRUCTURE CONSTRUCTION REQUIREMENTS NEEDED TO MAINTAIN EXISTING BUFFERS. THERE WAS NEVER ANY INTENTION OR AGREEMENT TO A FLOW OF UP TO 50,000 ML/D*
- *THE MURRAY DARLING BASIN AUTHORITY SUBSEQUENTLY REFUSED TO SCORE THE SDL PROJECTS AT FLOWS OF UP TO 30,000 ML/D AND THEREFORE HAVE RECORDED FLOWS AS UP TO 30,000 ML/D WITH A BUFFER **FOR FLOWS TO 50,000** ML/D. THIS WAS NEVER AGREED TO DURING DEVELOPMENT OF THE BUSINESS CASE BY THE NSW GOVERNMENT AND THE YARRAWONGA TO WAKOOL JUNCTION CONSTRAINTS ADVISORY COMMITTEE.*
- *This submission refers to recent joint public statements by NSW Water Minister Melinda Pavey and Victorian Water Minister Lisa Neville that rejected compulsory acquisition and/or flooding of private land unless there is consent by landholders (2019)*
 - *On this basis, it is not appropriate for Long Term Watering Plans with specific flow targets above regulated capacity to be included in WRPs and referenced in any form to WSPs*
- *NSW investigates how any losses associated with running the Murray and Edward River systems at such flow regimes are to be attributed*

Trade:

MVPD is concerned that application of the Water Act 2007 on trade has major implications for the Murray Valley. The concept as outlined in the Act ignores physical natural barriers and reasons why architects of the irrigation schemes, dams and systems originally established trade rules as they did.

NSW needs to acknowledge the Water Act 2007 and Basin Plan has not adequately factored this in, and therefore NSW should not be pressured in to applying mandatory rules when they are not realistic.

NSW Southern Basin Inter-Valley Trade

Recommendation:

- *MVPD notes NSW Fact sheet refers to Inter Valley Trade (IVT) which states explanations are in the Murrumbidgee Inter valley Trade Account details*
- *MVPD notes there will be no change to trade rules and that reference to IVT is to ensure trade rules are noted in a procedure manual and referred to in clauses 53, 54, and 55 under Part 9 Access dealing licenses. There has not been any consultation on the procedure manual and therefore this submission relies on advice of NSW that there will be no change*
- *MVPD does however retain on-going concerns that IVT has recognised challenges that have been previously noted and these remain unresolved, such as opening and closing of trade*

Trade within and between water sources (Access License Dealing Rules)

MVPD is concerned that the concept of trade as defined by the Water Act 2007 and Basin Authority needs review.

MVPD is concerned that compliance requirements may be unrealistic and encourages NSW to take a strong position on trade issues that may be contrary to physical or operational realities, including where there are implications of third-party impacts.

MVPD recognises the need to protect current trade restrictions in the Barmah Choke and suggests that any further trade requirements downstream are developed around trading restrictions with zones downstream of the Barmah Choke. Existing trade conditions as applying in the previous WSP on the Edward River, should also not be jeopardised on the basis of new irrigation developments particularly large-scale horticulture.

Recommendations:

- *NSW does not create changed trade conditions (Barmah Choke) where there are negative impacts to existing irrigators (NSW General Security entitlements)*
- *NSW does not create trade conditions that lead to pumping restrictions applying to the Murray or Edwards River or smaller rivers and creek systems (this includes with rules for environmental flows)*
- *MVPD is concerned that there is insufficient transparency around Commonwealth water purchases and how and where these are being applied.*
 - *All environmental water purchases were meant to retain original characteristics, there is insufficient evidence that this has been adhered to*

Conversion of Access License

MVPD is concerned that there has been no or extremely limited explanation on why this rule is being included.

Water NSW is considering an option to allow limited conversion of regulated river (high security) access licences to access licences in connected upstream unregulated river water sources. This would enable some additional water to be taken in upstream areas

without affecting water availability in the downstream storage/s. However this may need to be subject to an assessment of potential local impacts of any such trade on the environment and access to water by other water users.

It is not clear why this is being proposed. It may relate to a new emphasis on horticulture developments upstream of the Barmah Choke, or to future water license needs for plantation of forests. Further consultation on this issue is required.

Recommendation:

- *The proposed rule not be included in this WRP /WSP as there has been no consultation and no assessment of third-party impacts*
- *MVPD notes the caution in the draft plan and does not support any reference or inclusion of the proposal*

Barmah Millewa Allowance:

MVPD is concerned that the WRP/WSP pose risks due to changes in operating rules of the Barmah-Millewa Forest Environmental Water Allowance (BMF EWA).

There has been no consultation on the entirety of any proposed operating rule changes and therefore the full implications of either individual changes or incremental multiple changes remain unknown.

Clause 60 notes that NSW Environmental Water Manager is to manage the BMF EWA for the Barmah Millewa Forest and other environmental outcomes. However, this resource is specifically for the Barmah Millewa forest and it also underpins NSW General Security Allocations (ie GS borrow provisions).

The Barmah- Millewa Allowance return flows are regulated into the NSW consumptive pool. Therefore, it is not transparent what the changes and additional term will have on irrigation resources by using the BM allowance for 'other environmental outcomes') or whether those outcomes will be in NSW or other states.

Recommendation:

- *The Barmah Millewa Allowance remained specific to the Barmah Millewa Forest.*
- *That the inclusion of the existing BM clause which permits some use in other sites is reviewed due to third party impacts arising from how loss factors are attributed and any adverse impact on resource assessment impacting Murray GS allocations*
- *BM Water orders are confined/restricted to decisions of NSW Government and the water portfolio does not become part of broader environmental water orders*
- *That regulation of return flows is mandated in WRP/WSPs and benefits accrues to NSW Murray allocations*
- *BM Allowance is co-managed by NSW Water Minister and NSW Environment Minister*
- *That any changes to management of the Barmah Millewa Allowance does not lead to elevated flooding risks or private land inundation and that this provision is included in any revised rules or procedure manual*
- *Ensure protection of existing rule that enables Murray GS to borrow against the Barmah Millewa allowance and that any additional rules do not negate this position*

River Murray Increased Flow Access License (RMIF)

MVPD understands the temporary arrangements that have been in place in regards to RMIF water recovered under Water for Rivers program. Making transition from temporary to permanent however may have implications that as yet have not been discussed with stakeholders or are transparent to stakeholders.

MVPD requires further details on any license conversion or establishment/or use provision to ensure no impact on other parties. This includes irrigators through allocation impacts, and/or river sharing/capacity arrangements, this is particularly relevant to MVPD members on smaller systems.

MVPD has concerns that use of environmental flows, PPMs and other options may have detrimental impacts on riparian landholders through land inundation or elevated flooding and use of RMIF needs to ensure no adverse risks or third-party impacts occur.

Recommendation:

- *NSW further consult with stakeholders on any risks associated with the establishment of a new RMIF license*

Lower Darling Re Start Allowance

MVPD and other stakeholder members of the SAP have consistently sought a resolution to the lack of connectivity between the Barwon Darling and Murray Lower Darling WRP/WSPs.

NSW WRP/WSP Fact sheet suggests that a credit of 60GL operational water will become available from future inflows to the Lakes and not reserves. However, there is no evidence that future 'in flows' to the Menindee Lakes will come from any assurance of baseline flows reaching the Menindee Lakes. As such it is not clear *what or how* these future inflows will be included.

MVPD has long sought assurance from the NSW Government that extraction rules in the Northern Basin should enable baseline flows to reach Menindee and this includes rules around floodplain harvesting.

To date there has been no satisfactory resolution and NSW Murray GS allocations remain negatively impacted when the Barwon Darling and the Menindee Lakes are 'off line'.

SAP members requested meetings with the Barwon Darling SAP and reports back stated that there was no willingness by the Barwon Darling SAP to meet. This is not satisfactory and indicates a lack of shared objectives to ensure baseline flows of some level reach Menindee in non- drought years.

Recommendation

- *SAP is provided further explanation on the issues*
- *SAP is provided further consultation on the Menindee SDL project*

Sub category of regulated River (high security) access license

MVPD is concerned there has been no transparency or detailed discussion with stakeholders on the details of this issue.

Recommendation

- SAP has further consultation on the issue

Supplementary water

MVPD is concerned that changes to WSP will impact on accessibility to supplementary events.

SAP consultation did not occur on the details of this clause

Recommendation:

- *MVPD rejects inclusion in the plan of clauses that reserve a portion of flows over and above existing provisions in current WSP for the environment*
- *MVPD rejects the clause provisions that refers to supplementary events only be accessible after 'planned environmental water' needs are met*
 - *MDBA proposal to amend current NSW provisions for planned environmental water as defined in existing water sharing plans means that supplementary events are unlikely to occur in future*
- *Reference to dates where supplementary events are not permitted also are likely to ensure supplementary events are rare or do not occur at all*
 - *Eg Minister must not announce a supplementary event in the Murray Water Source between 1st April and 30th October.*

Objectives, strategies and performance indicators

NSW explanatory paper refers to objectives, strategies and performance indicators being revised by a working group appointed for that purpose. Provisions have been modified to meet new requirements of the Basin Plan

Recommendation:

- *Stakeholders have not been consulted on what changes are being proposed, how future changes will be consulted with affected parties and the process for decision making*

Role of the Operator and Environmental Water Manager

NSW has not discussed this with the SAP or consulted outside of SAP with stakeholders.

It is still not clear who actually takes legal responsibility for running of the Murray and Edward Rivers and therefore who is liable should there be negative impacts on people, irrigators or riparian landholders.

MVPD notes draft amendments to the NSW Water Act Amendment Bill under the former Water Minister Niall Blair where NSW included a draft clause that released the NSW Government from any liability from environmental flows.

The status of this clause remains unknown as there has been no discussion with SAP or stakeholders. Therefore, given the increased requirements for the environment and previously

stated Federal and State Government commitments of no third-party impacts, further explanation is required.

Recommendation:

- *SAP and external stakeholders are consulted on what inclusion of this provision actually means*
- *NSW resolves and describes to stakeholders who bear legal liability for operational changes affecting irrigation security and/or riparian landholders*

Environmental Advisory Groups

MVPD members are concerned that the word 'consultation' is not reflective of meaning of the term.

In the delivery and application of Government NRM policy in rural regions, the importance of collaborative relationships cannot be understated.

Benefits are extensive both in terms of participation in programs, but also long - term commitment and future monitoring opportunities.

MVPD strongly encourages a review of the current approach to environmental water advisory groups with a new focus on localism and inclusion of those stakeholders directly affected by the policy implementation.

Recommendation:

- *Revise Environmental Advisory groups to increase and maximise local stakeholder participation with assurance of local representation to maximise local knowledge*

Review date of Plan

Stakeholders continue to encourage the NSW Government to undertake effective and detailed consultation processes on water management in the Murray Darling Basin.

SAP has been disadvantaged due to time constraints of the Basin Plan and Water Act 2007 and the inability for departmental processes to make meaningful amendments. As stated previously in this submission, department restructures added to the challenges.

MVPD encourages further consultation on the draft plan with further explanation of issues that were unknown or unresolved as outstanding questions

MDBA have previously publicly stated 'they will learn as they go'. This would suggest that in the implementation of the Basin Plan new information or revision of original targets may need to be modified in future.

Recommendation:

- *Enable a review of the WSP /WRP to incorporate new knowledge*
- *NSW to ensure this includes progression or amendments to MDBA or NSW objectives noted in SDL projects or high flow targets to the South Australian border (80GL)*

- *Exclude the inclusion of Long-Term Watering Plans with specific flow regimes described for the Murray and Edward River. It is not appropriate at this point in time as the Constraints Management and SDL projects are only in very preliminary investigative stages and therefore no conclusions can be included in WRP or WSP*

Additional comments:

1. MVPD seek further discussions/clarification and input, with the NSW Department of Primary Industries prior to the WRP /WSP being submitted to the NSW Water Minister.
2. That any unresolved issues raised within the SAP or through SAP member submissions are raised for review in a subsequent SAP meeting
3. That a new clause is inserted in the Water Planning rules to prevent Barmah Choke rules being circumvented through trade
 - a. Further investigation and clarification is required to review whether any parties are able to bypass Barmah Choke Trade rules
 - b. Particular review is needed to consider what /if any trade restrictions can be bypassed by utilising trade into the Murrumbidgee or Victorian systems and then being re traded downstream of the Barmah Choke.
4. MVPD seeks further clarification on the issues of lack of connectivity between WRPs and WSP to reliability impacts on Murray GS entitlements
 - a. This includes both the Barwon Darling and Murrumbidgee WRP/WSPs
5. MVPD seeks further written clarification on exact 'end of valley 'flow contributions to the Murray River are/will be contributed by the Barwon Darling and Murrumbidgee Valleys

Appendix A: Water Act 2007 objectives

The objects of this Act are:

- (a) to enable the Commonwealth, in conjunction with the Basin States, to manage the Basin water resources in the national interest; and
 - (b) to give effect to relevant international agreements (to the extent to which those agreements are relevant to the use and management of the Basin water resources) and, in particular, to provide for special measures, in accordance with those agreements, to address the threats to the Basin water resources; and
 - (c) in giving effect to those agreements, to promote the use and management of the Basin water resources in a way that optimises economic, social and environmental outcomes; and
- (d) without limiting paragraph (b) or (c):
- (i) to ensure the return to environmentally sustainable levels of extraction for water resources that are overallocated or overused; and
 - (ii) to protect, restore and provide for the ecological values and ecosystem services of the Murray-Darling Basin (taking into account, in particular, the impact that the taking of water has on the watercourses, lakes, wetlands, ground water and water-dependent ecosystems that are part of the Basin water resources and on associated biodiversity); and
 - (iii) subject to subparagraphs (i) and (ii)—to maximise the net economic returns to the Australian community from the use and management of the Basin water resources; and
- (e) to improve water security for all uses of Basin water resources; and
 - (f) to ensure that the management of the Basin water resources takes into account the broader management of natural resources in the Murray-Darling Basin; and
 - (g) to achieve efficient and cost-effective water management and administrative practices in relation to Basin water resources; and
 - (h) to provide for the collection, collation, analysis and dissemination of information about:

25 October 2019

NSW Department of Planning, Industry and Environment
GPO Box 5477
Sydney NSW 2001

To whom it may concern,

RE: Submission regarding the Draft NSW Murray and Lower Darling Water Resource Plan

Thank you for the opportunity to provide feedback into the Draft Report on the review of the Water Sharing Plan for the Draft NSW Murray and Lower Darling Water Resource Plan (WRP).

The Lower Darling Pastoralist Group represents the interests of many pastoral family businesses along the length of the Lower Darling, covering over 1 million acres of pastoral country. The group represents the interests of pastoral holdings which depend on the Lower Darling for stock and domestic supply. Our families, businesses and communities are dependent on a healthy river. A number of families in this group have been sustainably farming in the region for over 150 years, and have an intimate understanding and knowledge of the Lower Darling ecosystem from early white settlement.

Our families and businesses have been significantly impacted by mismanagement of our river system, in particular by the changes in 2012 to the Barwon-Darling Water Sharing Plan. In 2015-2016 we experienced a 9 month period of cease to flow on the Lower Darling, and we are currently experiencing the longest cease to flow event ever experienced on the Lower Darling, which commenced in January this year.

We know first hand the physical, emotional, social and financial impact that having what has historically been a thriving ecosystem die before our eyes.

It is an important step forward for the development of the Water Resource Plans in NSW, given the devastation we see on the Darling River today. The WRPs offer an opportunity to set straight the significant failings in water policy by the NSW Government over the last decade. It is therefore unacceptable to us to see a draft WRP that continues to fail to address the fundamental issue of connectivity from the Barwon Darling and its tributaries to the Lower Darling.

In this submission we highlight the major failings of the draft WRP.

Connectivity with the Barwon Darling and tributary WRPs

There is a fundamental failing in this WRP, the Barwon Darling WRP and tributary WRPs to achieve connectivity between the WRP areas. Until connectivity is achieved, the Lower Darling environment, communities and economies will struggle to survive.

This lack of connectivity also fails to meet the obligations of the NSW Government to under the Water Management Act 2000, which states: [Section 58(1)] "For the purposes of this Act, the following priorities are to be observed in relation to access licences: (a) local water utility access licences, major utility access licences and domestic and stock access licences have priority over all other access licences,".

2015-2016, when the Lower Darling had ceased to flow, there were cases where extraction was permitted to occur in the Barwon-Darling because it was assumed these flows would not make Menindee or the Lower Darling. There were a number of small events, and senior departmental staff admitted that if these multiple small flows had been protected water would have been returned to the Lower Darling.

The Draft WRP states that interception activities within the WRP area or in areas hydrologically connected to the WRP will not have a significant impact on the Lower Darling. This is inaccurate, because significant interception activities in the northern basin do have a significant impact on the flow events in the Lower Darling. In particular, floodplain harvesting. This has been found by Vertessy and Keniry.

In the Planning for Environmental Water Schedule, it is proposed that there be cease to pump rules in the Lower Darling. However, there is no introduction of cease to pump rules to facilitate environmental water reaching the Lower Darling in the Barwon Darling and tributary WRPs. This is yet another example where there is no connectivity between the WRPs and why the WRP will fail to achieve environmental outcomes.

To start, there should be the introduction of flow targets and storage targets in the Lower Darling. Flow targets should be introduced for the end of the Barwon-Darling, and the end of the Lower-Darling. A storage target for Menindee Lakes should be introduced, at a minimum of 160GL. This will protect the river, and provide for town and stock and domestic supplies. When such targets are not being met, all irrigation extraction in the Barwon Darling should cease. This can ensure connectivity between Plan areas.

Lower Darling Restart Allowance

The Lower Darling River Flow Restart Allowance is an important introduction in the WRP. However, in its current form, it will fail to achieve anything.

In the allowance, the water to be used is future inflows at Menindee following the cease to flow, not existing storage. Under the draft Barwon-Darling WRP there is a cease to pump rule for first flush until 30GL is flowing past Burke. Above this flow, extraction will be permitted to start. This 30GL cease to flow will not provide sufficient flow for 60GL to reach Menindee and be used as a river restart allowance. The Barwon Darling WRP fails to meet the requirements of the Murray and Lower Darling WRP. It is a failure of the NSW Government to establish connectivity between WRPs.

The 60GL will not achieve the aim to flush and restart the river when the river bed is dry and aquifers are significantly diminished. This is the scenario which must be expected if the Barwon Darling WRP does not undergo significant alteration.

In addition to the proposed recommendations, we encourage the consideration of a storage target in the Lower Darling. This will protect the river, and provide for town and stock and domestic supplies. It is proposed that a storage target of 160,000 ML be introduced as a minimum. When the target is not being met, all irrigation extraction in the Barwon Darling should cease. This can ensure connectivity between Plan areas.

There should be established two-way communication and engagement required with community groups such as ourselves regarding the decision to restart the river.

Water Quality

The Lower Darling has been exposed to extended periods of extremely poor water quality due to mismanagement of upstream rivers and releases from Menindee Lakes. Experience shows that the greatest risk of blue green algae is when there is limited in the Menindee Lakes, and there is limited flows. This has occurred before and during cease to flow events.

The Environmental Water Allowance to address blue-green algae outbreaks in the Lower Darling only applies when the Menindee Lakes are under interjurisdictional control. It is critical that there be both flow and storage level targets in the Lower Darling and Menindee Lakes which triggers cease to pump in the Barwon-Darling and tributary WRPs, with some of this committed to this allowance.

In chapter 6 there is an objective to reduce the risk of blue green algae in recreational use areas. These areas are not defined. There is no mention of the impact of blue green algae on properties on the Lower Darling which depend on quality water for stock and domestic use. Ensuring that there is an objective to reduce the risk of blue green algae for stock and domestic users must be a priority.

Managing water during extreme water shortage or water quality events

The Lower Darling has experienced extreme water shortage and water quality issues since 2015 as a direct result of NSW Government and MDBA mismanagement and maladministration.

We are experiencing our second extended cease to flow event in 4 years. From this experience, we know that a 2 year planning period is not adequate to ensure there is a supply of critical water supplied to communities. Whilst the Government fails to address key issues of over-extraction and floodplain harvesting in the Barwon Darling and its tributaries, the Menindee Lakes and Lower Darling must be managed to have sufficient storage of water when small flows are not able to replenish the system. There should be a minimum of 4 year planning period which incorporates improved management of Menindee Lakes which focuses on maintaining supply to Lower Darling communities during extended period of dry.

In the event of a Stage 3 level, there is a need to construct a minimum of two block banks between Menindee and Pooncarie for stock and domestic users. This has been undertaken in 2018, and has had significant benefits for the community.

The region between Menindee and Pooncarie is a highly productive agricultural region, with predominantly pastoral properties running over 120,000 sheep, 850 cattle and over 80,000 rangeland goats, as well as extensive native wildlife. There is also a permanent planting of table grapes in the region which depends on the river for water. The majority of properties in this region access stock and domestic water. There are 25 agricultural properties located between Menindee and Pooncarie, home to 46 families. It is our estimation that a loss of stock water would result in an annual loss of \$18.2million gross production from sheep and cattle and \$6.4 million from rangeland goats. The economic and social impact of no water for properties located between Menindee and Pooncarie is significant. There is a significant loss of income, loss of jobs. Emergency provisions have been made for properties below Pooncarie. It is incomprehensible why the needs of properties between Menindee and Pooncarie would be ignored. The supply of water for domestic use through trucking is not a feasible option given the distances travelled and quality of roads.

The circumstances which have resulted and will continue to cause extended periods of cease to flow along the Lower Darling is predominantly a result of decisions on the use of Menindee Lakes storage supply and not as a result of natural events.

Under Stage 3 and 4 events, there is some limit to extraction in the Barwon Darling and tributary WRPs. These are:

- Restrict take under supplementary water access licences in the NSW Border Rivers, Gwydir, Namoi and Macquarie WRPs, where such flows can usefully contribute to Barwon-Darling flows.
- S.324 WMA 2000 order restricting take under unregulated river water access licences in downstream sections of the NSW Border Rivers, Gwydir and Macquarie WRPs if these unregulated flows can usefully contribute to Barwon-Darling flows.
- S.324 WMA 2000 order restricting take under unregulated river access licences in the Barwon-Darling

In the event of any Stage 2 or higher event in the Lower Darling, it is critical there be a total cease on irrigation extractions in the Barwon Darling and tributaries. These must not be dependent on whether these flows are expected to make a 'useful contribution' to the Barwon Darling and Lower Darling. As discussed above, such a justification was used in 2016, which delayed the return of flows to the Lower Darling by many months and had a significant impact on the Lower Darling communities. This was not acceptable at the time and continues to be unacceptable.

In summary, in relation to the Lower Darling, the NSW Murray and Lower Darling WRP fails to ensure connectivity from the Barwon Darling and tributaries and therefore fails to deliver on environmental, social and economic outcomes.

Kind regards,

Katharine McBride & **Wayne Smith**

Tolarno Station

Karoola Station

on behalf of the Lower Darling Pastoralist Group

Submission regarding:

NSW Murray and Lower Darling Surface Water Resource Plan

from Brian (Barney) Stevens, former Secretary Darling River Action Group

22.9.2019

The Big Picture

The NSW Murray and Darling Rivers are subject to changes being implemented under the Murray Darling Basin Plan (MDBP) and at the same time are subject to regulation by the NSW Government, in some ways contrary to the aims of the MDBP. Massive changes are also occurring as a result of water being disconnected to land, with the establishment of a water trading market. It is debateable whether Water Resource Plans are coping with the effects of water trading.

As a result of water trading there has been a huge increase in permanent plantings along the lower Murray downstream of the Barmah Choke. This, combined with the demand for environmental water downstream, has resulted in an undesirable amount of flooding of the Barmah forest, reports of bank erosion, a wholesale movement of water away from upstream users and near-revolt by water-starved irrigators in the upstream Southern Basin. Water trading has turned farming into an industry more like mining, where commodity rushes occur and die and towns bloom and fade accordingly. It produces instability and waste.

The Lower Darling - Big Picture

It is difficult to see why the NSW Murray and the lower Darling are being treated as one entity when they are entirely different. The lower Darling receives water from the Barwon-Darling for the most part, but when there is no flow in the Darling, the lowest several 10s of kilometres are fed by backflow from the Murray River. This is not acknowledged in the draft Water Resources Plan (WRP).

Any WSP for the lower Darling should take into account the origin of the water. Almost all of the water comes from the tributaries of the Darling and until recently much of the water was parked in Menindee Lakes. The requirements of the Barwon-Darling and the lower Darling should all be listed in the WRP for each of the tributaries and these listings be referred to in the WRP for the lower Darling. At present the water resources required for the Darling River are being consumed in the tributaries.

The management policies for Menindee Lakes are also critical to the WRP for the lower Darling, but are not mentioned.

Status and Issues Paper

The Status and Issues Paper is dated 17 February 2017, not long ago, but it is out of date. For example Figures 3 and 4 do not show the full effects of the current drought. Nor does

the paper tackle the effects of the recent huge increase in permanent plantings on the lower Murray, or the massive changes to the Darling resulting from the sale of Tandou's water licences and the change of Broken Hill's water source from the Darling to the Murray.

A Water Resources Plan cannot be based on such and outdated study.

Comments on Individual Points in Draft

Intervalley trade – the principal behind intervalley trade is that a certain amount of water has to go across the border into South Australia and it doesn't matter where it comes from. This ignores the effects on the individual valley. And a question – if there is no water in the lower Darling, can lower Darling water holders sell their year's allocation to an irrigator on the Murray? Such a sale would diminish the total amount of water in the rivers.

Borrow from Environmental Water Allocation Why should general security users be able to take environmental water, presumably when in drought when it is needed for the environment, and return it presumably when in flood when it is not needed for the environment? General security means that you take your chances on your water allocation and plan accordingly.

Lower Darling Restart allowance Currently set at 60GL, designed to flush stagnant pools after a period of non-flow. I note that at the head of any first flow down the Darling, the water is saline and may be de-oxygenated. The restart allowance should be sufficient to provide clean water to the river.

Lower Darling Environmental Water Allowance this should be sufficient to not only deal with blue-green algae, but also salinity and dissolved oxygen deficiency.

Tagged trade this term is used but not explained.

Aboriginal cultural objectives for the lower Darling are not greatly different from the objectives of everyone else that lives in the region. They want water in the river and it is not happening. See my comment above about the lower Darling-the big picture.

Compliance Assessment Advisory Committee the proposal is to chance the make-up of this Committee from a regulated composition, to the Minister's whim (maybe a committee comprising the Harris family, Angus Taylor relatives and Barnaby Joyce). This is a recipe for corruption and is strongly opposed.

Comments on Individual Points in Issues Paper

Principles

“there will be no adverse impacts on water available to a water access licence holder

- there will be no net reduction in the protection of planned environmental water.”

These two principles have been unworkable. The licence holders have had a field day, while environmental flows have been pumped for irrigation. The lower Darling water availability has been strangled by upstream irrigators. The WSPs for the whole Darling Basin need to be linked so that water is reasonably available throughout the system.

Land Use The figures are out of date. There has been a significant shift to cotton irrigation in the Southern Basin and to permanent crops, especially nut trees. This has been brought on by water trading that is rapidly shifting economic activity and leaving devastation in its wake.

2.3 Key environmental assets and ecosystem functions alpine fens, bogs and lakes in Kosciuszko National Park (NSW and Victoria). These are being overrun by feral horses, protected by the NSW Government. The fens, bogs and lakes are the sponge that holds water and slowly releases it after rain/snow. The damage done to the alpine areas impinges on the Murray River and the Water Resources Plan.

Also listed as “key” are:

“Menindee Lakes (47,500 ha) (NSW)

Great Darling Anabranch Lakes (269,000 ha) (NSW)

Lowland Darling River Aquatic EEC, including 21 native fish species and hundreds of species of native invertebrates.”

I see no provision to protect these assets in the WRP.

Figure 6 Does this need updating? I am under the impression that high security demand is rising, with the increase in nut tree plantations.

Figure 3 Inflows into Hume Dam appear to have declined since the mid 199s. Is this the result of climate change with poorer snowfalls? What does it mean for the WRP?

Page 18 “there is no accurate water take records for unregulated water access licences.” Is this water take significant in the big picture? If it is, the take should be measured and a recommendation should appear in the WRP.

Water Quality

Frequently exceeds target for N and P in the lower Darling. What is being done about it? Also turbidity is always high in the lower Darling (and the Murray?). It was not always so. The water of the Darling was clear in living memory. The turbidity results from changed land use etc. Turbidity is clay, silt and organic matter washing away from the land reducing its fertility, and ultimately settling in reservoirs and waterholes. What is being done? Should this figure in the WRP?

Risk Assessment

DPI yet to consult with traditional owners. Why? it is not a fast process, should have started some years before an outcome was needed.

Re-crediting of return flows. Return flows from irrigators are a high risk to water quality. They need to be monitored for contamination. Return of contaminated water should not be rewarded with credit for clean water.

High security water holders carry over. Carry over is a disastrous component of drought effects. Carry over in the Northern Basin is a major reason why the rivers have stopped flowing and why the lower Darling is in its current disastrous state.

Section 3.3-3.5 There are many issues listed as yet to be considered by DPI Water in consultation. The draft is incomplete.

Page 25 The SDL for the lower Darling is a joke. “Reliability of water allocations”. There isn’t any water to be diverted or allocated, except from backflow from the Murray. The water has all been taken upstream due to totally inadequate WRPs that do not take downstream water into account.

Farmdams The term brings to mind the ponds that we see on grazing properties. But the modern reality is huge dams competing in size with Sydney Harbour. They are shallow like Menindee Lakes and evaporate like Menindee Lakes. We see new enormous farmdams on Webster properties on the Murrumbidgee (tributary of the Murray) for example. The evaporation and soakage from these dams is a major water use.

Climate Change I note that DPI Water is looking at all possibilities, including higher and lower rainfall. Whether overall rainfall increases or decreases it is almost certain that hot dry intervals are increasing and that bushfire will transform the landscape. We will be dealing with a landscape with less tree cover and greater tendency to erosion.

Salinity Medium risk to irrigated crop damage from salinity of water at Weir 32 Menindee. It is my impression that past events of high salinity, together with lack of water, have already destroyed small-medium scale irrigation (e.g. grapes) at Menindee. The risk is not medium, it is overwhelming.



Healthy Rivers Dubbo

Submission to Draft NSW Murray and Lower Darling Water Resource Plan

To: NSW Government
Department of Industry
By e-mail: nswmurraylowerdarling.sw.wrp@dpi.nsw.gov.au

Introduction

Healthy Rivers Dubbo is a community grass roots group dedicated to providing a strong voice for our local rivers, aquifers, wetlands, and for the Murray-Darling Basin as a whole. As ambassadors for healthy rivers, wetlands and groundwater, we have been active in our community calling for transparency and accountability in all aspects of water management.

Healthy Rivers Dubbo pays our respects to the Traditional Owners, past, present and future, of the land we live in. We acknowledge that the land in which we live was never ceded.

Healthy Rivers Dubbo welcomes the opportunity to make a submission to the draft NSW Murray and Lower Darling Water Resource Plan (WRP).

Do you have any comments on the proposed changes to allow the operation of Pre-requisite Policy Measures (PPMs) for held environmental water in the NSW Murray and Lower Darling Regulated Rivers Water Sources?

The proposed rules to protect environmental flow reuse and piggy-backing (PPMs) are biased towards protection of the extractive industry.

The NSW PPM Implementation Plan¹ sets out that PPMs will be implemented only 'to the extent that impacts on third party licenced access rights can be mitigated or offset, whilst aiming to optimise environmental outcomes.' The NSW PPM Implementation Plan links the implementation of PPMs to Section 7.15 (1) (d) of the Basin Plan, which "represents a fundamental misunderstanding of the relevant provisions of the Basin Plan" according to the South Australian Murray Darling Basin Royal Commission Report.²

The approach being taken by the NSW Government in implementing the PPMs is not supported by Healthy Rivers Dubbo.

Do you have any comments on the proposal to codify NSW Southern Basin Inter-Valley Trade (IVT) and refer to the IVT procedures in the WSP?

All IVTs should be assessed for environmental impacts. The nature of markets means that water from a source that has higher supply (lower cost) would be traded to sources with lower supply (higher value). This is how markets work. However, the natural world is not the same as a market, and applying the principles of markets to the natural world will inevitably damage it.

Rivers with less water have a reduced capacity to maintain resilience and environmental integrity when water is extracted and diverted.

Tagged trades (using water from a different water source) should be prohibited, as they are for the benefit of a few large licence holders. Tagged trade is not supported by Healthy Rivers Dubbo.

Do you have any comments on the proposal to refer to the Operating rules for the Barmah-Millewa Environmental Water Allowance?

Healthy Rivers Dubbo does not support the ability to 'borrow' water from the Barmah-Millewa Forest Environmental Water Allowance (EWA), nor do we support the new operating rule regarding 4 monthly flood.

The Barmah-Millewa EWA must be fully available to be used for the benefit of the Ramsar listed wetlands, based on the wetlands requirements.

¹ https://www.water.nsw.gov.au/_data/assets/pdf_file/0004/723334/Pre-requisite-Policy-Measure-Implementation-Plan.pdf

² <https://www.mdbrc.sa.gov.au/sites/default/files/murray-darling-basin-royal-commission-report.pdf?v=1548898371>

Australia has moral and legal obligations under the Commonwealth Water Act 2007 to maintain the functionality of wetlands for several international migratory bird agreements including the Ramsar Convention.

Do you have any comments on the proposal concerning River Murray Increased Flows access licence(s)?

Healthy River Dubbo supports the management of River Murray Increase Flows as a special planned environmental account.

Do you have any comments on the proposed Lower Darling Restart Allowance?

Healthy Rivers Dubbo supports the proposed Lower Darling Restart Allowance.

Do you have any other comments on other proposed amendments to the Water Sharing Plan for the NSW Murray and Lower Darling Regulated Rivers Water Sources 2016?

The NSW Murray is a long and complex part of the Basin; and the Lower Darling is a very unique, highly variable system. There is too much complexity in this part of the Basin for this one draft WRP to adequately provide rules that meet the environmental needs of these rivers.

Healthy Rivers Dubbo strongly objects to the proposal for high security licences to be converted to unregulated licences for upstream extraction.

The WRP states that there is no floodplain harvesting in the WRP area. Therefore, all provisions for floodplain harvesting should be removed from the associated Water Sharing Plans.

In general, Healthy Rivers Dubbo considers that the EWAs are too closely associated to the needs of other water users and water determinations, rather than to meeting the environmental needs of the river system.

The WSPs fail to meet their environmental objectives, particularly the unregulated WSPs, in regard to protecting low flows and hydrological connectivity. There should be no access to uncontrolled flows in the regulated rivers.

Do you have any comments on how the NSW Government can improve the consultation process undertaken?

It has been seven years since the Murray-Darling Basin Plan was legislated, and yet the NSW Government seems to have left the important work of developing WRPs until very late in the process. Already, there has been the need to extend the deadline for accreditation of WRPs until 30.6.20, when they should have been accredited and operational by 30.6.19.

This late rush of plans on public exhibition for submission has placed unnecessary pressure on community stakeholders, who are often working hard to understand complex rules and policies on their own volunteered time.

The health and resilience of rivers, aquifers, floodplains and wetlands in our Basin are critically important to all Basin residents – perhaps more could have been done by the NSW Government to get the WRPs out for public comment earlier.

Do you have any other comments on Chapter 1 or Schedule C?

This WRP covers a large, diverse and complex part of the basin. Consultation with First Nation Groups has only been conducted with the Wadi Wadi and Ngiyampaa Nations, which is inadequate.

Wadi Wadi Country is located just west of Swan Hill Victoria, extending westward towards Ouyen and south of Robinvale, straddling the Murray River.

Ngiyampaa Country is located South bank of Barwon and Darling rivers from Brewarrina to Dunlop; on Yanda Creek; south to head of Mulga Creek; on Bogan River.

The level of First Nation consultation is very inadequate for this entire WRP area. Healthy Rivers Dubbo considers that this WRP should not have been presented for public comment until significantly more consultation with First Nation groups had occurred.

Do you have any comments on Chapter 3 or Schedule D?

SECTION 4.3 RISKS TO WATER AVAILABLE FOR THE ENVIRONMENT & CAPACITY TO MEET EWRS [E(W)] - UNREGULATED WATER SOURCES

The Lakes:

Lakes Cawndilla, Menindee and Wetherell have Not-Tolerable (N-T) risk ratings currently.

The current critical mechanism for reducing that N-T risk is to reserve all water over the Long Term Annual Average Extraction Limit (LTAAEL). The NRC report into the Barwon-Darling WSP had this to say about the use of LTAAELs:

"Use of this statistic as an indicator of environmental outcomes is highly misleading as this percentage is based on an average taken over more than 100 years and includes major floods that significantly skew the average. While the LTAAEL has a function in assessing long-term compliance with extraction limits, adherence to the LTAAEL is not appropriate for assessing whether the Plan has met its environmental and social objectives, particularly for such a highly variable system. When and where the water is taken is critically important in this system, not just volume extracted over many years."

New critical mechanisms being offered in this WRP to reduce the N-T high risks identified in this risk assessment of water not being available to meet the environmental requirements, for the three Lakes mentioned include:

1. To protect a portion of high flow events in the Barwon-Darling WRP area.
2. New critical mechanisms to be engaged are rules that are proposed in the Barwon-Darling WRPA, which include:
 - Implementation of a first flush rule to manage the resumption of flows after a cease to flow period (proposed new active management option).
 - Protection of Held Environmental Water through water take restrictions (proposed new active management option).
 - Investigate and implement water/flow protection measures to improve northern hydrological connectivity between Northern Basin catchments (proposed new active management option).

The expected residual risk ratings for the three lakes after the new rules are applied will reduce the number of risk ratings that are in the N-T range.

The Monitoring and Evaluation (M&E) for the three Lakes is "planned for the Menindee Lakes Savings project".

This controversial project has not been assessed or approved, it should not be assumed it will go ahead in this document. Therefore another strategy for monitoring and evaluation should be presented in this risk assessment:

- Lake Cawndilla
- Lake Menindee
- Lake Wetherell

Healthy Rivers Dubbo is extremely concerned that the Menindee Lakes Savings Project is mentioned in this risk assessment.

We now, after seeing this project mentioned in this document don't think it is clear if the low residual risk rating of Lake Cawndilla, Lake Menindee and Lake Wetherell after the new critical mechanisms are enforced is because the implementation of the Menindee Lakes Savings Project has been assumed.

Lower Darling:

Currently there are a lot of risk ratings in the N-T range for this river area.

Improvements to the management and protection of environmental water are the new critical mechanisms proposed to reduce the high number of N-T risks identified currently, including:

- Adherence to the Sustainable Diversion Limits
- Use of Lower Darling River Flow Restart allowance – Healthy Rivers Dubbo supports this proposed Allowance.
- Strategic use of environmental water – Healthy Rivers Dubbo supports an Environmental Water Advisory Group (EWAG), with environmental interests represented, be mandated for both the Lower Darling and NSW Murray.
- Protection of environmental water by PPMs – we have detailed our concerns about PPMs policy interpretation by the NSW Government above.
- Constraints management.

NSW Murray:

Current critical mechanisms are around strategic and co-ordinated use of EWA, and normal access to supplementary flows.

Strategies moving forward involve limiting extraction, protecting high flows, low flow habitats from drying out etc. – they seem general strategies with not much detail about how they will be achieved.

The new critical mechanisms to use to enforce those general strategies are:

- Adherence to the Sustainable Diversion Limits
- Strategic use of EWA – EWAGS should be mandated. EWAs are too closely associated to the needs of other water users and water determinations, rather than to meeting the environmental needs of the river system.
- Protection of environmental water by PPMs – we have detailed our concerns about PPMs above.
- Constraints management – very complex in the Murray. We have no confidence that there is enough appetite by agencies and government departments to adequately address constraints that restrict the ways environmental water can be used. There is generally too

much focus on not having any 'third party impacts', and not enough priority given to the requirements of the environment.

SECTION 4.4 RISKS TO WATER AVAILABLE FOR THE ENVIRONMENT FROM EXTRACTION UNDER BLR [E(BLR)] - UNREGULATED WATER SOURCES ONLY

Risks of over extraction under Basic Landholder Rights in the Upper Murray River are high and Not-Tolerable.

The strategy offered to minimise these high risks seem aspirational, not practical: "Protect the other water users from changes in flow attributable to growth in BLR extractive use." – does not inspire confidence that anything will be done. Reliance on temporary restrictions by the Minister to BLR access is not adequate.

BLR extraction must be metered in the Upper Murray – you cannot manage what you do not measure.

SECTION 4.6 RISKS TO WATER AVAILABLE FOR THE ENVIRONMENT DUE TO CLIMATE CHANGE

All areas listed have Medium or High N-T risk rating currently.

The current critical mechanisms engaged to deal with the risk are:

- to reserve all water above the LTAAEL for the environment as PEW under WSPs, and
- AWDs adjust extractive use according to water availability

As discussed above, the use of LTAAELs as an indicator of environmental outcomes is misleading.

Using AWDs to adjust extractive use according to water availability is not currently possible in NSW. The 2014 amendment to the Water Sharing Plans via the Water Management Act disallows inflow data from the most recent drought of record to be used when calculating the Available Water Determination for each valley.

The strategy for new critical mechanisms is to use SDLs to protect the environment and water users from changes in flow attributable to climate change. We consider this strategy to be more of an aspiration than a well described plan.

Healthy Rivers Dubbo considers that:

- The risks to all water sources in this WRP area of reduced water availability from climate change are underestimated in this risk assessment, especially in the Lower Darling.

- We have a low level of confidence that the SDLs have been developed to adequately account for climate change.
- The 2014 amendment to the WSPs through the NSW Water Management Act 2000 that restricts drought of record data from after implementation of each WSP means climate change must be ignored when determining the AWDs.
- In 2013 a NSW Government report Assuring Future Urban Water Security³ was shelved in draft form. This draft report details the impacts that a drying climate will have by way of a reduction of potable water in urban areas. This report should be finalised and used in AWD calculations.

SECTION 5.3, 5.4, 5.5 RISKS TO THE HEALTH OF WATER DEPENDENT ECOSYSTEMS FROM POOR WATER QUALITY

Healthy Rivers Dubbo believes the risks from salinity and blue-green algal blooms are much higher than identified in this risk assessment.

New critical mechanisms proposed to reduce N-T risks include the strategic use of EWAs, and the support of constraints management strategies. As previously mentioned, Healthy Rivers Dubbo:

- Supports the mandatory establishment of EWAGs in the Lower Darling and NSW Murray Rivers, with environmental representation, to facilitate the strategic use of environmental water to improve water quality.
- Has little faith that there is enough appetite from those in power to manage constraints, and prioritise environmental outcomes over third party impacts.

To summarise our study of the risk assessment offered up in this WRP, there are a lot of intolerable high risks that will not be mitigated through the rules in the associated WSPs. We recognise that the emphasis on no third party impacts (especially around constraints management), is threatening the long term health of the river systems in the WRP area.

Do you have any comments on the protection of environmental water?

Active Management Policy to facilitate the protection of environmental water in NSW is under development.

³ http://www.water.nsw.gov.au/_data/assets/pdf_file/0005/665609/assuring-future-urban-water-security-draft.pdf

Do you have any comments on cultural connections to surface water and the protection of Indigenous values and uses?

We have described above our serious concerns about the appropriateness of the consultation with First Nation Groups for this WRP.

With such poor levels of consultation for such a complex area, Healthy Rivers Dubbo is comfortable to assume that considerations of the protection of Indigenous values and uses regarding the cultural connections to surface water would be inadequate.

Do you have any comments on Chapter 5 or Schedule F?

Healthy Rivers Dubbo:

- Supports proposed Lower Darling Restart Allowance
- Supports the broadening of the use of the Lower Darling EWA and an increase in the volume to achieve improved water quality.
- Supports the management of River Murray Increase Flows as a special planned environmental account.
- Does not support the ability to borrow water from the Barmah-Millewa Forest EWA or the new operating rule regarding 4 monthly flood. This EWA must be used for the benefit of the Ramsar listed wetlands based on their requirements.
- Supports the mandated creation of EWAGs with environmental representation for both the Lower Darling and NSW Murray.

Do you have any other comments on Chapter 5?

Healthy Rivers Dubbo strongly objects to the proposal for high security licences to be converted to unregulated licences for upstream extraction.

The WRP states that there is no floodplain harvesting in the WRP area. Therefore, all provisions for floodplain harvesting should be removed from the associated Water Sharing Plans.

In general, Healthy Rivers Dubbo considers that the EWAs are too closely associated to the needs of other water users and water determinations, rather than to meeting the environmental needs of the river system.

Do you have any comments on Chapter 6 or the Water Quality Management Plan (Schedule H)?

As mentioned above in our comments on the risk assessment, Healthy Rivers Dubbo believes the risks from salinity, blue-green algal blooms and from climate change are much higher than those identified in this WRP.

Melissa Gray

Convenor

Healthy Rivers Dubbo



12th October 2019

Email address	[REDACTED]
Name	daniel pinnuck
Address	[REDACTED]
Contact phone number	[REDACTED]
Are you an individual or representing an organisation?	Individual
Proposed changes to the Water Sharing Plan for the NSW Murray and Lower Darling Regulated Rivers Water Sources 2016	
Do you have any comments on the proposed changes to allow the operation of Pre-requisite Policy Measures (PPMs) for held environmental water in the NSW Murray and Lower Darling Regulated Rivers Water Sources?	This policy does not meet the same standards as consumptive water users who have their water use measured. It is based on guessing returned flows to the river. However the forest will not be an uniform consumer of water with some soils being more permeable than other soils within the forest, so water use will be higher than expected. This is true in irrigated agriculture as well.
Do you have any comments on the proposal to refer to the Operating rules for the Barmah-Millewa Environmental Water Allowance?	I question why the repayment of the BMF EWA borrow is based on a formula relating to Victorian high security water allocations when the borrowers are NSW general security holders.
Response per Water Resource Plan chapter	
Do you have any comments on how the NSW Government can improve the consultation process undertaken?	This is a complex document and it needs a longer time to study it
Response to Chapter 3: Risks to water resources	
Do you have any comments on Chapter 3 or Schedule D?	It only responds to risks for environmental water .It should cover risks for all water use categories
Response to chapter 4: Environmental water, cultural flows and sustainable management	

Do you have any comments on cultural connections to surface water and the protection of Indigenous values and uses?	PEW and cultural and indigenous values should align to be one and the same.
Do you have any other comments on Chapter 4, Schedule E or Appendix C?	PEW does not include all water water in the river other than that allocated to consumptive users. Flood events while beneficial to the environment should also be available for supplementary flows
Response to chapter 5: Take for consumptive use	
Do you have any other comments on Chapter 5?	Just that long term annual extractions are well below average
Response to chapter 7: Measuring and monitoring	
Do you have any comments on Chapter 7?	Is water flow in the river measured to the highest standard available and is there an independent audit of these flows
Response to chapter 8: Information used to prepare the WRP	
Do you have any comments on Chapter 8 or Schedule I?	Any models used must be adaptable to climatic variations and the results of these models must be far to all water users and the environment
How did you hear about the Public Exhibition of this plan?	
Please let us know how you heard about the opportunity to make a submission	Communication from peak body
Additional Information	
Please tick the relevant boxes	I consent to my "submission" being published on the department's website and my name will be included with my suburb or town in a list of submitters with a link to my submission. Please note that any attachments you may have provided and any personal information that has been included in the submission will be published.

[REDACTED]
12 October 2019

Re: Draft NSW Murray and Lower Darling Surface Water Resource Plan.

Dear Sir/Madam,

Thank you for an opportunity to comment on the draft NSW Murray-Lower Darling Surface Water Resource Plan (draft WRP). My interest in commenting due to my concerns at the poor environmental condition of Australia's most significant river system and that the rights of First Nations to water access are respected.

I do not have a background in science or am I a user of water within the basin. We own property along an upper tributary of the Macquarie River. The vegetation which covers most of our 23 hectares provides ecosystem services by way of improved water quality and quantity to Duckmaloi Creek, erosion control and biodiversity protection. We receive no tax rebates/financial subsidies in our protection and management of these ecosystem services.

Our family has always enjoyed outback travel in NSW and is keen to support regional towns during these travels. However, bone dry waterways and disappearing native bird wetlands means such trips are much less enjoyable. The chronic mismanagement of land and water in NSW makes it hard to dismiss the obviously parched landscapes as due solely to the current drought.

After 2012 sign off on the Murray Darling Basin Plan (MDBP), NSW should have been working constructively and collaboratively to develop accredited Water Resource Plans (WRPs) to start this July. Rather, government focus has been on restructures to form super departments, dismantling of important natural resource management administrative structures and reactive policy responses at times when water theft, non compliances, dead fish and fiddling of water accounting methods to favour irrigators have had media exposure.

Sadly collapsing natural ecosystems, dead fish, putrid water holes, dying red gums and degraded RAMSAR listed wetlands reflect eight years of expensive government recalcitrance and maladministration. The important accreditation process of WRPs accreditation stays behind schedule and a low priority.

This was confirmed in the recent Murray Darling Basin Authority (MDBA) review of the MDBA/NSW Bilateral Agreement (BIA) signed off on this February. Of the nine actions NSW agreed to complete on or before 16 June 2019, only two were completed. All of these ten actions are critical to the accreditation of the WRPs.

Until the estimates used in NSW water management are realized as actual water in the WRPs via accurate measurement, transparent accounting methods and robust modelling, the rules around the use and management of these rubbery estimates will be sloppy and opaque. To now fast track preparation and accreditation signoff at the 11th hour of these critical WRPs reflects a State administration in absolute shambles in its management of natural resources.

The bombardment of draft documents on exhibition is unfair to those in the community wishing to provide input into this important process of reform of the Murray-Darling Basin Plan (MDBP).

My submission focuses on what I understand to be that which is on formal exhibition ie the documents to be submitted for MDBA accreditation which include the draft WRP, its supporting documents and the proposed amendments to the Water Sharing Plans (WSPs). I am relying on the text in the blue boxes as per stated in the draft WRP:

“Blue-boxed text in each section is provided for accreditation by the MDBA. This text may refer to all or part of an attached schedule, and in these instances, that schedule or part thereof is also to be assessed by the MDBA for accreditation.”

I understand exhibition includes the proposed amendments to *Water Sharing Plan for Murray and Lower Darling Regulated Water Sources 2020* (M-LD Reg WSP), *Water Sharing Plan for the Murray Unregulated and Alluvial Water Sources* (M Unreg WSP) 2011 and *Water Sharing Plan for the Lower Murray-Darling Unregulated and Alluvial Water Sources 2011* (LM-D Unreg.WSP) as stated in the blue boxes.

Overall, I feel it is too complex for me to fully comment on the relationship, and any subsequent conflict, between the MDBP and the way WSPs operate in NSW. Technically this “relationship” is not on full exhibition but it is a critical issue for MDBP implementation.

Arising conflicts in this relationship, both current and potential, are not well identified in the exhibited documents. Fact sheets and document linkages have a role in public information but they are not always helpful in transparent community engagement and consultation. It is not possible to fully understand what impediments to sustainable water use and management is created by NSW’s WSPs.

WSPs continue to be the legal instruments for managing water resources in NSW. They appear derived from legislation with objects to provide for sustainable and integrated management of water sources in NSW “for the benefit of both present and future generations” but their important and necessary alignment with WRPs to effectively implement the Basin Plan has been buried in NSW’s political machinations of NSW’s water management regime.

The necessary independent reviews of the WSPs has lagged as the NSW administration has juggled crises and grappled with its responsibilities under the Basin Plan. Thus far it has escaped proper scrutiny of the unsustainable water use and management entrenched in the WSPs. Though the recent Natural Resources Commission (NRC) review of the Barwon-Darling WSP exposed many management issues.

The adequacy of current WSPs to comply with MDBA accreditation is ludicrous. They ignore best science water modeling, contain unresolved floodplain accounting methods, demonstrate poor protection of environmental water and lack context within a well resourced monitoring and compliance framework and robust water trade arrangements.

If these WSPs continue to fail to take account of the urgent need for sustainable use and management of basin water, then NSW WSPs must be “called out” for the significant risk they pose to the achievement of the vision in the MDBP and its important intent to facilitate sustainable use of the Basin’s water resources.

Please find my concerns on the information in each blue box as below.

Yours sincerely,

Cathy Merchant.

INTRODUCTION:

There is a series of linked documents which are on exhibition on the Department of Planning, Industry and Environment - Water website but the relationship between them all is not clearly stated. There is no reference in the draft WRP to the policy document, *Active Management in Unregulated Rivers* currently on exhibition and whether it has connection with the two Unregulated WSPs. This constitutes a form of “shadow transparency” which breaches recent government commitments to improved public consultation.

It is confusing as to who undertakes the exhibition process for the Draft Murray-Lower Darling Long Term Water Plan (LTWP). This document is included in the exhibited draft WRP supporting documents on the Department of Planning, Industry and Environment (DPI) website. It is not for accreditation purposes but why it isn’t included is not properly explained. It has a long life of up to 20 years as a water plan in the complex MDB.

It also seems to have a different consultation pathway but it is unclear what part of DPI will consider community submissions. “Super departments” may reassure government itself of improved operational efficiencies but it can be argued this is at the expense of government transparency, rigour in policy development, meaningful public engagement and opportunity for community scrutiny.

Generally, government assurance of improved transparency and accountability is not evident on NSW’s water management websites where information is confusing for the general public. Information is not always updated properly and links often indecipherable eg. the status of 12 of NSW’s WSPs lack supporting documentation and just link to the actual legislation which is meaningless for the average person. Documents are often buried or missing eg information on the BIA does not appear to be on the NSW Industry website.

COMMENTS ON BLUE BOX TEXT:

1.3 Objectives and guiding principles

A statement of “recognition” in the draft WRP of the objectives of Chapter 5 of the MDBP is meaningless without proper reflection of the objectives of Chapter 5 in the WSPs.

It is arguable whether the clauses in the three WSPs meaningfully “refine” the important outcomes and objectives of the MDBP or further muddy the waters of the overarching objective of improved sustainability in water use and management as required under State and Commonwealth legislation.

It is erroneous to include “economic” in the clauses of the WSPs being submitted for accreditation. This implies an equal priority of water use for economic benefit, especially to the contentious irrigation industry.

Its inclusion as an objective undermines the important aim of the MDBP to deliver, in the genuine national interest, a healthy and working Murray-Darling Basin and achieve improved outcomes for all Australians based on sustainable management of water resources in the basin. An “economic” objective with equal priority to environmental objectives is nonsensical and contradictory to this aim.

It is also unclear why Aboriginal cultural objectives are included in 1.3. Chapter 10 Part 14 of the MDBP requires demonstration in the draft WRP of how Indigenous Values and Uses have been identified. It details the required objectives and outcomes based on these important values. These matters are addressed in other parts of the draft WRP and superfluous to accreditation as stated in 1.3.

Overall, the supporting WSPs lack rigor and cohesion. If approved it is unclear whether all three will be in effect for ten years or just the Regulated Rivers WSP ie will an amended 2011 WSP be audited before 2021 or 2030.

The WSP auditing process has been very erratic in NSW as outlined below. It is confusing as to what auditing has occurred of the specific effectiveness of the three WSPs to be amended and what improvements made in response of an audit. It was unable to be determined if any audit of the two Unregulated Rivers WSPs had occurred.

What limited independent of DPI auditing has occurred of the three WSPs has identified critical problems such as data gaps and inadequate policies to protect environmental water. Coupled with these has been the identification of poor water quality in many parts of the Water Resource Plan Area (WRPA). The M-LD Surface Status and Issues Paper (S&IP) stated significant information uncertainty for the unregulated rivers within the draft WRP area.

It is arguable that all of NSW WSPs need to be rewritten both to bring them in line with the State legislative requirements and assure compliance of the final WRP for accreditation purposes.

The MDBA rated the river health of the upper, middle and lower Murray as poor in the 2008-10 Sustainable Rivers Audit. The NSW Murray and Lower Darling Surface Water Resource Plan – Water Quality Management Plan (WQMP) which supports the draft WRP makes no reference to the MDBA’s 2010 audit.

In the undated WQMP, it was acknowledged that there were information gaps preventing full assessment of river health. Where there was adequate information the risk rating was high or medium in most sections. It identifies a number of causes of water quality degradation including salinity, raised nutrients and water temperatures. It is most likely that if adequate information had informed the WQMP risks from salinity and blue-green algal bloom on river health would be higher especially in the Lower Darling.

My final comment about 1.3 Objectives and guiding principles is regards the curious inclusion of the statement that “Additionally, this Plan recognises the objective identified in section 1.2 of the 2017 Intergovernmental Agreement on Implementing Water Reform in the Murray Darling Basin.”

Section 1.2 states:

“The objective of this Agreement is to ensure that the Commonwealth led Basin water reforms, including the Basin Plan, are implemented in a cost effective manner to support the national interest of improving river and wetland health, putting water use on a sustainable footing, enhancing irrigation productivity, providing water for critical human needs, and providing farmers and communities with more confidence to plan for a future with less water.”

This suggests a spurious rewrite of the “national interest” referenced in 5.02 (c) of the Basin Plan ie *“to optimise social, economic and environmental outcomes arising from the use of Basin water resources in the national interest;”*

Most members of the public would ask has it been in the “national interest” to provide money to enhance irrigation productivity with projects not properly assessed for their full environmental impact? The use of public money has not been cost effective in this regard (refer recent 4Corners episode).

How cost effective for the nation has the dead fish cleanup been compared to longer term resourcing of improved compliance on water use? How can farmers plan for a future with less water when predictions of trending lower rainfall and hotter changing seasons are not accurately and consistently modelled? Is it in the national interest for regional towns to be reliant on sometimes poor quality ground water to provide for their critical human needs? What are the long term health consequences of this groundwater use nationally? Why aren’t Indigenous values and uses recognized in Section 1.2?

It is not adequately explained why Section 1.2 of this document is included and arguably confirms the strongly felt public sentiment that NSW has made only tokenistic attempts to fulfill its commitment to the MDBP they signed up to over eight years ago.

This reference needs to be removed as it is irrelevant and contradictory to the accreditation process that NSW needs to comply with under the Basin Plan. In the interests of full transparency and accountability the recent BIA between NSW and the MDBA should be included and NSW’s review report card failure from July.

SUMMARY OF AUDIT HISTORY

The NRC audit in 2013 of the Regulated Rivers WSPs due to expire in 2014, included that for the M-LD Reg WSP. This 2013 audit covered over 30 WSPs.

The NRC report was rather generic in its response. It concluded that, despite recognition of significant knowledge gaps there was a “weight of evidence” that replacing the plans would benefit consumptive users and the environment.

Whilst the WSPs were improvements on the 2004 WSPs “more can still be done to improve monitoring, evaluation and reporting; increase transparency; address issues around risk; integrate surface and groundwater management; and minimise constraints on the carryover, trade and use of environmental water.”

However, given the replacement of WSPs would be necessary as the MDBP progressed the development of improved WSPs did not occur and NSW water management was “off the hook”.

In 2013 the Office of Water also undertook an audit of the implementation of Regulated Rivers which included the M-LD WSP. Among the issues identified were concerns with a lack of capacity in measuring systems to take proper account of transmission losses especially on trade across SDL Resource units, a reliance on environmental water to meet critical needs water requirements, increases in share entitlements of General and High Security licences observed on the Public Register but for undetermined reasons, the impact of the then drought conditions on water resources and how best to manage resources if another such situation should occur in the Murray, lack of mechanisms to re-credit environmental water, the need for a return flow policy.

It is unclear what follow action occurred subsequent to these reviews/audits.

Many of these issues still seem unresolved eight years later. In this rushed and complex exhibition process it would seem that WSPs are effectively being “rolled over” at State level in complete disregard of both the 2012 MDBP requirements for good alignment between WSPs and WRPs and the auditing requirements of the State water management legislative regime.

1.3.2 Objectives and outcomes based on Indigenous values and uses

Ensuring adequate water for cultural activities and the enhancement of ecosystems is integral to on country experiences for First Nations. The outline of progress in the draft WRP has been dismal with the necessary consultation for the purposes of accreditation very much behind schedule.

Only two consultations have been completed. Three are awaiting the consultation report, one has workshops underway and seven are yet to complete consultation.

The processing of Land Claims has been very slow and frustrating for First Nations and the draft WSPs should take account of any future amendments that may be required when claims are settled.

Box 1-2 *The Importance of water to Aboriginal Nations* should be included in the blue box text.

1.5 Form of water resource plan and responsible persons

For the purpose of clarity the area that applies in the draft WRP should be explained better. Presumably it applies to “only some of the water resources” because of the State border but for the average person this may be confusing.

Presumably Schedule B is submitted for accreditation. This should be clarified.

I feel the Index in Schedule B should be better explained. The explanation seems poorly worded and confusing and there are many MDBP requirements where the NSW Minister is identified as the responsible person.

Given the history of inappropriate and poor ministerial intervention in water management in NSW, this needs clarification to ensure the requirements of the MDBP are properly met. In the interests of transparency and improved administrative function it may be more appropriate for clarifications in the draft WRP of ministerial responsibility and/or stronger rules stated in the WSPs.

1.7 Consultation undertaken

It is noted that the wrong link is included in the draft WRP to Schedule C (Consultation Report) placed on exhibition though Schedule C is included on the draft WRP website information.

As mentioned above consultation with First Nations is not complete.

Information regards broader consultation is inadequate. The link on the DPI - Water website directs to the S&IP but there is no information about the submissions or the Issues Assessment Report which are stated in the draft WRP to form part of the Consultation Report.

1.8 Review and amendment

It needs to be directly stated that amendments to the WRPs will be necessary for such matters as: finalisation of the floodplain harvesting policy, real time water measurement information, revised water amounts based on improved understanding of actual water use, improvements in methods from actual water use accounting, consistent and improved and co-ordinated basin wide modelling of connectivity and environmental impacts across WRPs.

All future reviews should be independent.

2.1 Identification of WRP area, SDL resource unit and water resources

For the broader community it is puzzling why the Murray River and Lower Darling River are included in the same Water Resource Plan Area (WRPA) as they would seem to be separate catchments in terms of tributaries and water sources.

This needs to be explained and justified better to take account of any adverse impacts from water trading within the WRPA. Attention to the basic principles of total catchment management seem missing in this arrangement, especially in how the Lower Darling can receive water.

This creates complex issues in regards to sustainable water use within the WRPA which do not appear adequately addressed.

2.2 Regard to other water sources

Overall, rules in the WSPs are weak in ensuring protection of other water sources. The vague targets for environmental objectives facilitate limited opportunity for integrated catchment management within and between WRPAs.

Re 10.14 of Basin Plan

10.14 includes “potential effects” on the use and management of water resources in the M-LD WRPA including the taking of groundwater.

In the S&IP, Aboriginal communities have raised concerns with water quality issues impacting the general health of the river and connected groundwater systems. It also recognized an increased use of groundwater, including emergency infrastructure, during periods of extreme events. The LTWP stated “...that groundwater and surface water resources are inextricably linked and that connections between surface and groundwater systems can vary considerably between systems.”

Given this established surface-groundwater connection and the recognized high interconnectivity between the regulated and unregulated rivers in the M-LD WRPA it seems inadequate to remove the groundwater rules from the Unregulated WSPs in the M-LD WRPA and transfer risk management to other WRPAs. Rules to protect GDE in the WSPs within the draft WRP should remain and all risks to GDE managed properly within all WRPAs.

There will be an “effect” on the use and management of ground water resources in M-LD WRPA but they will be “ignored” in the draft WRP and supporting WSPs where there is a presumption that such use and management can be accounted for in complex inter-WRPA’s licence arrangements.

This approach to risk management also compromises reliable water quality monitoring progress, especially of salinity pollution and management of target ecological populations such as river red gum and black box within the draft WRP.

The cycle of groundwater recharge and replenishment is often longer than a WRP lifecycle and the robust application of the precautionary principle is critically important in groundwater management especially given increased reliance on it during drought.

3.1 Risk identification and assessment methodology and 3.2 Description of risks

It is noted that the wrong link is included in the draft WRP to Schedule D (Risk Assessment Information) placed on exhibition though Schedule D is included on the draft WRP website information.

Overall, from the blue box text in 3.1, 3.2 and 3.3 it is implied that only sections of the Risk Assessment Information are being submitted for accreditation - these being respectively section 2.4/Appendix A; Table 1; Section 8/Table 1. This needs clarification as it suggests the important 4-3 Consolidated Risk Table is not included for accreditation.

Overall, the risk assessment report in Schedule D presents to the average person as a dense, incomplete and disjointed document. It is difficult to understand properly the relationship between the two documents since the risk assessment information seems absorbed somewhat arbitrarily into the draft WRP.

It is difficult to understand in the risk assessment how the information in the consolidated risk table is transferred into Section 8 Risk Treatment overview and from there into the draft WRP. Of significant concern is how the final 18 strategies to be used to mitigate identified risk have been transferred into the draft WRP. The strategies, and how they are robustly derived from risk ratings, would seem critical to the accreditation process. My concerns are further identified below in 3.3.

Table 1 presents as an index table to the risk assessment document rather than providing meaningful information on “all of the medium and high risks and the factors that contributed to them.” as described in the text in the blue box.

Improved clarity in all aspects of *Section 3 - Risks to Water Sources* would better assist community understanding of how risks to the MDB are to be managed over the next ten years. The community has a right to know about risk management in the M-LD WRPA given the heightened community concern about the significant environmental problems evident across our precious Murray-Darling Basin.

Further, it seems inadequate for risk management planning to exclude from the risk mitigation process water for human consumption at a comprehensive M-LD WRPA level. Local government is struggling with drinking water supply due to low surface water quantity and poor water quality across the whole basin. The causal relationship of these low quantities and poor quality appear underpinned by mismanagement via the WSPs process but exacerbated by the current drought.

The stated Local Government approach of ...” ‘multiple barrier approach’ from catchment to tap” appears meaningless within an overall basin context. It seems inappropriate and unfair for only water utilities to implement a risk-based approach for water used for human consumption when NSW has demonstrated evident mismanagement of basin water resources.

It is deplorable that no information is available to inform the suitability of water for public benefit values (Indigenous and socio-economic). There is no statement as to when this information will be available. The separate document to address Aboriginal cultural requirements is not identified.

The risks to the suitability of water for the public benefit values (Indigenous, socio-economic) needs to be defined regardless of the absence of data. The risk to the public benefit of lost ecosystem services should also be included in 6.5.

There are significant longer term social and economic costs associated with reduced water quality and quantity: poor physical and mental health outcomes; increased transportation costs and greenhouse gas emissions; reduced quality of life; lost tourism opportunities etc. The dismissal of the requirement to undertake risk assessment of the socio-economic public benefit is not justified on grounds of “a lack of data” nor would this seem satisfactory for accreditation purposes.

3.3 Strategies for addressing risks

Once again it is unclear from 3.3 whether all or part of the Schedule D is to be submitted for accreditation purposes. The draft WRP suggests just Section 8 and Table 1 of the risk assessment.

As mentioned above Table 1 presents as an index rather than providing meaningful information. As well, the apparent disconnect between Section 8 and the consolidated risk table 4.3 is concerning and confusing for the average person trying to understand how basin risks will be managed in the draft WRP.

Table 3-1 in the draft WRP lists 18 strategies that are adapted from the Risk Assessment for the NSW Murray and Lower Darling WRPA, Table 8-7. This table is stated to complement the consolidated risk table 4.3. However, only half of these strategies appear to be derived from the consolidated risk table.

Whilst some rigour and transparency is apparent in the development of the consolidated risk table, which was compiled in conjunction with the MDBA and in response to stakeholder feedback on risk assessment drafts, the risk treatment process in Section 8 appears the opposite.

There seems confusion between what constitutes a mechanism and what a strategy eg Table 8-5 “provides information on the new strategies” but is headed “New or modified water management actions or mechanisms”.

Regardless, it is stated that half of these new mechanisms cannot be completed until new information is available. Seven are not stated in Table 3-1 of the draft WRP. One appears in section 4.4 (strategy 16 though worded differently in Table 3-1 with “other” replaced by “licenced”) and one from section 4.6 (strategy 14 referencing protection of the environment and water users from changes in flow attributable to climate change).

There is no clear statement as to the basis of the additional nine strategies in Table 3-1 of the draft WRP. There is no clear statement of what risks are being treated and the relationship of the risk treatment overview to the consolidated risk table. It seems illogical to derive a residual risk rating and then exclude the mechanisms/strategies from the strategies to be used in the draft WRP which are considered to have mitigated the original risk rating now described as “tolerable”.

There are still around ten scenarios considered not tolerable if these new mechanisms were applied.

Information clearly presented in the consolidated risk table is “mashed” up in 8.5 - *Summary of strategies to address risk* in a meaningless and obtuse way. The poorly presented table of abbreviations isn’t even in alphabetical order.

My apologies if I have misunderstood some information in the risk assessment but there is a significant risk to public confidence and improved government transparency around water management which the presentation and coherence of the risk assessment information has not considered.

4.1.1 Identification of Planned Environmental Water

The protection of the right of environmental water to flow a complete passage of the basin to the ocean has been one of the most contentious aspects of NSW water policy. Improved management and protection of environmental water is at the core of community concerns and stronger rules in the three WSPs are imperative to mitigate further ecological collapse. The protection of this “right of passage” is fundamental to NSW government responsibilities in water use and management under State and Commonwealth legislation.

Many and serious risks to environmental water across the WRPA are blatantly evident in the Risk Assessment Information but response is vague and weak and suggestive of a “NSW business as usual” approach in the draft WRP and supporting documents.

At the basis of this weak response is an apparent and circular political determination to manage the evident ecological imbalance consequential to historic overuse of basin water via an approach to water use and management underpinned by the supposed “balanced” objectives to the WSPs.

This irrational approach “unbalances” both the ecological processes within the basin and equitable access to basin water in its supposed balanced objectives. Historic overextraction/economic interests are balanced equally with environmental objectives in the WSPs which is inconsistent with the MDBP.

The delayed/fast tracked WRP accreditation process in NSW appears to be entrenching the current “unbalance” in water use and management for the next ten years. If environmental objectives are not paramount then economic objectives, coupled with political interest will continue to undermine sustainable water use and management in NSW.

Euphemistic notions of “balance” has skewed rational discussion of how to properly implement the MDBP and delayed its implementation over the past eight years. NSW is behind with its promises to better manage environmental water. Important policy documents, critical to WRP accreditation are currently on exhibition at the same time as the three remaining WRPs.

Management options in the current system operating in NSW are available and could be put to good use in the protection of environmental water within WSPs but are ignored.

For instance, with improvements to pump monitoring and compliance environmental it should be possible to “shepherd” environmental water effectively along the river system to where it is needed. There are multiple benefits for the environment in this passage.

Shepherding of water is defined in the Unregulated WSPs and listed as a possible future amendment to WSPs. However, the definition of shepherding includes both for environmental water and downstream extraction. Use of shepherding for downstream extraction is contrary to the intent of the MDBP. Whilst the rights of environmental water need full protection and shepherding is one available method to achieve this, the use of shepherded water for downstream extraction creates very serious conflicts in sustainable use of water in the basin.

WRPs underpinned by WSPs with strong rules on environmental water protection which are properly monitored and enforced throughout the basin is imperative for continuous whole of river connectivity. The NSW government needs to work fast in meaningful collaboration with the MDBA to get these strong rules in place and facilitate accreditation of the draft WRP.

4.1.2 Register of Held Environmental Water

The Register of Held Environmental water will only be as good as the standards in measurement of actual environmental water in in NSW. In the absence of real time monitoring, best science regards floodplain run off and protections via strong WSP rules it may not be a register of “real” water for the environment.

4.2 Priority Environmental assets and priority ecosystem functions

This blue box text in this section refers to Section 4 and the consolidated risk table but as mentioned in 3.1, 3.2 and 3.3 above it is unclear whether all or part of the Risk Assessment Information in Schedule D is being submitted for accreditation. This needs clarification to ensure consistency within the draft WRP.

It also needs clarification whether the text in point 2 is referring to the strategies outlined in the consolidated risk table when it says “Rules to manage these risks..” or the existing WSP rules which are arguably inadequate in risk management. As commented above risk mitigation is compromised by the “unbalance” in the stated objectives of the WSP.

Critical documents such as LTWP and WQMP are mentioned mostly as notes in the WSPs rather than intrinsically linked to the WSPs via the identification of firm target for monitoring and review. Target ecological populations and processes in the WSPs are not linked to those sites covered in the LTWP nor is monitoring linked to the Lower Murray Monitoring, Evaluation and Research Plan (2019–2022) (WMRP).

Well defined targets are critical to robust monitoring of progress but the WSP is generic in its definition and weak in its clarification that “processes must be easily monitored and measurable”.

The direct linkage of the targets and objectives within the LTWP and improved reference to this document would significantly strengthen the draft WRP and supporting WSPs. Added to these ill defined linkages is the use of weak language such as “broad objective”, “may include”, “may be managed”, “where possible” etc in all WSPs.

This weakness is confounded by inconsistency between plans. For example different dictionaries are attached between WSPs; low flow macroinvertebrates are not targeted ecological populations in the Regulated WSP.

The need for WSP to protect RAMSAR listed wetlands is not clearly stated in any of the WSPs. It is only mentioned in the Murray Unregulated WSP where it is presumably erroneously linked to the rules of the presumably superceded 2016 M-LD Regulated WSP. In the definitions of target ecological populations and processes there is no inclusion of RAMSAR listings.

The reservation of all water above the long term average annual extraction limit (LTAAEL) seems the current and proposed future 10 year “critical mechanism” to be used in risk mitigation. Yet the LTAAEL is a mechanism hotly contested. Whether the amount of the LTAAEL in the WSP is actually correct will hopefully be resolved with improved measuring and compliance and better science to model floodplain harvesting and runoff. It is probable that some of this extracted water is really water critical to ecosystem function that should have been always left in the river system.

Regardless, the use of averages to underpin risk mitigation in such a dynamic, landscape diverse and complex catchment as the Murray-Darling river system needs cautious application.

A changing climate is already skewing many so called “averages” across social and economic sectors. The impacts of a changing climate is well researched in the Murray-Darling basin even this is to identify significant uncertainty in many aspects of the predicted impacts of a changing climate. Significant reporting and compliance problems have been identified with the LTAAEL.

To then underpin risk management primarily to the LTAAEL is not an assurance to the general public that environmental water is properly protected or sufficient to maintain the ecological populations and process supposedly protected within the WSPs.

4.3 Planning for environmental water

Whilst there seem triggers in the LTWP for changes occurring to WRP during the accreditation process it remains unclear how the LTWP itself connects back meaningfully into the draft WRP to achieve improved environmental outcomes.

As stated above, there are weak rules in the WSPs to protect the rights of environmental water. There are serious flaws in the objectives of the WSP which compromise the management planning and protection of environmental water in the draft WRP.

Overall, the planning for environmental water appears as a skewed process. The objectives in the LTWP should be given full effect in the WSPs so as to clearly define targets and monitor progress meaningfully.

4.4 Environmental watering between connected water resources

NSW is proposing changes to Pre-requisite Policy Measures (PPMs) for held environmental water to allow environmental flow reuse and piggybacking for accreditation. “Piggybacking” is not defined in the definitions section of the WSP.

The use of held environmental water for anything other than its defined purpose is not supported. As stated frequently the objectives of the WSP must be aligned towards full protection of the rights of environmental water. The additional objectives conflict with the protection of these rights and suggest “piggybacking” is not consistent with the intent of the MDBP.

4.5 No net reduction in protection of PEW

As mentioned above the rules in the WSPs are weak and unaligned to well defined targets aligned with the LTWP. Borrowing water meant for RAMSAR listed wetlands is not consistent with the intent of the MDBP.

To justify “no net reduction” in protection of environmental water based on what was happening in NSW water management pre MDBP is poor policy. It may be that NSW was not properly managing water use according to its own State legislation in 2012 - there has been no transparent auditing process evident since WSPs were first introduced in 2004.

NSW has committed to the MDBP which aims to protect RAMSAR listed wetlands. It needs to demonstrate proper commitment in its draft WRP to such protection with strong, not weakened rules in WSPs which ensure the watering requirements of RAMSAR wetlands are met.

The following amendments to the M-LD Regulated WSP are supported:

- “broaden the permissible uses of the Lower Darling Environmental Water Allowance to mitigate any water quality issue in the water source at clause 65
- include a restart allowance for the Lower Darling for the purpose of mitigating impacts to water quality in refuge pools when the Lower Darling River is re-started at clause 73

4.6 Cultural flows and retention of current level of protection of Aboriginal values and uses

As stated above consultation has been grossly inadequate with First Nations. It is hard to comprehend the stated “retention of current level of protection of Aboriginal values and uses” when most likely for a young Aboriginal person in Wilcannia current contact with water is via a plastic bottle at best for drinking and poor quality ground water generally.

Mechanisms to ensure reliable access to cultural flows for First Nations needs a significantly increased focus in the draft WRP. The current levels of protection in the WSPs are inadequate and need to be strengthened and water access rights fully protected.

The draft WRP would seem in breach of current legislation regards the protection of rights of access to cultural flows. The weak rules in the WSPs currently limit intent of the MDBP to achieve continuous whole of river connectivity. This would seem important for access to cultural flows as well as healthy ecological river function.

4.7 Groundwater management

My concerns at the removal of rules for groundwater is discussed in 10. 14 above. The cycle of groundwater recharge and replenishment is often longer than the life of this plan and the robust application of the precautionary principle is critically important in groundwater management.

Rules to manage groundwater should be included in this draft WRP as well as the stated *Water Sharing Plan for the Murray Alluvial Groundwater Sources 2020* and the *Water Sharing Plan for the Lower Darling Alluvial Groundwater Sources 2020* to which the rules in the current WSPs have been transferred as part of the risk management decision making.

5.1.3 Trade between groundwater and surface water 5.1.4 Groundwater trade

No trade between surface and groundwater SDL would seem appropriate given risks to groundwater sources are not proposed for management within the draft WRP.

On trade more broadly:

Given the recognised knowledge gaps it is arguable that information about the interconnectivity of regulated and unregulated water sources remains very blurred.

Proposed changes in the draft WSPs include share trading between regulated and unregulated water sources which could have further adverse ecological impacts on already recognised poor water quality in some areas.

Any form of tagged trade is not supported. Likewise any conversion of high security licences to unregulated licences for upstream conversion.

5.2.1 Establishing the initial SDL 5.3 Determining available water - rules for take 5.4 Assessing compliance with the SDL and APT 5.5.1 Measuring and estimating 5.6 Annual permitted take

Resolution of these four sections is critical for accreditation of the draft WRP and progress in the meaningful implementation of the MDBP. The lack of information provided in the draft WRP is disappointing to the community concerned to see progress but typifies NSW's tardy approach since 2012.

These sections have formed part of the ongoing discussion arising from this February's BIA between NSW and the MDBA. As at 4 July most of the ten actions NSW had agreed to in the BIA had not been completed satisfactorily. In some cases with serious implications for the important accreditation of the draft WRP eg the method NSW proposed for SDL compliance would need improvement as it was "potentially inconsistent with the Basin Plan."

All of the matters within these sections of the draft WRP are fundamental to a robust and accredited WRP so it is hard to comprehend that an adequate consultation process is being undertaken when this information is not available for public comment.

The MDBA has urged NSW allocate increased resourcing of these important actions necessary to realise the vision of the MDBP for all Australians.

5.7 Interception activities

The draft WRP states that no types of interception activities (runoff dams, commercial plantations, mining activities, floodplain harvesting) were found to have a significant impact on water resources.

However, for dams and floodplain harvesting this assessment seems based on an assumption rather than an actual measured amount of water take. Use of estimates introduces an uncertainty. Interception activities could increase with subsequent risk to water resources.

For the purposes of accreditation it would seem necessary for the draft WRP to demonstrate how dam growth is to be monitored to identify early any increase in risks to water resources.

A 2006 Government Gazette notice re dams and floodplain harvesting is mentioned a number of times in the draft WRP. The relevance of this document to the accreditation of the draft WRP under the MDBP is unclear and unexplained. Its intent may be inconsistent with the intent of the Commonwealth MDBP.

Accurate measurement of take from floodplain harvesting is also necessary especially as the supporting WSPs include provisions for floodplain harvesting. Removal of these provisions would of course mitigate future risks to water resources from any increase in this form of take. Past floodplain harvesting activity captured in the proposed floodplain harvesting policy should be incorporated into all WSPs after the immediate concerns within the northern basin are rectified.

5.8 Measures in response to extreme events

It is noted that the wrong link is included in the draft WRP to Schedule G (Incident Response Guide For the NSW Murray and Lower Darling Water Resource Plan Area (SW8) (IRG) placed on exhibition though it is included on the draft WRP website information.

The text in the blue box appears to suggest the IRG will address situations of “extreme water quantity event” and “extreme water event” rather than and/or situations as stated as required under the Basin Plan 10.51. The IRG G states and/or. The blue box text should include “or”.

The inevitability of “extreme events” occurring more regularly and intensely within the Murray Darling basin due to the impacts of a changing climate is not fully reflected in the draft WRP. The S&IP foreshadowed this situation: “However, more severe droughts are possible, and unanticipated water quality events or system failures could occur. The current regulated river WSPs are unlikely to meet the requirements of the Basin Plan during extreme events.”

The draft WRP and its IRG do not appear to have taken account of this important issue. It is concerning that water use during an “extreme event” will prioritise water take for basic landholder rights and take for domestic or essential town services, over the needs and protection of water sources and dependent ecosystems. This contradicts the normal priority order that identifies highest priority to both water source and dependent ecosystems and the taking of water by persons exercising basic landholder rights. This normal priority seems more aligned with the objectives of the Basin Plan.

A reprioritisation seems counter intuitive as a sensible management approach to “extreme event” situations which are reliably predicted to be more regular and intense during the ten year operation of the draft WRP. It is arguable whether ecosystem maintenance can even be separated in priority from the needs of basic landholder access to clean adequate water.

Many communities across the basin now only have access to poor quality drinking water, if they have access at all. This reduced quality is largely due to associated ecosystem collapse as a consequence of chronic over extraction of water and amplified during drought conditions.

“Extreme events” should not trigger abandonment of water for dependent ecosystems and further loss in resilience of ecosystems and vegetation communities such as river red gums. Further loss of river red gums will have dire consequences for water quality as erosion worsens.

It is unclear why flood situations are not considered within the context of the IRG. Extreme events such as a flood event may be isolated and also be more frequent with a changing climate. How these are managed will have impact on water quantity and quality across the whole basin and some account of management should be stated in the draft WRP to ensure consistency with basin wide objectives.

“Extreme events” should consider scenarios where reduced vegetation cover either due to land clearing, bushfires, dying river red gums etc will exacerbate erosion and soil loss. Increases in the number of river chokes will exacerbate pollution risks and make connectivity even more difficult to achieve causing significant ecological devastation and disruption to fish habitat requirements.

As mentioned above audits of all WSPs across NSW has been limited and tardy. The auditing that has occurred of the Murray-Lower Darling WSPs suggest serious problems with the capacity of these mostly unchanged WSPs to be effective in extreme event situations.

The response by DPI - Water seems to focus on licence suspension/flexibility, borrow of carryover or environmental water, non application of accounting for transmission losses etc with little regard to reduced water extraction as a viable risk management option for extreme event situations. Reliance on ministerial intervention is not a suitable management option.

As mentioned above the NRC 2013 audit recognised serious information gaps making it “..difficult to draw conclusions on the outcomes of implementing these water sharing plans and their adequacy for sustaining key water-dependent values.” The precautionary principle needs to be applied given the significant data gaps which still underpin this draft WRP. This implies a necessity to reduce the amount of water licenced for extraction during the life of the WRP.

Section 3.2.2 and Clauses in the Unregulated WSPs relate to management responses for unregulated rivers. It is unclear what is the meaningful definition of Very Low Flow Class in terms of ecological processes. Whilst linkage to a gauge flow provides a practical measure to define each Flow Class it is unclear to the average person concerned about improved basin health overall how the gauge level is linked to ecological outcomes. This needs to be better defined in the draft WRP.

Any periods of suspension of the WRP must take account of the need to protect environmental water.

6. Water Quality Management Re 10.29- 10.35 (pgs 85-86)

It is noted that the wrong link is included in the draft WRP to Schedule H (NSW Murray and Lower Darling Surface Water Resource Plan – Water Quality Management Plan) (WQMP) placed on exhibition though it is included on the draft WRP website information.

Public confidence has been shattered in the way the State government has managed NSW's area of the Murray-Darling River. The public has been disturbed and angry by photos of fish kills and stagnant ponds and media coverage of damning independent reviews of plans and policies. Degraded water can kill aquatic organisms, compromises or destroys Aboriginal cultural and spiritual uses of water, increases water treatment costs and has associated public health risks.

The government has promised improved transparency and accountability in revised management strategies and policies and demonstrated improved rigour in this draft WRP so as to genuinely achieve sustainable water use provides one of a number of opportunities to restore public confidence.

In relation to water quality management presumably there is need for consistent targets across all basin jurisdictions to ensure reliable comparative monitoring of progress of the Basin Plan. The draft WRP must demonstrate consistency whilst taking account of any regional considerations.

It becomes unclear then why national guidelines are not utilized. NSW appears to have rejected use of the Guideline document 4: Australian and New Zealand Guidelines for fresh and marine water quality 2000 because it is under revision. These are the guidelines referenced in the Basin Plan. All guidelines are revised from time to time to take account of new information and methodologies.

Some statements in Schedule H are not especially useful in clarifying NSW's approach to water quality management:

“The Assessment of Murray-Darling Basin water quality targets in NSW (2015) by NSW Department of Primary Industries Water identified targets in some zones and zone boundaries as being inappropriate. **Perceived poor water quality at a monitoring site may be due to an inappropriate target, rather than excessive pollutants.** In response to these findings, NSW Department of Planning, Industry and Environment will develop appropriate regional water quality guidelines by 2020 for inclusion in water quality management plans.”

The bolded text could be interpreted by the general public as NSW revising its targets as an easier option to taking effective action to reduce pollution. Under Basin Plan 10.30 there is a requirement to identify likely causes of water quality degradation. Elevated levels of salinity, nutrients and cyanobacteria; fluctuating dissolved oxygen and pH; cold water pollution were all identified and considered to have a medium to high risk. It should be noted that the WQMP was unable to properly assess risks from elevated pathogens and pesticide counts due to information gaps.

The management of salinity poses equity and other complex challenges in management. Raised salinity affects the environment, communities and business and poses significant economic cost to all.

Reliance on extraction techniques to flush saline water through the system may be more expensive longer term than ensuring adequate flow of water at all times is passing through the system relative to the conditions of a changing climate. This could be achieved by improved protection of environmental water but also by better

controls on extractions both of which should be more strongly reflected in the draft WRP including the accreditation of important documents related to salinity management.

7.1 Information relating to measuring take

The implementation of the NSW Metering Policy will improve understanding of water extracted within the WRPA. The current information gap seems to be in the unregulated rivers but improved technology and compliance may also indicate need for changes in allowances.

The improvements in measurement may demonstrate a growth in diversions that exceeds the SDL. The draft WSP needs to contain clear rules to control any growth in diversions should this eventuate so as to ensure SDL compliance.

7.2 Monitoring water resources

It is noted that the wrong link is included in the draft WRP to Schedule J (NSW Murray and Lower Darling Surface Water Resource Plan – Monitoring, Evaluation and Reporting Plan) (MERP) placed on exhibition though it is included on the draft WRP website information.

Similarly to comments on Water Quality above, any monitoring of water resources in NSW should be an approach that is consistent and collaborative basin wide.

8.1 Best available information and methods

Public confidence in the way NSW has managed water in the Murray-Darling Basin is mostly eroded. To restore public confidence, especially as the predicted, dynamic and somewhat unknown impacts of a changing climate become more evident to the community will require considerable effort on the part of government.

Government must demonstrate transparently that it is in fact relying on the best available information and methods. In the recent progress report of the BIA implementation commitment was made by NSW to amend estimates of Baseline Diversion Limits for each SDL resource unit based on best available information. The community supports immediate and urgent attention to the use of the best available science informing all aspects of NSW commitment activities in implementation of the MDBP.

This information should be made publicly available on the Confluence portal.



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Comments on Draft NSW Murray and Lower Darling Surface Water Resource Plan

The Inland Rivers Network (“IRN”) is a coalition of environment groups and individuals that has been advocating for healthy rivers, wetlands and groundwater in the Murray-Darling Basin since 1991.

IRN welcomes the opportunity to provide comments on the Draft NSW Murray and Lower Darling Surface Water Resource Plan (draft WRP).

Background

IRN submitted substantial comments to the Status and Issues Paper on the NSW Murray and Lower Darling Surface Water Resource Plan released in 2017.

We noted that the Murray-Lower Darling River system supports very important wetlands and ecological values in the Basin including 10 wetlands listed under the Ramsar Convention and the Directory of Important Wetlands. Many of these environmental assets have considerable significance in providing habitat for migratory bird species protected under international agreements.

The WRP area also supports a significant number of threatened animals, fish, ecological communities and River Styles. Many are listed for protection under the Federal *Environment Protection and Biodiversity Conservation Act 1999* and the IUCN Red List.

The draft WRP fails to recognise the obligations of the NSW and Commonwealth Governments under international treaties to provide adequate water for Ramsar listed wetlands and migratory water bird breeding events.

We raised the issue of significant risks to key environmental assets and ecological function.

These included:

- medium to high risk of damage to ecological values on the regulated system from water take and regulation across a broad range of flow conditions.
- medium to high risk in the unregulated systems. It was noted that no adequate data was provided on the impact of consumptive extraction on unregulated rivers in the WRP area.
- high risk from cold water pollution, turbidity in the Barham area and high salinity levels in the Lower Darling.

The draft WRP does not adequately mitigate these key risks or many of the others identified in the risk assessment.

The rules for the use of the various Environmental Water Allowances (EWAs) in this water source are based more on water allocations of water users, than on the watering requirements of key environmental assets and ecological function. The many restrictions on the use of the EWAs will cause a failure of this draft WRP to meet many of its objectives. It does not mitigate identified high risks including poor water quality.

We also raised the importance of consultation with First Nations people and are concerned that consultation has been completed with only two of the twelve Nations with country in the WRP area. The draft WRP should not be on exhibition for comment with this significant gap in consultation and information.

The draft Water Sharing Plans (WSPs) associated with the draft WRP fail to meet their environmental objectives in regard to protection of planned environmental water and reinstating a portion of natural flow regimes.

The regulated WSP will also fail to provide water security because water determinations are not based on the most current record of lowest inflows.

IRN does not support the draft WRP and accompanying WSPs because they have failed to address the issues we raised in our submission to the Status and Issues Paper. The ongoing information gaps and failure to adequately protect the environmental values supported by this surface water source must be addressed.

Risk Assessment

The risk assessment for the draft WRP identifies an alarmingly high level of risk to the availability of environmental water and capacity to meet environmental watering requirements in the regulated Murray-Lower Darling River and many in the unregulated systems. There is also high risk to water quality across the water source.

There are a number of not tolerable risks that will not be mitigated. This is unacceptable.

We also note that many high risks are regarded as tolerable because the ability to mitigate the likelihood is low. This is a failure of the WRP process.

The NSW Government position to prioritise third party impacts with bias towards water user certainty through minimal changes to rules in WSPs has caused a failure in the mitigation and management of risk to the health of this major water source. There is a failure in the process to recognise that poor river health has significant impacts on the achievement of the objectives of the Basin Plan and within the WSPs.

There are economic, social and environmental impacts caused by a failure to mitigate risk to river health.

The NSW Government position stated in the risk assessment is that *'These risk results cannot be addressed during WRP development as NSW planning principles minimise change for WSPs within their initial ten year period to provide certainty for water users.'* This position causes the continuation of considerable high risk to river ecology, social and cultural values and long term economic viability.

In the Lower Darling there is a not tolerable high risk to water available for the environment in the upstream of Menindee Weir 32 and at Burtundy in regards to protection of base or low flows and fresh flows.

The reason for the inability to mitigate the risk to fresh flows is given as *'Water ordering patterns have altered the duration and timing of freshes leading to unnaturally long events in summer and less events in winter.'*

This risk should be mitigated through a rule in the WSP to protect a portion of fresh flows.

The proposal to include the Lower Darling Restart Allowance in the WSP is a good start to improving water quality in the Lower Darling. However, the environmental benefits of protecting a portion of fresh flows across all areas of the Murray- Lower Darling water source would help to mitigate the impacts of water extraction.

The risks to the Menindee Lake system are high, including a not tolerable medium risk to Lake Cawndilla in regard to filling rate and duration of rises.

The filling rates of Lake Cawndilla relate to the connected Barwon-Darling WRP. There needs to be provisions in both WRPs to recognise the Darling River as a single system and provide adequate flows for the health of the entire river system.

IRN is concerned that the implementation of the Menindee Lakes SDL project is an assumption included in the risk assessment for Lake Cawndilla, Lake Wetherell and Lake Menindee. This consideration is inappropriate at this stage of the WRP development because there is no certainty that the Menindee Water Savings project will be adopted.

There are also a significant number of high risks identified in the Murray regulated and unregulated water source.

The generalised response to the mitigation of the many high risks in the regulated water source is not acceptable:

- Base flow or low flows – no change can be predicted due to dam operations
- Fresh flows – no change can be predicted due to consumptive water ordering
- High and infrequent flows, bank full – there are no unregulated NSW tributaries in the river reach below Hume Dam to supplement PEW or HEW releases in order to achieve bank full or over bank flows.

IRN does not support the conclusion that these risks are tolerable because the ability to mitigate the likelihood is low. These risks could be improved through:

- Improved operation of dams
- Protection of a portion of fresh flows from extraction
- An increase in EWA

We note that a number of not tolerable high and medium risks have been assessed in the unregulated Murray systems.

The high not tolerable risk in the Tooma unregulated stream and medium not tolerable risk in the Hume, Albury and Mannus unregulated systems are impacted by the NSW planning principles. This is not acceptable and is a failure of the WRP process.

The risk assessment identifies a high risk to environmental assets from climate change. These include River Murray Channel, Barmah-Millewa Ramsar site, Koondrook-Perricoota Ramsar site, Darling Anabranch Lakes. Recent extreme weather events have also demonstrated high risk to Menindee Lakes and the Lower Darling. IRN does not support that the SDL will be sufficient to mitigate this impact. The volume of water available after the implementation of the SDL adjustment mechanism will be insufficient to protect these assets from environmental harm.

An increase in the volume of the Barmah-Millewa Allowance would help to mitigate the high risk of climate change impacts to this significant environmental asset. The Federal and State Governments have an obligation under international treaties to manage the health of Ramsar listed wetlands.

IRN considers that all high risk to environmental outcomes is not tolerable and all should be reviewed during the WRP development process.

We are concerned that there are a high number of river reaches in this WRP area with no available data to assess risk. These include Murray at Euchuca and at Wentworth, Warkool at Warkool/Barham Rd and at Gee Gee Bridge, Niemur River at Barham/Maulamein Rd, Bullatale Ck upstream of Edwards, Upper Murray (zero flow data), Murray below Mulwala and Lower Murray Darling (unreg).

There is no indication provided in the risk assessment that this data will be collected at any time. There must be a process identified for completing the risk assessment in all areas of the WRP.

We note that the management of all high and medium risks to water dependent ecosystems from poor water quality is referred to the Water Quality Management Plan (WQMP).

Water Quality

The WQMP aims to provide a framework to protect, enhance and restore water quality that is fit for purpose for a range of outcomes that:

- Fulfil First Nation peoples spiritual, cultural, customary and economic values
- Protect and improve ecological processes and healthy aquatic ecosystems
- Provide essential and recreational amenities for rural communities
- Assist agriculture and industry to be productive and profitable

These aims are greatly compromised through the NSW planning principle that protects water user certainty above all other considerations.

IRN does not consider that the WQMP adequately mitigates the identified medium and high risks of water quality degradation in the Murray-Lower Darling WRP area. Appendix E of the WQMP identifies a number of strategic decisions options to mitigate high and medium water quality risks. One of these is to review the adequacy of WSP rules for flow dependent issues. The WQMP fails to do this.

We note that the key water quality objective, WQ1, Protect, maintain or enhance water quality to ensure it is fit for purpose, is to be managed entirely through the regulated and unregulated Water Sharing Plans (WSP). The emphasis on minimal change to the WSP rules in the draft WRP raises key concerns that the high and medium risks to water quality will not be adequately mitigated.

Appendix E also questions the appropriateness of Basin Plan water quality targets and suggests reassessing risk using revised, locally derived targets. IRN strongly objects to this approach within a WRP to be accredited under the Basin Plan.

We note that there are significant knowledge gaps in all areas for the following WQ objectives:

- WQ5 Reduce duration and/or severity of hypoxic blackwater events in streams and refuge pools from major flooding events
- WQ8 Reduce the mobilisation of toxicants and pesticides.
- WQ9 Reduce contamination from pathogens into water sources.

The WQMP fails to recommend a strategy to fill these knowledge gaps or measure the possible significant impacts on water quality in the Murray- Lower Darling water source.

We note that WQ10 Protect, maintain or enhance connectivity between water sources to support downstream processes including priority carbon and nutrient, as identified in the Murrumbidgee WQMP, has not be included in the Murray- Lower Darling WQMP.

Connectivity between water sources is a critical issue that must be addressed in this WRP.

The management of the water quality objectives for salinity, turbidity, ph and dissolved oxygen rely heavily on WSP rules to protect low flows and levels in pools through cease-to-pump rules. However, the rules in unregulated WSP include cease-to-pump when there is no visible flow. The lack of gauges in pools and lagoons threatens compliance with WSP rules.

Management of black water events includes improved overbank flows. However, the risk assessment has ruled this out for many areas of the Murray regulated water source. Also the PPM Implementation Plan has identified that direct releases from dams for environmental watering occur at a rate to ensure flows remain within channel capacity limits. The environmental impacts of black water events will not be better managed by this draft WRP.

Management of cold water pollution is aimed at improving the high risk to 200km downstream of Hume Dam and 120km downstream of Khancoban Dam. The cold water pollution strategy does not appear to have progressed on this issue.

In regard to the management of blue-green algal blooms, we strongly disagree that the risk in the Menindee Lakes and Lower Darling is medium and low. The recent extreme weather events and low water levels have caused high levels of blue-green algae and subsequent fish kills due to loss of dissolved oxygen.

It is concerning that blue-green algae laden water was released from Lake Wetherell at this time. Better management of flows in the entire Darling River system needs to be identified as a key management tool for the high risk of blue-green algae pollution.

The proposed objectives in the WQMP will not be met under the proposed WSP rules.

Improved water quality management is a significant issue for the Murray-Lower Darling water source that has not been adequately addressed in the draft WRP.

Proposed Murray-Darling Regulated WSP Rule Changes

1. Prerequisite Policy Measures (PPMs)

PPMs are a requirement of the Basin Plan. Their purpose is to maximise the beneficial outcomes of water recovered for the environment under the Basin Plan.

The implementation of PPMs was assumed when developing the outcome of the SDL adjustment mechanism. It is critical that the PPMs are implemented in a way that achieves their purpose.

The *NSW Prerequisite Policy Measures Implementation Plan (PPMIP)* states that the Murray-Darling Basin Authority (MDBA) in developing the Basin Plan, assumed that rivers will be managed to maximise environmental outcomes with the water available without impacting on the reliability of other water users. IRN questions whether this assumption is consistent with the intent and objects of the *Water Act 2007*.

1.1 WSP Clause 72

IRN notes that a new clause 72 under Part 10 Division 5 General system operation rules has been included to allow for the establishment of environmental flow reuse and piggybacking operation rules (PPMs)

Clause 72 (1) refers to the PPMIP. We note that in the PPMIP, NSW will only implement PPMs to the extent that detrimental impacts on the access rights of licence holders can be mitigated or offset.

IRN strongly objects to this restriction on the use of environmental water under the Basin Plan. The use of environmental water must be based on science and outcomes that improve the health of the river, wetlands and aquifers.

The undue emphasis in NSW on third party impacts is creating an unbalanced approach to the implementation of the Basin Plan.

1.2 Draft WRP Appendix D: PPMs Procedures Manual

The PPMs Procedures Manual (the manual), outlines the processes for implementing the Murray-Lower Darling PPMs under Clause 72 subclauses (2), (4) and (5).

There is also a note in the WSP that *‘This plan may be amended in future to allow access licences other than those that are being used for environmental purposes only, to order water in a manner consistent with the environmental flow reuse procedures and the piggybacking procedures.’* IRN questions the purpose of this inclusion and strongly disagrees with its intent.

IRN considers that the manual has a built in bias towards extractive users. It allows for a number of restrictions on the use of PPMs through decisions by the river operator (Water NSW) that create an imbalance between environmental water licence holders and extractive licence holders.

The manual allows for the river operator to reject an environmental water order. There needs to be more descriptive examples of when this may occur to demonstrate that all water orders would be equally affected eg works program on water storages.

IRN considers that all licence holders, whether environmental water or extractive licences, should be treated equally by river operators when making water orders. It is inappropriate for the river operator to have sole responsibility for accepting or rejecting orders placed through environmental water licences.

The manual outlines that a more conservative or higher loss rate will be applied to the use of environmental water to ensure no detrimental impacts to reliability for licensed water users.

IRN considers that all licence holders, whether environmental water or extractive licences, should be treated equally by river operators when calculating delivery losses.

The manual requires the river operator to consult with licensed water users or their representative groups prior to submitting the Annual Environmental Releases River Operations Report. The river operator should also be required to consult the Environmental Water Advisory Group (EWAG)

The manual also requires the regulator (DPIE-Water) to consult with licensed water users or their representative groups regarding any proposal for change to the agreed actions, or to implement any new trial actions. The regulator should also be required to consult the EWAG.

IRN supports that both positive and detrimental effects of PPMs will be taken into account when considering any potential impacts and their mitigation measures to achieve an appropriate balance between allowing for the efficient and effective use of held environmental water licences to achieve the environmental outcomes and providing protection for other water licence holders.

The protection of environmental flows through PPMs is a requirement of the Basin Plan and must be implemented in a balanced manner that does not give undue influence to extractive users in the decision-making process.

1.3 WSP Clause 44

IRN notes that clause 44 under Part 8 Division 1 Accounting for water allocation accounts has additional subclauses:

(4) in accordance with Environmental Flow Reuse Procedures

(5) in accordance with Piggybacking Procedures, as varied in accordance with any debiting protocol established by the Minister.

IRN objects to the inclusion of discretion of the Minister as noted under subclause (5) that: *‘A protocol may be developed to increase or decrease the amount of water to be debited, to offset the impact on reliability to other licence holders caused by the release of water under the Piggybacking Procedures.’*

As outlined above, IRN considers that water debiting should occur in the same or equal manner for all water licence orders.

1.4 WSP Clause 79

IRN notes that clause 79 under Part 12 Amendments under this Plan allows for amendments to change debiting rules and operational rules for Environmental Flow Reuse and Piggybacking orders.

There appears to be no specific rules within the WSP other than reference to the procedures manual. The intention of this amendment is unclear.

2. NSW South Inter-Valley Trade (IVT)

Clauses 53, 54 and 55 under Part 9 Access Licence Dealing Rules refer to the IVT Procedures established by the Minister while not including these in the WSP rules.

The fact sheet explaining mechanisms for NSW South IVT states that IVT procedures will be codified, in accordance with the principles or procedures.

Because there is a substantial volume of inter-valley trade between the Murrumbidgee and NSW Murray and Lower Darling regulated rivers there needs to be stronger regulation.

IRN considers that specific rules in regard to IVT between the Murray, Murrumbidgee and Lower Darling Rivers should be included in the WSP. These should consider the environmental impacts of IVT, particularly in dry times.

Tagged trading should not be permissible. The environmental and social impacts of this form of water use are too great and have not been assessed.

3. Trade within and between water sources (Access licence dealing rules)

The changes proposed to Clauses 51 – 55 under Part 9 Access Licence Dealing Rules are proposed to enable more effective use of tagged trades as the preferred method for trades between water sources.

IRN does not support the concept of tagged trading as stated above.

We note that the Murrumbidgee Regulated WSP states that dealing should be prohibited under Clause 55 (4) (a):

‘there is nor (sic) than minimal likelihood that environmental water, domestic and stock rights, native title rights and the reliability of supply to all access licences in the water source will be affected’

And Clause 55 (4) (b): the supply of the volume of water arising from the assignment is not physically possible.

There are no similar provisions in the Murray-Lower Darling Regulated WSP.

IRN maintains that water trade dealings should cause no impact on the reliability of supply for environmental water or other water rights.

There should also be stringent assessment of the environmental impacts of water trading on the river reach where extraction is to occur and on the river reaches where increased water transfers are required to meet the increased demand.

The issue of environmental impacts from inter-valley transfers is a key issue in the Murray River system with damage currently occurring in the Goulburn River Valley and within Ramsar listed wetlands.

Proposed rules in the Murray-Lower Darling Regulated WSP must take environmental impacts of IVT into account with a clear set of management rules.

It is impractical to remove all trade constraints if the outcome is to reduce reliability and cause environmental harm.

4. Trade between regulated and unregulated water sources (Part 9 Minister’s note)

IRN strongly opposes the proposal to allow the conversion of regulated river (high security) entitlements from downstream regulated river water sources to access licences in connected upstream unregulated water sources.

This will cause a net reduction of planned environmental water in unregulated streams and reduce volumes of supplementary flows and inflows into storages.

The environmental impacts on the river reaches where converted access licences are to be extracted will be too great and too difficult to regulate.

It will also impact on inflows to water storages if the trades occur above the major dams in the water source. This will impact on water availability for all water users, including allowances for environmental benefit.

5. Barmah-Millewa Allowance

The proposed change to Clause 60 is to include reference to the operating rules for the Barmah-Millewa Environmental Water Allowance (EWA).

IRN does not support the new operating rule that provides an exemption from the monthly release triggers when a 4-monthly flood has already occurred. The Barmah-Millewa EWA must be operated for the best environmental outcomes.

The mitigation of risk to ecological assets and function relies on the use of the EWAs in this water source. Changes to operating rules that restrict the use of EWAs are not acceptable.

IRN strongly disagrees with the ability of general security licence holders to borrow from this EWA. The draft WRP states that ‘The allowance may be borrowed by regulated river (general security) access licence holders when available water determinations (AWDs) are less than 0.3 ML per unit share or 0.5 ML per unit share, if ‘exceptional circumstances’ apply’. This arrangement does not appear within the WSP rules and is inconsistent with the purpose of the EWA to improve the environmental condition of a Ramsar listed wetland.

Clause 60 (2) provides that ‘Unless the operator otherwise determines, the operator is to make releases from the Barmah-Millewa Allowance at the request of the Environmental Water Manager’

IRN does not support this rule unless it is applied to all water orders. There needs to be a caveat on the reasons why the operator can determine otherwise.

6. River Murray increased flows access licence category

IRN supports that NSW’s share of water recovered through the Water for Rivers program be managed as an EWA under Part 10 of the WSP.

7. Lower Darling Restart Allowance

IRN supports the addition of this EWA in the WSP. The 60 GL volume should be run as pilot, with options to be increased, if needed. This provision should be included as an amendment under Part 12 of the regulated WSP.

8. Lower Darling EWA

IRN supports the proposal to broaden the permissible uses of the Lower Darling EWA to better manage all types of water quality risks. This allowance should be increased to better protect the habitat for native fish and other ecological values and function.

The rules managing this EWA at Part 10 Division 2 Clause 65 are too restrictive and will prevent the environmental outcomes required. The rate and timing of releases should be managed to environmental requirements.

IRN strongly disagrees with Clause 65 (4) that releases from this EWA be made at the request of the Minister. This decision should be made by the Environmental Water Manager with advice from the Environmental Water Advisory Group (EWAG).

We note that this EWA has not been accessed since the commencement of the WSP in 2004. Consideration of different crediting arrangements should be part of the development of this WRP.

9. Compliance assessment advisory committees

IRN strongly objects to the role of compliance assessment being placed in the hands of Water NSW Customer Advisory Committees (CAGs). Both Water NSW and its customers have a major conflict of interest in the operation of WSP rules.

Compliance assessment, particularly compliance with the extraction limit, must be undertaken by a state-wide independent body such as the Natural Resources Access Regulator or the Natural Resources Commission. This will improve the transparency and trust in the process.

10. Mandatory requirement for EWAG

Clause 66 should include the mandatory requirement to establish EWAGs in the Murray-Lower Darling SW WRP area with a clear list of community and government agency representation.

It would be preferable to have a separate EWAG for the regulated Murray and a separate EWAG advising on the management of the Darling River system as a whole.

Other Issues with Regulated WSP:

1. Climate variability

Clause 13 under Part 3 Bulk access regime claims that the WSP recognises the effects of climatic variability on river flow in the water source.

Clause 67 (1) under Part 10 Division 4 General system operation rules states that ‘The operator must operate the water supply system in such a way that water would be able to be supplied during a repeat of the worst drought.’ IRN strongly supports this provision.

However, Clause 67 (2) states that ‘In this clause, *worst drought* means the worst period of low inflows into the water source, as identified in flow information held by the Department before 1 July 2004’.

This is a high risk approach to water management in the context of climate change.

This clause fails to recognise the climate variability caused by the Millenium Drought and the current drought now impacting on rainfall and inflows to the water source.

For Clause 13 to be met, Clause 67 (2) must be removed or amended so that the most recent drought of record or worst period of inflows (actual lowest accumulated inflows on record) are used to determine water supply.

2. Floodplain Harvesting (FPH)

The draft WRP states that FPH licences are not and will not be issued in this water source. It also states that FPH permitted take is not relevant to the WRP area.

IRN does not support the inclusion of Clause 80 providing for an amendment to the WSP to include rules for the management of FPH within the water sources.

There is reference to FPH (regulated) access licences in the Murray Unregulated WSP at Clause 1 (5) (b). This indicates a future intent to issue regulated FPH licences which is contrary to the statement in the draft WRP that FPH licences will not be issued in the WRP area. This clause must be removed.

3. Carry over in Lower Darling

IRN does not support Clause 45 (2) (b) that allows a 0.5 ML carryover plus the airspace in on-farm storages in the Lower Darling. This water source has significant environmental problems that need to be addressed through more conservative management of extraction.

4. Access to uncontrolled flows

IRN strongly objects to Clause 47 that allows the taking of uncontrolled flows that have not been credited to the water allocation account of a regulated river (general security) access licence. This water take has not been included in the Long-term Average Annual Extraction Limit (LTAAEL) and is therefore planned environmental water.

This is free access to water over and above supplementary allocations that is not accounted for. Uncontrolled flows have an important environmental benefit of maintaining natural flow events and must be left in the river.

Proposed Changes to Murray Unregulated WSP

1. Trade between regulated and unregulated water sources (Part 10 Minister's note)

As stated above IRN strongly opposes this proposed rule change.

We also object to the consultation occurring as part of the draft WRP process at such a late stage in the development of requirements under the Basin Plan. This is unacceptable and cannot be considered as a genuine or relevant process.

Other Issues with Murray Unregulated WSP:

1. FPH in Unregulated WSP

Clause 28 (1) (c) and Clause 29 (c) allow for an estimation of water take under FPH and the issuing of FPH licences in the extraction management zones.

Clause 74 (1) (b) and (7) allows for the unregulated WSP to be amended to include rules for the management of FPH in these water sources.

As outlined above, the draft WRP states that FPH licences are not and will not be issued in this water source. It also states that FPH permitted take is not relevant to the WRP area.

The above clauses, including Clause 1 (5) (b) must be removed from this WSP

2. Protection of Held Environmental Water (HEW) in the unregulated water source

There is no reference to the existence or protection of HEW in the Murray unregulated system.

Clause 74 (1) (c) allows for amendments to the unregulated WSP to allow for rules for shepherding water. However, there is no specific reference to the protection of HEW.

The WSP needs to include specific rules to protect HEW so that it will meet the objects of the Basin Plan.

3. Trade rules

IRN does not support the rules in Clauses 59 – 63 that allows for an increase in the share components through trade into significant unregulated water sources.

Particularly the Tooma and Mannus water source that have identified risks.

These rules are likely to increase risk and threaten the environmental values and function of seven unregulated water sources in this WRP area.

Proposed Changes to Lower Darling Unregulated WSP

1. Trade between regulated and unregulated water sources (Part 10 Minister's note)

As stated above IRN strongly opposes this proposed rule change and having the consultation left to the exhibition of this draft WRP

Other Issues with Lower Darling Unregulated WSP:

1. FPH in Unregulated WSP

Clause 26 (d) and Clause 27 (c) allow for an estimation of water take under FPH and the issuing of FPH licences in the water source.

Clause 73 (1) (b) and (2) allows for the unregulated WSP to be amended to include rules for the management of FPH in these water sources.

As outlined above, the draft WRP states that FPH licences are not and will not be issued in this water source. It also states that FPH permitted take is not relevant to the WRP area.

These clauses, including Clause 4 (d) referring to regulated FPH licences, must be removed from this WSP.

2. Assessment of compliance with LTAAEL

IRN strongly objects to Clause 28 (2) which allows for non-compliance to be based on a five year assessment period. The Murray unregulated and other unregulated water sources are assessed on a three year period.

This must be adopted across the state for consistency of water management. The LTAAEL is the key protection provided under this WSP for planned environmental water. The assessment for compliance is critical. The five year period is too long for the Lower Darling, a water source with critical environmental problems.

3. Failure to meet environmental objectives

This WSP does not reserve a portion of natural flows to partially mitigate alterations to natural flow regimes.

Nor does it reserve a portion of natural flows to maintain hydrological connectivity between and within the water source and other connected water sources.

Clause 41 does not protect low flows. It allows for pumping until there is no visible flow. It also allows for pools, lagoons and lakes to be pumped to less than 100% with no indication of what gauging, monitoring or measurement is available for compliance purposes.

IRN strongly objects to Schedule 3 lagoons and Thegoa Lagoon being draw down to less than 50%.

Significant drought refuge and fish habitat is threatened by these rules.

Conclusion

IRN does not consider that the draft Murray-Lower Darling Surface WRP will meet the requirements of the Basin Plan.

The proposed water sharing plan rules will not adequately protect planned or held environmental water, achieve management of risk, or improve water quality.

For more information please contact:

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**RICEGROWERS' ASSOCIATION
OF AUSTRALIA INC**

**SUBMISSION TO THE NSW
DEPARTMENT OF INDUSTRY – WATER**

**Draft NSW Murray and Lower Darling
Surface Water Resource Plan**

October 2019

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1. INTRODUCTION

The Ricegrowers' Association of Australia (RGA) welcomes the opportunity to provide our submission on the draft NSW Murray and Lower Darling Water Resource Plan prepared by the NSW Department of Planning, Industry and the Environment – Water (the Department).

To date the RGA has actively participated in the development of the NSW Murray and Lower Darling Water Resource Plan, having provided a submission to the initial 'Status and Issues Paper' in March 2017, attended meetings, and made written representations to the Department.

Unfortunately, the RGA has been extremely disappointed with the process for developing these Water Resource Plans. In particular the RGA feels there has been insufficient opportunity to review many of the rules contained in the Water Sharing Plan component of the Water Resource Plan.

The NSW Murray and Lower Darling Water Sharing Plan commenced in 2004 and was due for review and renewal in 2014. Due to a lack of preparedness, the Department postponed this review until 2016. Despite consistent lobbying from industry, the review did not occur and the Plans were rolled over with little to no consultation in 2016. Instead the Department promised a comprehensive review of Water Sharing Plans prior to the commencement of the Water Resource Plans this year.

The current review process commenced in early 2017 with the release of the 'Status and Issues' paper and the establishment of the Stakeholder Advisory Panel (**SAP**). However, the process has been extremely disappointing and very unproductive. Some key reasons are as follows:

- The Department did not have a suitable model (Source Model) for the NSW Murray and Lower Darling valleys to enable proposed rule changes to be modelled to the degree of accuracy required to provide NSW Government staff and stakeholders with any level of confidence. Consequently, we have been unable to consider rule changes with potential impacts on irrigator or other water users' water availability. We understand that the Department is now developing this model but it will not be available until after the review timeframe.
- Furthermore, considering the NSW Government is responsible for developing 22 Water Resource Plans at the same time, the amount of resources dedicated to considering issues specific to our valley has not been sufficient.

- Finally, there is a perceived reluctance/resistance to consider any substantial changes to the Plan rules due to these posing risks to the final accreditation of the Plan, including the requirement to meet the Murray-Darling Basin Plan objectives.

The RGA together with the other NSW Murray stakeholder representatives has previously written and met with both the Minister and Department to express our disappointment with this process. In response to our concerns, we have been verbally advised that Plan will be subject to ongoing review before the next formal review period in 2030 (10 years following the commencement of the Plans).

Verbal assurances are not enough. We seek a written undertaking by 31 October 2019 that this and other Water Resource Plans will not be submitted to the Murray Darling Basin Authority until the community and stakeholder advisory panels have had the opportunity to go through the Water Sharing Plan component with Department staff, specifically whether issues identified in submissions have been addressed.

We also seek a written undertaking by 30 November 2019 that many of the rules contained in the Water Sharing Plan component of the Water Resource Plans will be reviewed comprehensively in 2020. In particular, the RGA would like to see the following matters further reviewed:

1. The simplification of the Planned Environmental Water Rules;
2. Consideration of how the Planned Environmental Water Rules can be modified to allow for the achievement of improved environmental outcomes; and
3. Consideration of how the Water Sharing Plan rules can be improved to ensure that the level of take is at or near the Sustainable Diversion Limit (rather than on average being significantly less than the Diversion Limit, as has occurred to date – allowing for a significant ‘Cap Credit’ to develop in the NSW Murray Valley).

2. THE RICEGROWERS’ ASSOCIATION OF AUSTRALIA

The RGA is the collective voice of rice growers in Australia. The RGA represents the interests of around 1200 voluntary members. The RGA’s main objective is to provide members with strong and effective representation on issues affecting the viability of their businesses, their communities and their industry.

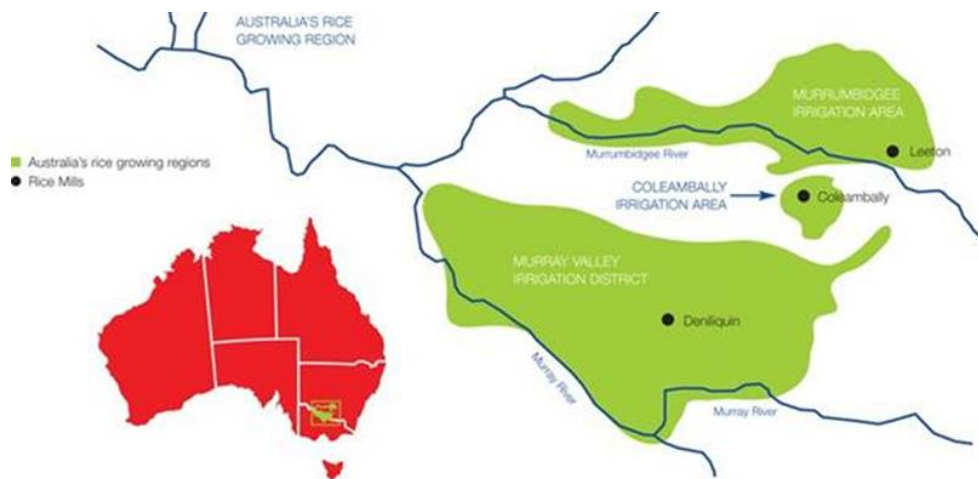
The RGA is made up of eight branches located across the Riverina rice growing regions of NSW and Victoria. Each branch annually elects representatives to form the RGA Central Executive. The Central Executive represents their respective branches in determining RGA policy and projects.

The RGA is a member of the National Farmers’ Federation, National Irrigators’ Council and NSW Irrigators’ Council.

3. THE AUSTRALIAN RICE INDUSTRY

The Australian rice industry is located predominantly within the Riverina region of south-west NSW, with two small industries also situated in the Northern Rivers region of north NSW and in Northern Queensland.

The Australian rice industry relies on irrigation, mainly sourced from the Murray and Murrumbidgee river valleys. Provided water is available, the Australian rice industry is considered one of the world’s most successful, delivering significant yields while leading the world in water use efficiency.



In a typical year the Australian rice industry produces around 800,000 tonnes of paddy rice with a farm gate value of around \$350 million. About 80 per cent of this product is exported. With value adding, the total industry worth is well over \$1 billion each year. It can be further argued that the full economic potential of the Australian rice industry has not yet been realised with rice being excluded from three recent free trade agreements: Japan, China and North Korea. These markets represent significant potential for the Australian rice.

The rice industry is a significant economic contributor to the Riverina region of NSW. The towns of Griffith, Leeton, Coleambally, Finley, Jerilderie, Deniliquin, Wakool and Moulamein are highly dependent on rice production for their social and economic wellbeing. Additionally, rice growers have individually invested more than \$2.5 billion in land, water, plant and equipment and collectively invested around \$400 million in mill storage and infrastructure through SunRice.

While the Australian rice industry is very small by world standards, it remains a very competitive supplier of premium rice products into world markets.

4. PROPOSED CHANGES TO THE WATER SHARING PLAN FOR THE NSW MURRAY AND DARLING REGULATED RIVERS WATER SOURCES 2016

The RGA's response in the paragraphs below refers to the provisions in the draft *Water Sharing Plan for the NSW Murray and Lower Darling Regulated Rivers Water Sources 2020* version of the document (**the 2020 Plan**).

At times the RGA will also refer to the previous version of the Plan, being the *Water Sharing Plan for the NSW Murray and Lower Darling Regulated Rivers Water Sources 2016* (**the 2016 Plan**).

Part 2: Vision, objectives, strategies and performance indicators

- A. The 2020 Plan places greater emphasis on the Environmental Objectives (Section 8), when compared with the Economic (Section 9), Aboriginal cultural (Section 10) or Social and Cultural Objectives (Section 11), when compared with the 2016 Plan. In particular:
 - o Section 8(1) provides that the broad environmental objective of the Plan is to *'protect and where possible enhance'* the ecological condition of the water source and its water dependent ecosystems.

- In comparison, Section 9(1) provides that the broad economic objective of the Plan is to simply 'maintain' access to water to optimize economic benefit for irrigation, water dependent industries and local economies.
- In addition, Section 10(1) and 11(1) both provide that the broad Aboriginal cultural and Social and Cultural objective is to 'maintain and, where possible, enhance' these respective outcomes.

The RGA feels that the use of these three different phrases provides the reader with the impression that the environmental objectives are of greater weight or importance than the Aboriginal cultural and Social and Cultural objectives, and in particular the economic objective of the Plan. The RGA recommends that the same phrase be used for each objective to ensure that the reader understand that these objectives are all of equal importance.

- B. Section 8 (1) and (2) introduce a far more comprehensive, prescriptive and targeted set of environmental objectives, with highly detailed and specific notes, compared with the equivalent Section 9(1) in the 2016 plan.

Section 8(2)(a) in particular introduces two new objectives which were not in the 2016 plan, that is, to protect and where possible enhance:

- (i) the recorded distribution or extent, and the population structure of, target ecological populations,
- (ii) the longitudinal and lateral connectivity within and between water sources to support target ecological processes.

Notes to 8(2)(a)(ii) specify that "*Connectivity may be within this water source, between this water source and water sources in the Water Sharing Plan for the Murray Unregulated River Water Sources 2012, the Water Sharing Plan for the lower Murray-Darling Unregulated Water Sources 2011, or South Australian River Murray connected water sources*".

This new objective and the relevant note aligns the 2020 Plan with the draft Murray-lower Darling Long Term Water Plan (LTWP), also out for public consultation.

The LTWP aims to achieve the connectivity objective through overbank flow rates consistent with the relaxed constraints model supporting a 3200 GL Murray-Darling Basin Plan. Relaxing constraints to that extent – indeed, even enough for a 2750GL Basin Plan – remains a highly contentious and unresolved issue.

Nonetheless, the LTWP (Chapter 5, p96) notes that total volumes of water available for the environment do not meet environmental water needs. It proposes "to coordinate the delivery of held (HEW) and planned (PEW) environmental water across catchments (Murray, Murrumbidgee, Goulburn, lower Darling) and in conjunction with natural events and operational water to help meet target flow rates and durations".

Planned Environmental Water (PEW) has not used for this purposes in the past, particularly to meet Basin Plan objectives involving other States such as South Australia. This objective can only be achieved by increasing the PEW volume. Any PEW increase can only occur by reducing water availability for irrigators and other water users, particularly supplementary water events.

Further, the draft NSW Murray and Lower Darling Water Resource Plan itself does not suggest PEW be used to achieve Basin Plan objectives. On p41, it says specifically that Environmental Water Allowances (i.e. the Barmah-Millewa Allowance) "are used to maximise environmental outcomes, such as wetland inundation, flushes to improve water quality, or providing connectivity and habitat for water bird breeding". PEW is not mentioned.

Tables on pages 100, 101 and 105 of the Resource Plan indicate that the NSW Long-Term Watering Plan seeks to achieve river flows and connectivity objectives (30-60% increase in freshes, bankful and lowland floodplain flows); riparian vegetation objectives; and, bird breeding objectives, by guiding the use of HEW (Held Environmental Water) and EWA (Environmental Water Allowances). PEW is not mentioned.

In summary, the 2020 Plan has been aligned with the LTWP, which apparently will cop-opt PEW to deliver overbank flows consistent with a 3200 GL Murray-Darling Basin Plan.

The LTWP proposes to cop-opt PEW, even though the Water Resource Plan references only Held Environmental Water and Environmental Water Allowances.

PEW can only be used as proposed in the LTWP if the volume is increased. The only way to increase the volume is to reduce water availability to irrigators and other water users, in particular supplementary water events.

This change represents an erosion of licence holders rights, and an increase in environmental water by stealth. Enshrining this potential in the 2020 Plan as a schedule to the Water Resource Plan means NSW is relinquishing a degree of discretion over managing its water resources to the Commonwealth.

If this is not the NSW Government's intent, the solution to avoid all doubt is simple: Replace the wording in Section 8(1) and (2) in the 2020 Plan (including all the notes) with the wording from the equivalent Section 9(1) in the 2016 plan.

- C. Section 8(3)(a) states that all water volume in excess of the long-term average annual extraction limit and the long-term average sustainable diversion limit be reserved for the environment.

The RGA is concerned that this provision provides the reader with the impression that water used for River Operations (operational losses) is to be accounted for as part of the long-term average annual extraction limit and long-term average sustainable diversion limit.

As you are aware, this is not the case, and it is critical that this matter be clarified in the Plan.

- D. A number of the strategies outlined in Section 8(3) to achieve the environmental objectives in 8(2) mandate the following: *"reserve a portion of natural flows"* and *"reserve a share of water"*.

It is assumed that these statements are referring to the Planned Environmental Water rules set out in Part 10 of the Plan. It is important that this is explicitly stated, as the current wording could provide the reader with the impression that a separate parcel of water is to be reserved for these purposes. The same phrase is used for the purpose of a number of the objectives in Sections 9(3)(f), 10(3)(c), 10(3)(d), 11(3)(b) and (11)(3)(c).

- E. If the statements above do refer to Planned Environmental Water (PEW), then this itself is problematic. The Section 8(3) provisions to *"reserve a portion of natural flows"* and *"reserve a share of water"* to achieve environment objectives in Section 8(2), are new. Such prescriptive provisions are not in the equivalent Section 9(2) in the 2016 Plan.

This suggests the creation of an additional environmental requirement within Planned Environmental Water. The word 'reserve' means setting aside, implying setting aside an additional portion of natural flows, before making water available to irrigators and other water users.

The most obvious example would be reducing the frequency and duration of supplementary access events. This change represents an erosion of licence holders rights, and an increase in environmental water by stealth. Enshrining this potential in the 2020 Plan as a schedule to the Water Resource Plan means NSW is relinquishing a degree of discretion over managing its water resources to the Commonwealth.

Any change in the frequency and duration of supplementary access events can have a substantial material impact on the volumes of water irrigators and other water users can access, given that each event lasts only a matter of days, even hours.

The table below shows the annual supplementary water use in the NSW Murray and Murrumbidgee valleys since 2004/05. This use could easily be halved or more if supplementary water events lasting hours no longer occur, or those lasting two or three days last only one or two instead because more of the flow is reserved to meet the 2020 Plan's environmental objectives.

Year	Murray	Murrumbidgee (not lowbidgee)
2004/05	58,843	62,053
2005/06	67,724	87,855
2006/07	233	0
2007/08	25	0
2008/09	0	1,649
2009/10	0	23,544
2010/11	138,931	167,762
2011/12	141,289	139,786
2012/13	139,870	157,821
2013/14	137,103	98,085
2014/15	11,848	68,454
2015/16	0	143,789
2016/17	137,073	107,350
2017/18	0	39,832
2018/19	0	0
2019/20 to date	0	0

Questions that must be answered include how much water will be reserved to comply with this section of the 2020 Plan? What will be the impact on water entitlement reliability and allocations? Will entitlement holders be compensated for the loss of water?

If this outcome is not what the NSW Government intends, the solution is simple. Remove the provisions to reserve water from each clause in Section 8(3), and replace with the language used in the equivalent Section 9(2) in the 2016 Plan. For example:

- 8(3)(a) reserve all water volume in excess of the long-term average annual extraction limit and the long-term average sustainable diversion limit for the environment.

becomes

- 8(3)(a) manage extraction within the long-term average annual extraction limit and long-term average sustainable diversion limit, thereby maintaining all water in excess of those limits for the environment.

- F. The RGA suggests that the ‘targeted economic objectives’ listed in Section 9(2) should also include the matters addressed in sub-Sections 10(1)(a) and (b) of the 2016 Plan, as follows:

- (a) support viable and sustainable water dependent industries over the long term, and*
- (b) encourage economic efficiency in the management and use of water.*

In addition, the RGA believes the ‘targeted economic objectives’ should include reference to maintaining the total reliability of water entitlement (licence categories) within the NSW Murray and Lower Darling Water Sources.

- G. The RGA suggests that the strategies listed in Section 9(3) should include ‘*minimise the adverse impacts of water delivery on economic uses*’, similar to Section 10(3)(e) in the 2020 Plan.
- H. The RGA suggests that the performance indicators listed in Section 9(5) should include reference to the reliability of water entitlement (licence categories) within the NSW Murray and Lower Darling Water Sources

Part 4: Environmental water provisions

- A. Section 15(3) provides that all “*water that is not committed after the commitments to basic landholder rights, and for sharing and extraction under any other rights, have been met*” is Planned Environmental Water.

However we note that water used for the purpose of operational losses is neither a basic landholder right nor identified for the purpose of a right for sharing and extraction, and hence should be acknowledged within this provision.

- B. The RGA wishes to express concern about parcels of acquired water in the NSW Murray and Lower Darling WSP that are not properly accounted for (including who’s paying) and neither are the environmental and/or operational outcomes they are supposedly designed to create. To have a properly functioning market mechanism in the MDB these rules need to be addressed in the interest of transparency.

The water market can’t work fairly for NSW producers, when on the one hand we have consumptive licence holders who are accountable for every single drop of water and on the other hand numerous State government agencies with legislative protection with high priority water that don’t have the same accountability.

The WSP and the WRP need to rationalise all these extra parcels of water so that they are almost able to 'continuously account' in the southern connected system. These would include transparent, translucent, conveyance, loss, emergency supplies, voluntary contributions, RAR, purchased entitlement and other parcels, which are all in State Government or State agency hands and protected by State Government legislation.

We understand and accept that certain volumes are needed to look after base river flows and end of system flows, but it has become clear to us that since the introduction of the federal Water Act 2007 and the unbundling of water from land, this has been taken a bit far by NSW in legislation and has created some unintended, highly perverse outcomes for irrigators and their support communities in NSW.

Part 5: Requirements for water

- A. Section 21(a) of the Plan provides that the share components of local water utility access licences total 38,217 ML/year in the Murray Water Source. In the 2016 Plan, the volume was 33,497 ML/year. The RGA questions the difference in these two figures?
- B. Section 22(1)(a-e) of the Plan introduces a subcategory of share components of high reliability access licences in the Murray Water Source totaling 3243 ML, the largest of which is 3195 ML for subcategory Town Supply. It is not explained why this additional water requirement has been added, or its potential effect on water availability to meet other licence requirements in the NSW Murray Water Source.
- C. Section 22(2)(a) of the Plan provides for 190,222 unit shares of high security access licences in the Murray Water Source. In the 2016 Plan, it was slightly higher, 191,698 unit shares.

The difference does not reconcile with the additional 3243 ML identified in the new subcategory described above. It highlights the question how a new subcategory can be added increasing the high reliability licence requirements, without affecting water availability for other licence categories such as general security. This needs to be explained, and reconciled.

Part 6: Limits to the availability of water

- A. The RGA requests that Section 28 expresses the Long-term Annual Average Extraction Limit (the Plan limit) in volumetric terms.

The calculation is opaque and so fails to assuage concern that underuse below the Plan limit may be factored into annual model run, leading to underused water being reclassified as Planned Environmental Water over time. Ultimately, this may limit the capacity of irrigators to use water up to the Plan limit, and indeed above in wet years offsetting low usage in dry seasons. Clarity on this essential baseline is required to give irrigators confidence their water rights will not be eroded over time.

- B. Section 28(2)(a)(iii) provides for "*the level of development for plantation forestry that existed on 30 June 2009,*" to be factored into the calculation of average annual extraction for the purpose of calculating the long-term average annual extraction limit.

The RGA notes that this is an addition to the 2016 Plan, and argues that if the level of extraction by plantation forestry is of such significance that it must be factored into the calculation of long-term average annual extraction limit, then that form of water extraction should be required to obtain an Access Licence.

- C. The RGA requests that the Notes to Section 31 specify the final long-term average Sustainable Diversion Limit figure as identified in Schedule 2 of the Basin Plan, being 1550 GL minus the

SDL shared reduction amount. The SDL includes an assumed 132 GL in farm dam, plantation and other inceptions.

- D. The RGA seeks that a Note be included following Sections 33(2) and 36(3)(b) setting out the requirements of Division 2 of Part 4 of Chapter 6 of the Basin Plan.
- E. The RGA notes that Section 38 (4), “Available water determinations for regulated river (high security) access licences” says the Minister must not make an available water determination under subclause (1), (2) or (3), unless sufficient water is available for all of the following:
 - (a) to meet the environmental water provisions in Divisions 1 and 2 of Part 10 that are relevant to the respective water source.

This new prioritisation of the Environmental Water Allowances is also reflected for Murray Conveyance in Clause 39 (2) (a), for Murray General Security determinations in clause 40 (2) (a) and Lower Darling in clause 40 (3) (a).

Divisions 1 and 2 of Part 10 relate to Planned Environmental Water, namely:

- a. Barmah-Millewa Allowance
- b. Barmah-Millewa Overdraw and
- c. Murray Additional allowance.

Currently the minister can make a determination for High Security allocation when all these buckets are empty. No water then needs to be repaid until General Security allocation is at 30%. But this the clause appears to say the Minister ‘must not’ make water available until those EWA buckets are dealt with, which contradicts what is actually written in Divisions 1 and 2 of Part 10.

The 2016 Plan said the Minister ‘should not’. Why does it now go a step further to say ‘must not’? Surely the Minister needs some flexibility in dry times without suspending the WSP.

Part 7 – Rules for granting access licences

- A. Section 43(3) states the minister must not grant a specific purpose access licence unless satisfied that the share and extraction components of the access licence are the minimum required for the proposed use. This clause should include ‘and will not impact on existing entitlement holders access to allocation.’

Part 9 - Access licence dealing rules

- A. In acknowledging the need for Clause 53 trade rules restricting 71T (temporary trade) across the Choke, it is unclear how transfers of Zone 10 held environmental water to Zone 11 and further downstream are audited to ensure they comply with the same rules applying to irrigators.

A clause needs to be inserted referencing a process for recording, auditing and reporting on Zone 10 HEW transferred below the Choke.

- B. The RGA refers to the ‘Minister’s Note’ within this Part 9. The RGA agrees that it is important that this concept be subject to sufficient stakeholder consultation prior to the addition of any new rules to the 2020 Plan. The RGA however feels that other key Water Sharing Plan matters raised throughout the Water Resource Plan development process should be reviewed prior to the department expending resources on progressing this concept.
- C. The RGA notes that it has not had the opportunity to review thoroughly the Inter-Valley Trade procedures referred to in Section 53, 54 and 55. The RGA seeks the opportunity to review

these procedures prior to them being finalised. The RGA notes the significance of these procedures to the businesses of rice growers in the Murrumbidgee and NSW Murray Valleys.

Part 10 – System operation rules

- A. The RGA notes its disappointment that there has not been an opportunity to review the environmental water allowance rules or general system operation rules set out in Divisions 1, 2, and 4 of Part 10. The RGA feels that there is a significant opportunity to:
- Simplify the rules so that they are more readily understandable and therefore acceptable by the general public; and,
 - Improve the operation of the rules to maximise the environmental outcomes that can be achieved through their implementation.
- B. Clause 60 (3) states that water may be released from the Barmah-Millewa Allowance for environmental purposes other than beneficial outcomes for the Barmah-Millewa Forest, provided the volume to be released is not required to provide environmentally beneficial outcomes for the Barmah-Millewa Forest under any relevant interstate agreement.

The Barmah-Millewa Allowance was established by agreement between NSW and Victoria to water the Barmah-Millewa Forest under the Murray-Darling Basin Commission. The Barmah-Millewa operating rules specify that water leaving the forest is then reregulated and contributes to NSW general security allocation, or for uncontrolled flow and supplementary access.

The original 2003 Water Sharing Plan included this phrase:

(14) The Minister may approve water to be taken from the Barmah-Millewa Allowance and made available for other environmental purposes provided the volume is not required for release to provide environmentally beneficial outcomes for the Barmah-Millewa forest under any relevant inter-state agreement.

However, we understand from those involved at the time that the water was never intended to be used outside the forest. Rather, ‘for other environmental purposes’ referred to non-vegetation uses, such as fish flows, but still within the forest.

At that time, the trees were identified as having the need and all other environmental beneficiaries were secondary. Allowing the use of Barmah-Millewa Allowance to be used elsewhere, potentially including South Australia, is not acceptable and would impact on NSW Murray general security allocation.

RGA recommends the wording be clarified to say releases can only be ordered by agreement between the NSW Environmental Water Holder and Minister for Water for environmental use within the Barmah-Millewa Forest.

To avoid all doubt about the Barmah-Millewa operating rules, a clause should be added to the 2020 Plan stating that flows returning from the BMF are reregulated and made available for NSW Murray allocation.

Part 12: Amendment of this Plan

- A. The RGA suggests that an additional provision be included in Part 12 to provide for amendments to the environmental water allowance rules or general system operation rules set out in divisions 1, 2 and 4 to Part 10.

The RGA feels that there is a significant opportunity to achieve the following that is yet to be explored:

- Simplify the rules so that they are more readily understandable and therefore acceptable by the general public; and
- Improve the operation of the rules to maximise the environmental outcomes that can be achieved through the implementation of these rules.

General

Language has consistently been changed through the draft 2020 Plan in ways that potentially limit the Minister's flexibility in decision-making. For example, changing the minister 'should not' to the minister 'must not'. The RGA recommends using the original language, 'should not.'

The River Murray Increased Flows (RMIF). It appears this will have to be a new entitlement class. As it can be carried over 100% for a year it is of higher value than High Security, so therefore should pay fixed charges equivalent to High Security, rather than have its management and delivery costs socialised across irrigators.

RGA would prefer to have this water licence held by NSW, not the CEWH, and its release occur only with the agreement of both the NSW Water Minister and the NSW Environmental Water Manager.

As it is above-Choke water released from Snowy Mountains Hydroelectric Scheme, it should be deemed as NSW Murray Zone 10. As this new water poses potential channel capacity issues, RGA considers it appropriate that RMIF either be limited to use between May and August, or include a clause in the 2020 Plan saying that it can only be used when there is spare channel capacity.

As this water can only be carried over once, in a flood year when environmental needs are already met, this water spills. A clause should be included that in years where there is no environmental use it can be traded on the market rather than lost in a spill.

5. CONCLUSION

The RGA thanks the Department for the opportunity to provide a submission to the draft NSWIC Murray and Lower Darling Water Resource Plan.

However, the RGA reiterates its disappointment with the process undertaken for drafting the Water Resource Plan and in particular reviewing the rules of the 2020 Plan. As outlined above, verbal assurances that the water sharing plans will be reviewed before the next formal review period in 2030, are not enough.

We seek a written undertaking by 31 October 2019 that this and other Water Resource Plans will not be submitted to the Murray Darling Basin Authority until the community and stakeholder advisory panels have had the opportunity to go through the Water Sharing Plan component with Department staff, specifically whether issues identified in submissions have been addressed.

We also seek a written undertaking by 30 November 2019 that many of the rules contained in the Water Sharing Plan component of the Water Resource Plans will be reviewed comprehensively in 2020. In particular, the RGA would like to see the following matters further reviewed:

1. The simplification of the Planned Environmental Water Rules;
2. Consideration of how the Planned Environmental Water Rules can be modified to allow for the achievement of improved environmental outcomes; and

3. Consideration of how the Water Sharing Plan rules can be improved to ensure that the level of take is at or near the Sustainable Diversion Limit (rather than on average being significantly less than the Diversion Limit, as has occurred to date – allowing for a significant ‘Cap Credit’ to develop in the NSW Murray Valley).

The RGA also reiterates its disappointment that the draft 2020 Water Sharing Plan appears to provide greater weight to achieving the Plan’s Environmental objectives, when compared to Aboriginal cultural and Social and Cultural objectives, and in particular the Economic objectives.

This prioritization of environmental outcomes is reflected in numerous amended provisions within the Plan, as identified in this submission. This is arguably a change in the intent of the water sharing arrangements within the NSW Murray water source, when compared with previous versions of the Water Sharing Plan.

6. CONTACTS

For further information please contact:

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Submission on the

Draft NSW Murray and Lower Darling Surface Water Resource Plan (2020)

October 2019

- DRAFT Murray Lower Darling Water Sharing Plan (2020)
- DRAFT Long Term Watering Plan

Sally Dye

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General comments

I welcome the opportunity to comment on the draft Murray Lower Darling Water Sharing Plan, Long Term Watering Plan and Water Resource Plan, and thank you for allowing me an extension on the submission date.

The Water Sharing Plans (WSP) for each valley in NSW are the instrument to ensure equitable distribution of water between all water users in that valley.

As a SAP member I was taken aback by the content of the draft WSP and the extent of wording changes in clauses that clearly preferences the environment over any other water use. It is not a balanced and equitable plan that will provide any great certainty for consumptive water users into the future as it's currently written. It is an environmental plan with consistent prioritisation of the environment over all social and economic objective whilst being supposedly designed for equitable water sharing between all users.

Confirmation of the insidious move to incorporate unrealistic aspirational and unilateral change to water sharing to the detriment of consumptive users was confirmed when I started to read the Long Term Watering Plan (LTWP) and cross reference to changes in the WSP. The detail of the comprehensively unrealistic volumes in the Draft LTWP were not discussed at SAP other than to be, at best 'aspirational' but undeliverable, and to now find them hard wired in the WRP, and manipulated into the WSP is unacceptable.

This environmental prioritization is reflected in numerous amended provisions that arguably change the intent of NSW Murray water sharing arrangements, compared with previous plans. A comparison between Environmental Objectives and Economic Objectives in Part 2 about sums it up:

Clause 8 (1) The broad environmental objective of this Plan is to protect and, where possible enhance.....

Clause 9 (1) The broad objective of this Plan is to maintain access to water....."

Equitable water sharing between users... after the environment which is addressed first throughout this Draft.

The SAP process was two years with very limited consideration of SAP community members views and this has effectively resulted in a wasted opportunity for the potential of some real improvements to the WSP.

Recommendation: That the Murray Lower Darling WSP and WRP not be submitted to the NSW Water Minister and the Murray Darling Basin Authority until the community and SAPs have had the opportunity to resolve grievances in both the WRP and the WSP component, and these have been appropriately addressed.

Summary of Key Issues

1. Plan Limits and Planned Environmental Water (PEW)
2. Reduced access to supplementary water by stealth without compensation.
3. Available water determinations for HS, GS only after Barmah Millewah needs.

4. Trade Chokes rules.
5. Environmental Water
6. Language changes that limit the NSW Ministers flexibility.
7. RMIF licence category, fees and charges and impacts on allocation deliverability.
8. Order Debiting
9. Access to uncontrolled flows
10. Converting regulated HS to upstream unregulated for plantation interception.
11. PPM implementation.
12. Connectivity and Base Flows
13. 'Restart' Allowance.
14. Amendments to the plan.
15. Review Date for WSP.
16. Other issues.

1. Planned Environmental water

Current changes in the Draft WSP appear to seek that:

- Underuse will be factored into extraction limit models so that the unused water is reclassified as Planned Environmental Water over time.
- The volume of Planned Environmental Water is being increased by stealth, for example by reducing the frequency and duration of supplementary access events or other management actions reducing the volume available for consumptive use.

Clause 8 (3) (a) *reserve all water volume in excess of the long-term average annual extraction limit and the long-term average sustainable diversion limit for the environment,*

Clause 15 ***Commitment and identification of planned environmental water***

Water is committed and identified as planned environmental water by reference to the following:

(3) the water that is not committed after the commitments to basic landholder rights and for sharing and extraction under any other rights have been met.

Planned Environmental Water within NSW Murray is The Barmah Millewa Allowance, the Barmah Millewah Overdraw and the Murray Additional Allowance. These volumes have been specifically set aside for environmental benefit already. The extension of PEW to be all water above Entitlement usage and BLR makes all these clauses unacceptable.

This clause to codify all water above entitlement and BLR as PEW is absolutely unacceptable and totally reduces the NSW Water Ministers capacity to manage water in the system flexibly to deal with unforeseen future challenges.

Recommendation: That all clauses referencing that all water not committed for BLR and entitlement be reserved as planned environmental water be removed.

If these clauses are not removed, then in the interests of 'no third- party impacts', who is going to pay water fees and charges associated with the use of this expanded PEW as it is stored, released and used? It cannot be socialised across consumptive users.

2. Reduced supplementary access

There has been no consultation at SAP regarding this reduced access to Supplementary water, and presumably UCF as well.

Clause 8 (3)

(b) reserve a portion of natural flows to partially mitigate alterations to natural flow regimes in this water source, and

Notes. 1 Flow regimes is defined in the dictionary 2 The provisions in clause 49 of this Plan partially mitigate alterations to natural flow regimes in this water source by permitting a supplementary water event to occur once all requirements for planned environmental water have been met. These provisions contribute to the objectives in subclause (2).

(c) reserve a portion of natural flows to maintain hydrological connectivity between this water source and riparian zones, wetlands and floodplains connected to this water source, and

Notes. The provisions in clause 49 of this Plan contribute to maintaining the hydrological connectivity between the water source and connected wetlands by permitting a supplementary water event to occur once the connectivity requirements outlined in clause 49 for planned environmental water have been met.

The reference to not providing access to Supplementary allocation until ALL PEW requirements are met appears again in Clause 11 Social & Cultural Objectives (3) b), c), and Clause 15.

Clause 49 (3) *The Minister must not announce a supplementary water event in the Murray Water Source between 1 April and 30 October, if, in the Minister's opinion, the taking of the water will reduce beneficial flooding of the Barmah Millewa forests or other Murray Water Source riverine ecosystem.*

This is **absolutely unacceptable** as it is reducing access to supplementary flows for environmental benefit without compensation to the entitlement holders. It is undermining their property rights and further reducing productive opportunity.

There are several issues in this clause:

1. 'The Minister must not.....' – how is this providing the Minister with flexibility?
2. '...or other Murray Water Source riverine ecosystem.' This is excessive and a broad sweeping catchall that even includes SA.

To clarify, in reading this it appears there will never again be Supplementary water available in NSW if ANYWHERE might get an opportunity for an incremental untargeted and unmeasured improvement.

This was not discussed or consulted on at the SAP meetings. This clause was included in the 2016 WSP, which again had no consultation whatsoever, and we were told was simply a 'template change'.

A wide and meaningful consultation with potential solutions needs to take place before any clause like this is included.

If the priority objective is to protect these flows from Supplementary or UCF extraction for the benefit of the environment, then it would be reasonable to expect the CEWH or OEH effectively 'under-write' this protection. This could be done by providing the equivalent volume of forgone Supplementary opportunity usage as GS allocation into individual accounts, of those with lost opportunity, for extraction for use after the main event has passed.

Recommendation: Remove the clauses from the WSP until after they have been extensively consulted on.

Note: There is currently licenced Murray Supplementary water held in Environmental accounts under TLM and CEWH which is effectively used to 'water- the-environmental- farm' and never gets charged usage as it is not 'extracted'. The cost is socialised across other water holders, whereas previously this water paid when extracted. This water now effectively provides service to satisfy cause 8 (3) (d).

Clause 8 (3)

(d) reserve a portion of natural flows to partially mitigate alterations to natural flow regimes in this water source, and

without withholding uncompensated Supplementary access to other licence holders which would be a third party impact on access to allocation.

3. Available water determinations for High Security, Conveyance and General Security water

Clause 38 ***Available water determinations for regulated river (high security) access licences***

(4) The Minister must not make an available water determination under subclause (1), () or (3), unless sufficient water is available for all of the following:

(a) to meet the environmental water provisions in Divisions 1 and 2 of Part 10 that are relevant to the respective water source,

This new prioritisation of EWA is also reflected for Murray Conveyance in Clause 39 (2) (a), for Murray General Security determinations in clause 40 (2) (a) and Lower Darling in clause 40 (3) (a).

ISSUE

Divisions 1 and 2 of Part 10 relate to Planned Environmental Water

- a. Barmah Millewa Allowance
- b. Barmah Millewa Overdraw and
- c. Murray Additional allowance.

Currently the minister can make a determination for High Security, conveyance and General Security allocation when all these buckets are empty. No water then needs to be repaid until General security allocation is at 30%.

The proposed expansion of PEW to include all water above BLR and entitlement use adds another layer of complexity to this.

Does this clause change the current prioritisation of water, as this appears to be prioritising Planned Environmental Water even over HS which is not consistent with what is included in Part 10 Divisions 1 and 2.

The way this reads appears to say 'The Minister must not.... 'make water available until those buckets are dealt with, which contradicts what is actually written in Divisions 1 and 2 of Part 10.

Why is this even written in? It was previously 'should not' not 'must not'. Surely the Minister needs some flexibility in dry times without suspending the WSP.

Recommendation: Remove the clause 38 (4) (a) and similar reference that conflict with what is written in Part 10 Divisions 1 and 2 to avoid confusion.

4. Trade Choke Rules

The Chokes are included in Ramsar listing of the area, and as such are a unique and environmentally valuable asset that is to be protected.

The Choke rules were introduced for a reason- to protect the Chokes and the area from being destroyed by the movement of historical upstream water to downstream where it had not historically been used.

All water users, including the CEWH and OEH, must comply with these rules to protect our asset.

The biggest environmental threat to the Chokes and Barmah Millewa forest is the movement of environmental water from above the Chokes to downstream areas under the Basin Plan implementation. This clearly demonstrates that the volumes and frequency of environmental flows now being delivered were never what happened in nature or the Chokes would have collapsed decades, or a century ago.

In acknowledging the need for Clause 53 trade rules restricting 71T (temporary trade) across the choke and a clear process of limiting trade through the chokes to within capacity, it was disappointing to not have a clearly defined process of auditing water transfers of Zone 10 licenced environmental water to Zone 11 and lower down the system.

Water purchased from consumptive use for the environment must maintain its original characteristics, so water purchased a Zone 10 remains Zone 10 and is only allowed to be traded across the Choke within the same rules applied to water for consumptive use.

Is there a process of ensuring that CEWH held zone 10 water is only being used above the choke, or transferred to below the choke by the same rules as all irrigators must adhere to? This applies to 'bulk' orders of environmental water.

The held water was purchased from irrigators and is required to maintain the same characteristics and this process would provide some transparency.

If there is, who is auditing that to ensure that held environmental water isn't breaching choke rules?

There needs to be some clause included referencing a process of ensuring that the rules are observed by all, not just irrigators.

How much Zone 10 above choke water has been used below the choke each year since 2012?

The potential to create issues in channel capacity sharing below the chokes is obvious. How much of the emerging channel capacity constraints issue is being created by the use of above choke environmentally held water to lower down the system?

RECOMMENDATION: A clearly articulated process of annual recording, auditing and reporting on Zone 10 HEW water use needs to be done as a matter of urgency and included as a clause to ensure transparency around water maintaining it's original characteristics.

5. Environmental Water Allowances

Barmah Millewa Allowance.

Clause 60 Releases from the Barmah-Millewa Allowance

(1) The NSW Environmental Water Manager is to manage the Barmah-Millewa Allowance to provide environmentally beneficial outcomes for the Barmah-Millewa Forest, and other environmental outcomes, in accordance with the Barmah-Millewa operating rules and any procedures developed by the Minister and published on the Department's website.

(2) Unless the operator otherwise determines, the operator is to make releases from the Barmah-Millewa Allowance at the request of the Environmental Water Manager.

(3) Water may be released from the Barmah-Millewa Allowance for environmental purposes other than beneficial outcomes for the Barmah-Millewa Forest, provided the volume to be released is not required to provide environmentally beneficial outcomes for the Barmah-Millewa Forest under any relevant interstate agreement.

The Barmah Millewa Allowance was established in 1992 by agreement between NSW and Victoria to water the Barmah Millewa Forest under the MDBC.

It was only agreed to on the basis that the water leaving the BM Forest is then reregulated and contributes to NSW GS allocation, or for UCF and Supplementary access. The basis of this is that the Allowance water came from NSW Murray General Security water without compensation.

Additionally, whilst it is stored in Lake Hume and has ordered releases, it pays no fees and charges with the operational cost being socialised across other licence holders.

As the BMA derives from Murray GS it was agreed that it can only be appropriately used for the environment within the area it was recovered- The Barmah Millewa Forest.

Whilst the original 2003 WSP included this phrase

(14) The Minister may approve water to be taken from the Barmah-Millewa Allowance and made available for other environmental purposes provided the volume is not required for release to provide environmentally beneficial outcomes for the Barmah-Millewa forest under any relevant inter-state agreement.

in speaking with people involved in the original agreement, there was never any intention to use the water outside the BMF. The wording 'for other environmental purposes' was referring to uses beyond forest vegetation for fish flows, frogs and similar uses, but still within the BMF. At that time the forest trees were identified as having the need and all other environmental beneficiaries were secondary. Nowhere does it state it could be used outside the BMF.

As a more holistic approach is now taken with recognition that environmental watering provides multiple benefits at the same time, and some specific individual categories or species within the BMF may require an individual release to maximise their potential outcomes, such a small flow through the forest for fish spawning trigger or connectivity within the BMF.

Allowing the use of BMA for any other environmental use, potentially including SA is not acceptable and would impact on NSW Murray GS allocation.

I have asked and been told that the BMA has never been used outside the BMF, and all outflows have been reregulated for NSW Murray GS allocation as historically agreed.

It was not an SDLAM project.

There needs to be clauses that capture and clearly articulate this historical reality and the intent of the original agreement to avoid any misinterpretation in the WSP

Recommendation: Release of BMA water can only be ordered by agreement between the NSW Environmental Water Holder and Minister for Water for use for environmental purposes within the BMF.

Recommendation: Remove the reference the clause 60 (3) for clarity now there is a holistic understanding of ecosystems or include '... for other environmental services within the BMF...' in the clause.

The BM Operating Rules specify that water returning to the system from the BMF is then reregulated and made available to NSW Murray allocation as has evidently always happened. It would be good to have this clearly articulated within the WSP with a clause included for transparency so that future water users understand this is the process, rather than just referencing the Operating Rules.

Recommendation: Include a clause stating that BMA flows returning from the BMF are reregulated and made available for NSW Murray allocation to be consistent with the Operating rules.

Additional clause for inclusion above Clause 57 (1).

Minister Pavey is on the record declaring that:

'NSW Governments will not inundate private land without landholders' consent nor compulsorily acquire land or easements as part of possible adjusting physical and operational limits to higher environmental flows.'

This is consistent with Federal government position.

Recommendation: That an additional clause at above Clause 57 (1) be inserted to reflect this policy when using all environmental water. Something like ‘Environmental will not be released if it will inundate private land without landholders’ consent.’

Clause 62 Barmah-Millewa Overdraw

(1) When the sum of available water determinations for regulated river (general security) access licences in the water year reaches 1 ML per unit share and there is sufficient water set aside for the making of an available water determination of 0.97 ML per unit share for regulated river (high security) access licences at the commencement of the following water year, the Minister may direct the operator to credit the Barmah-Millewa Overdraw with any available water, as long as the amount in the Barmah-Millewa Overdraw does not exceed 50,000 ML.

Shouldn't this be 1.1 per unit share of GS as NSW Murray has a total water allocation credited to a GS account from available water determinations during the water year must not exceed 1.1 ML per unit share minus carry over volume on account?

(2) The NSW Environmental Water Manager is to manage the Barmah-Millewa Overdraw to provide environmentally beneficial outcomes for the Barmah-Millewa Forest, and other environmental outcomes, in accordance with any relevant interstate agreements and any protocols developed by the Minister and published on the Department's website

Again, using water specifically set aside for BM forest and turning it into general use environmental water. See above recommendations for BMA. I don't believe the BMO has ever been used so there is potentially 50GL sitting in the dam continuously as it doesn't get borrowed like the BMA when GS allocation is below 30%.

Recommendation: That consideration be given to Clause 64 to include the ability for the BMO to be borrowed when GS allocation is below 30%.

6. Language changes limiting Ministers flexibility.

There have been consistent changes in language throughout the draft WSP that would seem to limit the flexibility in decision making by the Minister. Many examples of 'The Minister must not...unless..' have changed from '...should not...unless.'

Clause 49 Announcement of supplementary water event

(2) The Minister must not announce a supplementary water event in the water sources if, in the Minister's opinion:

Comment: Why has the intent changed from 'should only be permitted' to 'must not'?

This is reflected again in changes in (3) and (4)

Recommendation: Change all wording from ‘The Minister must not...’ to ‘The Minister should not....’ To provide the Minister with flexibility

7. RMIF (Minister requested comment)

Clause 26 *Share components of River Murray increased flows access licences*

As at 1 July 2019, the share components of River Murray increased flows access licences total 35,000 unit shares in the Murray Water Source.

MVPD supports the treatment of RMIF as currently reflected in the Draft WSP and the account management rules set out in Parts 6, however we have some concerns around the ability to carry over water on account from year to year in Clause 45 (2) (c), and the detail of this licences characteristics that have not yet been disclosed.

It appears this will have to be a new class of licence. As it can be carried over 100% for a year it is of higher value than HS, so therefore should pay fixed charges equivalent to HS rather than have its management and delivery costs socialise across irrigators.

REMEMBER- in the Act it states No third- party impacts from implementing the Basin Plan.

- As this water is held in dams and then released on request, it should pay fees and charges just as any other HS water holder in the NSW Murray.
- We would like confirmation that
 - a. The water on account can only be carried over once
 - b. The maximum on account is 35GL at any one time
 - c. and any excess water in account spills in wet years when it is not released as there is no need to release.
- I would prefer to have this water licence held by NSW, not the CEWH, and its release only with the agreement of both the Water Minister and the NSW Environmental Water Manager
- As it is above choke water released from Snowy from the Murray, it should be deemed as NSW Murray Zone 10.
- We see the potential for this new water to create channel capacity issues for those with a history of extraction. We therefore consider it appropriate that the RMIF either:
 - a) Be limited for use to between May and August.
 - or
 - b) Have a clause in the WSP saying that it can only be used when there is spare channel capacity so it doesn't impact other water holder's access to water.

8. Order debiting

Part 8 **Rules for operating water accounts and managing access licences**

Division 1 **General water allocation account management rules**

44 Credits to and debits from an individual water allocation account

(3) *For any access licence other than a supplementary water access licence, if the Minister has first given written notice to the holder of the licence in accordance with a water order debiting protocol established by the Minister, the Minister may debit the greater of the following from the account, except where clause 47 applies:*

- (a) the volume of water extracted by water supply works nominated by the access licence,*
- (b) the water ordered for extraction under the access licence.*

Note. It is intended that the Minister may take action under subclause (2) if water orders from a particular licence holder exceed the volume of water taken under the licence and this cannot be explained by rainfall or other unavoidable factors.

I have to wonder why this clause was included. It was not discussed at the SAP as an inclusion, and as it is zero days lead time in the NSW Murray, it seems redundant. Is this clause now included in all WSP's or just a select few, and if so why?

9. Access to Uncontrolled Flows

Clause 47 **Taking of uncontrolled flows**

(4) *The total amount of water permitted to be taken under subclause (1) is 1 ML per unit share minus the water allocations carried over from the previous water year and the water credited to the water allocation account from available water determinations in that water year.*

Shouldn't this be 1.1 per unit share in line with General Security being 1.1 the NSW Murray?

10. Converting HS Regulated entitlement to upstream unregulated.

Part 9 **Access licence dealing rules**

50 **Conversion of access licence to new category** *Deals under section 710 of the Act are prohibited.*

(Minister requested COMMENT on proposal.)

The suggestion to allow the transfer of regulated river HS to the unregulated part of the system to allow plantations to offset their water interception impacts on the catchment inflows seems

sound, however, concerns are raised about the volumes of water they would require being permanently removed from the available resource pool for productive irrigation.

There is only about 190,220 ML of High Security available for irrigation in entire NSW Murray.

ML/Ha x Ha plantation forestry = ?????

Can I suggest that

- a. A SEPP stopping further plantation development be developed to protect all water users, or
- b. the HS should only be acquired from SA or Victoria, not NSW Murray, as SA appears to have the highest reliability licence category, followed by Victoria.

Plantations would be happy as apparently SA pay their irrigators MDBA fees and charges whereas if they had NSW Murray HS they would have to continue to pay the same fees and charges as the water currently attracts.

Recommendation: Extensive consultation with both the Murray and Murrumbidgee water communities should take place if this proposal looks like Proceeding. It would be preferable to either stop plantation expansion with a SEPP or use SA water.

11. PPM Implementation

References to PPM implementation within this WSP are inadequate.

The SAP had information, however no detailed consultation on the PPM Procedures Manual 's, and certainly haven't agreed to it. There remains considerable concern around 'piggy-backing Zone 10 held water through the system. It is destroying the chokes, an environmental asset on their own rite and creating channel capacity issues to the detriment of other water users..

To refer to the proposed PPM Implementation Procedures Manual leaves the implementation open to changes without consultation with water holders. The process of developing the Manual should have included genuine consultation with those who will be potentially impacted by these changes. In the interest of transparency there needs to be an established framework for consultation which MVPD wish to participate in.

Recommendation: Annual consultation for transparency in the NSW Murray PPM Procedures Manual development and implementation, and any proposed changes to ensure that the reliability of supply to water entitlement holders is not impacted.

Recommendation: That key agreed principles and rules of the PPM implementation be included in the WSP for transparency and clarity.

12. Connectivity and Base Flows between WSP's

I am concerned by the lack of connectivity through the system. I note that there is reference to connectivity to SA, however was unable to find any reference to the Barwon Darling. The relationship between WRPs, and thus WSPs, is critical to ensure objectives can be met across the system. In this circumstance, it is critical that planning for the Barwon-Darling

WRP area and Lower-Darling WRP appropriately align, and that sufficient connectivity in planning is enabled to achieve appropriate outcomes for the Lower Darling.

There are end of system requirements between the Murrumbidgee and the Murray Valley, and saying it shouldn't be written into the Barwon Darling WSP as well as they rely on opportunistic flows. They have rules around those flows when they happen, so acknowledging that a requirement of first flush volumes through to the Lower Darling would add consistency and transparency.

13. Restart Allowance for The Lower Darling Clause 73

I acknowledge the Minister's note seeking feedback on the proposal for a Lower Darling River Flow Restart Allowance of 60GL. This measure is designed to enable an initial pulse release to flush stagnant water, so that normal regulated flows can resume safely.

I note that the allowance will be triggered once the Lower Darling River at Weir 32 (GS 425012), near Menindee, ceases to flow for at least 10 consecutive days and that the 60GL will be operational water and will become available from future inflows to the Menindee Lakes, not from existing reserves in storage.

I therefore assume that the Barwon Darling WSP has a recognition of this requirement to protect the first flush of water to the end of their system when water is needed to be provided for the 60GL flush.

If there isn't a clause within the Barwon Darling WSP, then there should be as neighbouring WSP need to 'speak' to each other to produce connectivity.

Recommendation: That a clause be included the Barwon Darling WSP acknowledging the need for water to be provided out on the Barwon Darling when available to meet this first flush or Restart Allowance for the Lower Darling.

14. Amendments to the Plan Part 12

This should include a clause relating to changing this plan to alter clauses or that need further clarification to avoid misinterpretation or deleting clauses made obsolete. Currently it appears to be that only additions for inclusion are possible.

There also needs to be a clause that any proposed changes to this plan MUST be consulted on prior to changes being made.

15. Review date of the Plan.

The 2003 WSP was simply rolled over and finally updated in 2016 without any real consultation or consideration given to any potential changes. The two year SAP process has been guided along on the premise that no real changes can be made because the MDBA will not accept them and this process has legislated time constraints. It was a wasted opportunity for some real improvements to be made.

A more comprehensive review will need to be undertaken of Water Sharing Plan rules within the Water Resource Plan in the near future, well before the next formal review in 2030. In particular the review needs to address:

1. Modification of Planned Environmental Water Rules to improve environmental outcomes without reducing irrigators and other water users' water availability, including supplementary access.
2. Improved Water Sharing Rules to ensure that the level of take is at or near the Sustainable Diversion Limit (rather than on average being significantly less than the SDL).

Recommendation: Consultation to review this WSP be completed within 3 years if the Minister has not called for it to be reviewed prior to that.

16 Other issues

Issue A *Clause 9*

(6) *In evaluating the effectiveness of the strategies in meeting the objectives of this clause, the following will be relevant:*

(b) water made available during the term of this plan through available water determinations and the granting of new licences.

How is the 'granting of new licences relevant in evaluating the effectiveness of strategies. It is not creating increased production as it's a limited water resource, so it's just rearranging the deck chairs on the Titanic.

Unless the priority is to see water move from productive family farming to corporates, foreign investors or mining, then this would seem an inappropriate measure,

Issue B *Rules for granting access licences*

43 (3) *The Minister must not grant a specific purpose access licence unless satisfied that the share and extraction components of the access licence are the minimum required for the proposed use.*

This clause should include 'and will not impact on existing entitlement holder's access to allocation.'

Recommendation: Add a sub -clause to 43 (3) to include 'and will not impact on existing entitlement holders access to allocation.'

Issue C. *Concurrence of NSW Water Minister and NSW Environmental water holder for the release of any environmental water.*

- a. Throughout the WSP it references 'at the call of the Environmental Water Holder'. It needs to specify NSW Environmental water holder as we don't want CEWH having say on NSW held water.

- b. I believe that any release of NSW environmental water should be by the Water Minister at the request of the NSW EWH, however if this is not possible, then concurrence of both ministers should be required.

Issue D *SDLAM Implementation clauses into the Plan*

I recognise that there may be changes required to the plan if the SDLAM projects proceed.

I and other NSW Murray irrigators wish to be involved and participate in the Menindee SDL project development. It potentially has very serious ramifications for access to GS water in the Murray Valley, particularly in mediocre and dry years with Menindee offline more often.

Conclusion

The Water Sharing Plans (WSP) for each valley in NSW are the instrument to ensure equitable distribution of water between all water users in that valley.

This Draft Murray Lower Darling WSP is not a balanced and equitable plan that will provide any great certainty for consumptive water users into the future as it's currently written. It is an environmental plan with consistent prioritisation of the environment over all social and economic objectives whilst being supposedly designed for equitable water sharing between all users.

I consider there to be unexpected serious issues in the Draft WSP that were not addressed or discussed at SAP meetings to date. We require SAP 8 as a matter of urgency to address not just issues with the draft, but also the numerous outstanding items from prior SAP meetings. This must be done prior to these documents being submitted to both the NSW Water Minister and the MDBA.

There has been no transparency around some very major changes included in the draft, which is extremely disappointing.

Recommendation: That the Murray Lower Darling WSP and WRP not be submitted to the Murray Darling Basin Authority until the community and SAPs have had the opportunity to resolve grievances in both the WRP and the WSP components, and these have been appropriately addressed.

Please do not hesitate to contact me for clarification or to discuss any of the issues I have raised.

I look forward to your response.

Regards

Sally Dye

Submission on the

Draft NSW Murray and Lower Darling Surface Water Resource Plan

I have been involved with Resource management representing Communities and industry for more than 40 years. As a SAP member from the beginning of this process in early 2017, I have never before become more frustrated and disillusioned with not being able to include the Irrigation Communities issues and priorities in a plan. While I appreciate the opportunity to comment on the draft, I have absolutely no ownership of the final draft document.

As the WSP is the main state instrument to ensure that the rules to share water in that state is fair and equitable between all the competing interests, it is of major concern that there have been many changes slipped into the 2019 WSP that key industry representatives were not aware of. Even though a number of the changes may only be slight changes of wording that may make it more compatible with the WRP, the consequences for the productive irrigation industry will be a further erosion of the NSW Murrays reliability of general security entitlements, which is in contrast to the original intent of the basin plan. Below is an extract out of the WRP Handbook for Practitioners:

12 Water resource plan requirements and reliability

While it is important to have a WRP that meets the requirements set out in Chapter 10, the Basin Plan has been deliberately drafted so as to have no detrimental impact on the reliability of water allocations. The Authority acknowledged both the importance of this commitment as well as the challenge in identifying any possible impacts during drafting by including s. 6.14 in the Basin Plan which states: Nothing in the Basin Plan requires a change in the reliability of water allocations of a kind that would trigger Subdivision B of Division 4 of Part 2 of the Act. This section has the effect of limiting all others to operating only to the extent they do not require any impact on reliability of water entitlements. The Authority has sought to ensure that if a water access entitlement holder chooses not to participate in water buybacks there would be no impact upon them from the Basin Plan – in particular the water assets that they hold and that are fundamental to their businesses will not change. Under the existing water entitlement frameworks entitlement

On attempting to wade through and understand the reasoning and changes from the WSP 2016 to the WSP 2018 and then the further suggested changes and language to the draft 2020 WSP to the final draft document of the WRP, the process to be involved in providing informed comment has been made almost impossible by including the draft Long Term Watering Plan (LTWP) and then further complicating understanding of the issues by including numerous WRP supporting documents that many of the SAP committee have never seen or had the opportunity to comment on. The development of this draft WRP has

become so complicated and complex that I doubt any industry or Community representative will give it a tick of approval in its present form. It lacks transparency and clarity that is required to gain ownership from the broader Community and most concerning of all it appears to have gone too far in handing over more control of NSW water issues than was necessary to the MDBA

There is no need for me to go into too much detail to highlight my individual concerns as I have had opportunity to be involved in a number of other submissions from representative groups from the Murray valley to the draft WRP, where they have gone into more detail to expose the individual concerns and issues and put forward many excellent recommendations to improve the process, which I have been involved with and fully endorse.

Recommendation:-That the Murray Lower Darling WSP and WRP not be submitted to the NSW Water Minister and the Murray Darling Basin Authority until the community and SAPs have had the opportunity to resolve grievances in both the WRP and the WSP component including the LTWP, and these have been appropriately addressed.

As time is paramount for the WRP's I look forward to your response

John Lolicato

Chair Wakool River Association

[REDACTED]

Oct. 2019

Submission to the Review of the Lower Darling and Barwon Darling Water Sharing Plans

25 October 2019

From

South West Water Users

South West Water Users (SWWU) represents water users on the Lower Darling River downstream of the Menindee Lakes water storage scheme and NSW licensed water users on the Murray River from the Murrumbidgee Junction to the South Australian Border.

Our members use water for domestic and livestock purposes as well as for irrigation of both permanent plantings and annual crops using both general and high security water entitlements.

On the Lower Darling downstream of Menindee and above the influence of the Wentworth Weir, there is the town of Pooncarie and about 70 families on 50 properties. They cover an area in the vicinity of 1 million ha. , have around 250,000 adult sheep plus lambs in season as well as extensive numbers of rangeland goats and native wildlife. Six properties irrigate extensive, high value permanent plantings. All are dependent on the Darling River for water, and this water must traverse The Barwon Darling.

On the Murray River downstream of the Murrumbidgee junction, there is extensive irrigation of permanent plantings. This extends into the Lower Darling River within the influence of the Wentworth weir pool.

This submission will focus on the Darling River as the issues involved are of a far more serious nature.

Background

SWWU was represented at the Meeting held in Menindee on the 18th of October this year.

The meeting was intended as a joint presentation on the Barwon Darling (BD) and Lower Darling (LD) Water Sharing Plan's (WSP).

Unfortunately, there has been no attempt to date to have any coordination between these plans and repeated queries as to why this was the case were not answered.

It should be noted that over the life of the plan review the M/LD SAP repeatedly requested connection into the BD Review process and in every instance this was refused by the NSW Department.

SWWU is vehemently critical of the refusal to integrate the BD and LD WSP's.

This deficiency on its own makes both plans dysfunctional and accordingly neither is fit for purpose.

Comments on the Menindee Meeting

The presentation was of a very poor standard

- On multiple occasions presenters had to be corrected after making comments which were blatantly false.
- Presenters lacked any apparent comprehension of the extent of the mess in the administration of The Darling River, nor of the impacts this was having on the people attending the meeting.
- One of the presenters failed to understand where they were on The Darling River.

NSW continued to have a categorical refusal to have any form of connectivity between these two plans. This is a specific and current and intentional refusal to manage the Darling River on a 'whole of river' basis.

- There was a direct refusal from agency staff to answer the simple question of why this was the case.
- This deficiency alone makes both plans dysfunctional and raises very serious questions around what is an obvious lack of integrity in the NSW planning process.

Following from the comments above, current NSW policy is that irrigation of annual crops in the BD system (and in the tributaries upstream) is intentionally a higher priority than freshwater to Menindee or Pooncarie or Wentworth.

- This is a policy in direct contravention of the NSW Water Act
- It is also a direct and intentional insult to everyone living along the bottom half of the Darling River.

Water quality – a massive issue – is completely ignored.

- Water quality is important – for the river and the people who live along it
- It is staggering that even after the recent fish kills and human health problems that the NSW government can choose to completely ignore this issue in its principal river management structure.

Specific Issues In the BD and LD Draft WSP's

Both plans are dysfunctional due to the lack of any connectivity between them.

This is such a basic issue it is beyond comprehension as to why it has not been addressed.

It could be politely described as a direct and intentional insult to everyone living along the bottom half of the Darling River.

Following are comments on components in the plans.

The LD Plan has ignored all recent deficiencies in water supply along the LD.

- Failure to supply all high priority use is ignored
- Water quality issues are ignored
- Carryover rules with a complete disconnection from reality remain unchanged.
- Recent changes in water license behavior which have increased dry season demand on the top lakes at Menindee fourfold have been ignored
- Recent changes under the Basin Plan which increase supply obligations from Menindee have been ignored.

Recommendation – *The LD Plan requires a complete rewrite. There has been a fundamental disconnect from reality and as a consequence the proposed plan is dysfunctional*

There is a proposed 60Gl 'bucket' to allow for a professional 'restart' of the Darling downstream of Menindee.

- This is a valid concept.
- However, in an act of what can only be described as blatant stupidity, there is a refusal to give any priority to getting any water into the bucket.
- A Class extraction upstream for annual crops is rated as a higher priority than the ability to restart the Darling River downstream in a professional manner.
- This is obscene.

Recommendation – *no irrigation extraction anywhere should be allowed until fresh water can be delivered to Wentworth. Suggest 60 Gl available in the proposed LD restart bucket*

LD Carryover Rules remain disconnected from reality

- The storage carryover provisions are ridiculous.
- General Security carryover is problematic as losses in storage are frequently 100% resulting in water in accounts when there is no water in storage

- Non-existent account water then has priority over new allocations when water becomes available.

Recommendation – storage carryover provisions should be removed from the Plan. At the very least, general security carryover must be subject to reductions in account which line up with loss of physical water. This will frequently be a 100% reduction.

A Class extraction can commence at 605MI/day at Bourke.

- This is an improvement on the current situation
- However, the recent flow from the Warrego was capped at 600MI/day and only just reached Wilcannia
- It follows that this condition rates annual crops upstream as a higher priority than the river, people, towns and livestock downstream.
- As such it is directly in contravention of the NSW Water Act.
- It also ignores the financial impacts on industries downstream which are based on priority of access to water significantly higher than annual crops upstream. For example, the pastoral industry downstream of Menindee has an annual turnover well in excess of \$40m.

Recommendation – A class extraction should only commence when there is confidence fresh water can be delivered to Wentworth. In practice, this should mean 60 Gl into the proposed LD restart bucket.

A Class extraction can commence after 30 Gl. passes Bourke.

- In 2016, 30 Gl released from Menindee in winter and early spring failed to get fresh water to Wentworth.
- So 30 Gl past Bourke does nothing for the river, people, towns and livestock downstream.
- This is in direct contravention of the NSW Water Act

Recommendation – As an absolute minimum, A Class extraction should only commence when there is confidence that fresh water can be delivered to Wentworth. In practice, this should mean 60 Gl into the proposed LD restart bucket.

A Class extraction can commence once 400 MI/day has passed Wilcannia for 10 days

- 4000 MI past Wilcannia into a dry river achieves nothing. It would struggle to reach Menindee and would never have any impact downstream
- It follows that this condition again rates annual crops upstream as a higher priority than the river, people, towns and livestock downstream.
- Again, it is directly in contravention of the NSW Water Act.

Recommendation – A Class extraction should only commence when there is confidence that fresh water can be delivered to Wentworth. In practice, this should mean 60 Gl into the proposed LD restart bucket.

Under the Basin Plan, Prerequisite Policy Measures (PPMs) allow CEWH to have access to preferential drawdown from any storage of their choosing.

- In the southern basin, Menindee becomes the preferential source as it does not have the delivery constraints that the Murray system has.
- This becomes a direct threat to the reliability of supply past Menindee and this has been ignored.
- This compounds the impacts of recent licensing changes in the LD which have led to a fourfold increase in the supply obligations from the top lakes at Menindee in dry years.
- Again, the impacts of supply reliability downstream of Menindee have been ignored.

Recommendation – reserve accounts should be established in the Menindee storage to protect against preferential drawdown at the expense of local reliability of supply.

The introduction of IDEL's in the BD Plan is progress. However, a system of unlimited carryover and the ability to take 3 years in a year compromises this.

- Again, this can compromise higher priority downstream use.

Recommendation – this risk is best managed by use of a requirement for the LD restart 'bucket' to be filled as a prerequisite for allowing upstream irrigation access to commence.

Conclusion

SWWU is highly critical of the planning process which has led to the draft plans having such notable deficiencies.

Neither plan is fit for purpose and both should be subject to major revisions.

Alan Whyte

Chair

South West Water Users



25 October 2019



Department of Primary Industries

NSW Government

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RE: Submission regarding the Draft NSW Murray and Lower Darling Surface Water Resource Plan

Thank you for the opportunity to comment on the Draft NSW Murray and Lower Darling Surface Water Resource Plan (WRP). This submission relates to the aspects of the WRP relevant to the Lower Darling.

I own three properties totalling 500,000 acres on the Lower Darling, approximately 50 km south of the Menindee Lakes. Tolarno Station sits on the Darling River with basic landholder rights, and all three properties depend on the Darling for livestock and domestic purposes. The properties have a rich history spanning 160 years, and today run merino sheep, cattle and rangeland goats.

In developing WRPs it is important to reflect on the aim of the Murray-Darling Basin Plan (MDBP), which is to

“... ensure water is shared between all users, including the environment, in a sustainable way. It does this by managing the basin as one system.”(MDBA)

I recognise the role of WRPs in the implementation of the MDBP at a regional level. However, it is critical that the WRPs are interconnected and support the common aim. It must also be recognised that environmental, social and economic risks identified within one WRP area are impacted by the water sharing plans (WSPs) and WRPs of other areas.

It is unacceptable that this WRP does not adequately achieve connectivity between WRPs for the purpose of the ecosystems and communities which depend on healthy ecosystems.

This submission is structured by addressing specific topics then by each Chapter and Schedule.

The proposed Lower Darling Restart Allowance

I support in principle the Lower Darling River Flow Restart Allowance. However, there are two fundamental issues with the proposal.

First and foremost, it is unlikely there would be sufficient water to enable the restart. The proposed first flush rules under the Barwon-Darling WRP only allow 30GL to flow past Burke before extraction is allowed to commence. It is highly improbable that there will be the adequate quantity of water to reach Menindee Lakes to enable the Flow Restart to occur. This is a clear demonstration where upstream WRPs fail to demonstrate connectivity with the Lower Darling WRP.

Second, it is unlikely that the 60GL set aside will be sufficient to maintain river health during extended periods of low flows, that the quantity of water set aside should be at least doubled.

It is noted that this restart allowance is to be made up by future inflows. In addition to a flow trigger at Wilcannia in the Barwon-Darling WRP, there should be a flow trigger on the Lower Darling within the Barwon-Darling WRP. There should also be a minimum storage target of 160,000 ML set for Menindee Lakes.

Decisions to re-start the river should involve extensive consultation and input from local communities and stakeholders, particularly those who depend of the river for human consumptive use.

Chapter 1: Introduction

Box 1.1 states the three outcomes around sufficient and reliable water supply, productive and resilient industries and communities, and healthy and resilient ecosystems. None of these outcomes will be achieved with this WRP on the Lower Darling, as the fundamental issue of connectivity from the Northern Basin is not addressed.

The work identifying Aboriginal values and uses for water has only been undertaken with two Aboriginal nations. There are 11 nations with whom this work has not been undertaken. The NSW Government should not consulting on or submitting this WRP until this work has been completed and made available for consultation. When this work has been completed, the revised Draft should be made public for consultation again, for adequate inclusion of this important knowledge.

Chapter 2: Identification of water resource plan area and other matters

One page 32, the WRP stated that the Lower Darling is connected upstream to the Barwon-Darling and all tributaries. It should be stated that all tributaries to the Barwon Darling, and therefore their WRPs, should demonstrate connectivity at least to the MLD WRP.

There is now a flow target for Wilcannia, which supports the facilitation of connectivity between the Barwon-Darling and Lower Darling, however given the nature of flow events in the Northern Basin and the natural ecology of the Menindee Lakes and Lower Darling this is not adequate. There should also be a minimum storage target of 160,000 ML set for Menindee Lakes. Below this storage level, all extraction in all WRP areas above the Lower Darling should be ceased, excluding human consumption and stock and domestic users.

Chapter 3: Risks to water resources & Schedule D

Schedule D states that "Any impact from floodplain harvesting on water available for other users is not assessed in this risk assessment." Floodplain harvesting in upstream WRP areas poses a significant risk to flows in the Lower Darling. The NSW Floodplain Harvesting Policy has failed to demonstrate evidence for which policy is implemented on. There is a failure of the NSW

Government to undertake monitoring and compliance which are required for effective implementation of any policy.

Chapter 4: Environmental water, cultural flows and sustainable management

Environmental water in upstream WRP areas

There is not yet adequate protection of environmental water in the upstream WRPs to the Lower Darling. There is a need to protect environmental water from extraction in all Northern Basin WRPs. Until this is achieved and objectively demonstrated, the WRP will fail to deliver on ecological outcomes.

In Schedule E, the protection of connectivity with downstream WRPs is identified as a strategy. However, there is no mention of upstream WRPs, which is critical to maintain the ecological health of the Lower Darling.

In Schedule E, cease to pump rules are proposed as a water management action. However, this is only indicated in the Lower Darling WRP area, and not in upstream WRPs or WSPs. There would be little value having cease to pump rules in the Lower Darling, as there is limited extraction. What is critical, but not included in this WRP, is the introduction of cease to pump rules in the Barwon-Darling WRP and WSP and tributary WRPs/WSPs.

The fact there is an end of system flow for the Lower Darling in upstream WRPs which is not enforceable is farcical. It demonstrates the NSW Government's lack of intent to fundamentally address ecological, social and economic health of the Darling River through ensuring connectivity throughout the system.

Environmental water in the Lower Darling

The Environmental Water Allowance in the Lower Darling is for blue-green algae. However, this is unlikely to be of value when the Menindee Lakes are under the control of the MDBA at its current operating system. There should be an allowance (in addition to the 480GL) under NSW Government control. We support the expansion for which this water can be used to include other water quality issues.

There are significant licences held for environmental purposes on the Lower Darling - a The Living Murray allocation and a CEWH allocation. It needs to be noted that the NSW Government has a conflict of interest as the implementer of the WRP and the licence holder of The Living Murray allocation in the Lower Darling.

Cultural connection to the Barka

Barkindji people talk about the Barka-Darling as their lifeblood. When the river is sick, they are sick. Their fundamental connection to the river cannot be overstated. As landholders, we support Barkindji people having rights to water, because we know that when their cultural needs for water are being met, we have a healthy and vibrant river that supports all people and communities. It is therefore critical that Barkindji values and uses for water be protected.

As noted elsewhere in this submission, the lack of consultation and knowledge documented in this draft WRP is far inadequate. The WRP should not be considered for submission until this work has been completed adequately and Aboriginal people's values and uses prioritised.

Ground water

The WRP does not include ground water. However, it is well known by Lower Darling communities that groundwater quality and quantity is intrinsically connected to surface water quality and quantity, and therefore is significantly impacted when the Lower Darling ceases to flow for extended period of time, as has occurred in recent years.

Chapter 5: Take for consumptive use

Section 58(1) of the Water Management Act 2000 states that: "For the purposes of this Act, the following priorities are to be observed in relation to access licences: (a) local water utility access licences, major utility access licences and domestic and stock access licences have priority over all other access licences,".

In recent years, there have been cases where extraction of irrigation licenses in the Barwon-Darling has occurred in accordance with the BDWSP when there has been a failure to i) protect the water source and its eco-systems, and ii) provide water for local water utilities and stock and domestic licenses. Just one such example was extraction in the Barwon-Darling during the 2015-2016 period of cease to flow in the Lower Darling.

Extraction of water under irrigation licenses in the Barwon-Darling when the Lower Darling has ceased to flow and/or there is no provision of water for townships or stock and domestic users is in clear opposition of the Water Management Act 2000. This must be addressed in the WRPs, through ensuring connectivity between the Plans. This is not demonstrated in this WRP.

One page 77, it states "no types of interception activity in the water resource plan area were found to have the potential to have a significant impact on the following, whether on an activity-by-activity basis, or cumulatively: the water resources of the plan area, or; water resources which are hydrologically connected to the water resources of the water resource plan area." This statement must include WRP areas upstream of the Lower Darling. This statement is fundamentally incorrect, as demonstrated in a number of independent reports published in 2017 and 2018, including but not limited to the Vertessey report, the Natural Resources Commission Report on the Barwon-Darling Water Sharing Plan, and the Matthews Report. Extraction and interception in the Barwon-Darling and its tributaries have been found to have a significant impact on the Lower Darling.

On page 80, the draft WRP reads: "The hydrology of the Lower Darling River is highly variable, with periods of low flows and cease-to-flow interspersed with high and flood flows." Whilst the Lower Darling is highly variable, the river has not experienced extended cease to flow periods prior to 2007, and the statement is misleading. The table below demonstrates this. It has been found by a number of independent reports that flows in the Lower Darling have been significantly compromised by extraction in upstream rivers.

Cease to flow events on the Lower Darling at Burtundy

Year	Month	Duration (days)
1946	September – November	89
1947	January	19
2002	August – September	19
	September – October	19
	October – November	26
	December	10
2004	January – February	48
2005	November	10
2006	September	10
	September – November	42
2007	July – September	67
2007-2008	October – January	103
2009	July	9
	October – November	14
2015	February	3
	March	21
2015-2016	December – August	~500
2019	January - (ongoing)	~270 to date

It is clearly evident in the current situation, when there is a significant period of cease to flow in the Lower Darling and permanent plantings are being removed that the contingency measures introduced have been vastly insufficient to address the man-made impacts that over-extraction and mismanagement of the Menindee Lakes system has had in the last 10 years.

Schedule G: Incident Response Guide

The experience on the Lower Darling in 2017-2019 is that a planning period of 2 years is insufficient to maintain supply of critical water supply to communities. This is particularly given the lack of action by the NSW Government to take effective action of over-allocation of water in the Barwon-Darling and upstream tributaries which has limited small and medium flows making it this WRP area. Floodplain harvesting also threatens the capacity for small and medium floods to travel down the system effectively.

In Schedule G, table 3.2, Stage 3 criticality level states that a block bank will be constructed downstream of Pooncarie for high security water users. It is critical that there be a minimum of two block banks constructed between Menindee and Pooncarie for basic landowner rights.

In Schedule G, table 3.2, Stage 3 and Stage 4 state that there will be some restriction of take in upstream WRP areas:

- Restrict take under supplementary water access licences in the NSW Border Rivers, Gwydir, Namoi and Macquarie WRPA, where such flows can usefully contribute to Barwon-Darling flows.
- S.324 WMA 2000 order restricting take under unregulated river water access licences in downstream sections of the NSW Border Rivers, Gwydir and Macquarie WRPA if these unregulated flows can usefully contribute to Barwon-Darling flows.
- S.324 WMA 2000 order restricting take under unregulated river access licences in the Barwon-Darling

This is vastly inadequate. There should be a total cease on extractions in upstream rivers. This is regardless of whether flows are expected to reach the Lower Darling. Experience in early 2016 demonstrated that if small flows are not extracted, this is important in wetting in river bed and enables future flows to travel further. There should not be conditions placed on protection of these flows.

CWAPs do not have an effective means of communication with affected stakeholders, and in our experience, becomes a road-block for information. There is also ineffective means of stakeholder input into the CWAP.

Chapter 6: Water Quality Management

Since 2015, there have been clear issues with the quality of water in the Lower Darling. This has had a significant impact on communities and the environment. These issues will not be resolved and managed in the WRP. Water quality has been directly associated with management decisions by the MDBA and NSW Government.

The water quality issues identified in Table 6.1 are a result of upstream management practices, and therefore to address these issues on the Lower Darling, there must be specific flow targets at the end of the Lower Darling and a storage target in the Menindee Lakes included in all upstream WRPs.

Table 6.1 has a water quality objective to: "Reduce risk of harmful algal blooms in recreational use areas". This should be extended to beyond recreational areas to include all sections of the Lower Darling where stock and domestic licenses are extracted. The presence of blue-green algae has a significant impact on the physical and mental health of residents and our businesses. It should also be noted that the strategy of "Risk management framework to provide a structured process to notify users of potential health risks and to minimise exposure" does not address the objective, but is a response to blue-green algae outbreak.

Chapter 7: Measuring and monitoring

The decision to remove the Compliance Assessment Advisory Committees (CAACs) and replace these with the Minister to consult lacks transparency on the process. There is a need to have transparency around the processes of which consultation on compliance takes place. This is particularly important given the issues of lack of compliance which have occurred in recent years.

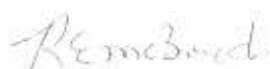
Concluding comments

In conclusion, there has been a failure of the WRP to seriously address ecological outcomes on the Lower Darling. When these ecological outcomes are not achieved, there is a real and serious impact on individuals, families, communities and businesses.

There is a serious failure by the NSW Government to adequately address the concerns regarding upstream over-extraction and interception, which has a real and devastating impact on the Lower Darling.

In its current state, this WRP will does not prioritise the river environment, and the environmental, social and economic disaster which is occurring at present will be repeated in the future. The community seeks appropriate, sustainable long-term management of the Lower Darling. We recognise that the MDBP and WRPs are critical, and bitterly disappointed that this WRP does not achieve this.

Regards,



Rob McBride
Tolarno Station



25 October 2019

NSW Department of Planning, Industry and Environment
GPO Box 5477
Sydney NSW 2001

RE: Submission regarding the Draft NSW Murray and Lower Darling Water Resource Plan

To whom it may concern

Thank you for the opportunity to comment on the Draft NSW Murray and Lower Darling Surface Water Resource Plan (WRP).

Our family have been landholders on the Lower Darling since the 1880's. Six generations of our family have lived on the Lower Darling and been able to rely on regular flow to sustainably run a successful grazing enterprise. We believe this gives us a rare insight into this important part of the Darling river system. Our family company currently owns and operates 5 livestock properties in the Western Division, 3 of these properties rely on fresh water being supplied from Menindee Lakes to the Lower Darling and a 4th one relies on the Menindee - Broken Hill pipeline.

The properties on the LD are situated approximately 60 km south of Menindee. We can go through family history for 5 generations without seeing any water quality problems like we have seen in the last 15 or so years. In 2005 we had to put down a bore for stock & domestic water, prior to this (from 1880 to 2005) there was never any need to have a bore for stock & domestic consumption as there had previously always been enough good quality water for property use.

Since 2002 we have seen around 5 cease to flows which causes high salinity and blue green algae issues. The blue green algae issue then renders the water unusable for our stock and domestic purposes. The current cease to flow (starting here in Jan 2019 when flows stopped over Weir 32) also has the added pollution of numerous dead fish that have been dying randomly since about June 2019.

In 2016 we attempted to put down 2 more bores so that each property on the Lower Darling had its own secure supply but only 1 of these bores had a viable water supply. So far it has cost us in excess of \$50000 to drill and equip the 2 working bores. I note with a degree of dissatisfaction, that in the Barwon Darling water sharing plan any water lost to irrigators under changes in the new plan is given a dollar amount and counted as lost production for the area. I would add that the combined cost to many businesses from Tilpa to Wentworth (since the 2012 changes to A class water that benefited so few people) far outweighs the cost of any changes in returning to pre 2012 conditions for A class water.

Since 2012 there has been a significant increase in the length of cease to flow events. These cease to flows are directly related to flawed changes that were made to the Barwon Darling Water Sharing plan in 2012. These changes saw A Class water users given access to low river flows in the Barwon Darling, the ability to pump and store A Class water and an unlimited carry over with the option to use 300% of their allocation during a season. These alterations have had a detrimental effect on the ability of smaller flows to reach the Menindee Lakes storages.

Cease to flow events on the Lower Darling at Burtundy

Year	Month	Duration (days)
1946	September – November	89
1947	January	19
2002	August – September	19
	September – October	19
	October – November	26
	December	10
2004	January – February	48
2005	November	10
2006	September	10
	September – November	42
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2007-2008	October – January	103
2009	July	9
2009	October – November	14
2015	February	3
	March	21
2015-2016	December – August	~500
2019	January - (ongoing)	~270 to date

A significant change that has been added to MLDSWRP, would see a 60Gl “bucket” of water stored at Menindee to enable the restart of the Lower Darling. While this is a good thing, unfortunately it would seem there is no allowance to get water into the bucket from the Barwon Darling WSP. The BDWSP states under new first flush rules that 30 Gl will be allowed to pass Bourke before pumping can resume. It is claimed this should reach Willcania, possibly even Menindee, yet there is no attempt to get any water into the “bucket” to restart the Lower Darling. There is no plan to have connectivity of the river top to bottom but this is crucial on a number of fronts. To have water diverted above Bourke for opportunistic cropping before Towns, Stock and Domestic, and other High Security water users downstream have been fulfilled, goes against the water act. Could this be illegal?

The property that we hold on the Menindee - Broken Hill pipeline has been severely affected by the uncertainty of not knowing if a replacement pipeline is going to be built or who will pay for it. There has been a serious lack of communication between stakeholders and the water departments. The NSW government refusal for a number of years to release the business case for the Wentworth - Broken Hill pipeline only added extra uncertainty around the future supply of water to the Menindee - Broken Hill line water users. The added stress comes from the belief that the Wentworth - Broken Hill line was only built to enable the decommissioning of the Menindee Lakes. Upon the release of the Business case we can see that the only real beneficiaries of this pipeline are the irrigators in the Northern Basin as there will be less embargoes put on their pumping. Less embargoes however means that (under current rules) that less water will now get to Menindee, there will be longer cease to flow events, terrible water quality in the Lower Darling and possibly times when there won't be water available to pump to users on Menindee - Broken Hill line.

This will mean a very sad and slow end to our families farming operation. It will also mean a similar fate for Indigenous culture, towns, native fish species, native animals, ancient native trees and all things in the Riverine Environment that rely on fresh regular flows

I would also add the proposed Menindee Lakes Water Saving Scheme, which was also denied to be in existence for a number of years, as more proof the NSW Government were planning to decommission Menindee Lakes as a secure water supply for the 500 km section of the Lower Darling. In its current form it is unworkable.

Finally, these documents are called Water Sharing Plans, it seems some departmental staff maybe overlooking the "Sharing" word and just putting together Water Plans, with no thought to connectivity between Valleys!

Kind Regards

Wayne Smith

[REDACTED]

[REDACTED]