

Department of Climate Change, Energy, the Environment and Water

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What We Heard

Draft Water Sharing Plan for the NSW Border Rivers Unregulated River Water Sources
2024

May 2024





Acknowledgement of Country

The Department of Climate Change, Energy, the Environment and Water acknowledges that it stands on Aboriginal land. We acknowledge the Traditional Custodians of the land and we show our respect for Elders past, present and emerging through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally and economically.

Published by NSW Department of Climate Change, Energy, the Environment and Water

dceew.nsw.gov.au

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First published: May 2024

Department reference number: PUB23/1178

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Executive summary

About this document

The Water Sharing Plan for the NSW Border Rivers Unregulated River Water Sources 2012 will expire in June 2024.

The Department of Climate Change, Energy, the Environment and Water - Water group (the department) publicly exhibited a draft replacement water sharing plan, providing an opportunity for water users, broader stakeholders and other interested parties to learn more about proposed changes, to make submissions and comment on the draft plan.

This report summarises how we engaged with communities, the key issues we heard and the next steps in finalising the draft Water Sharing Plan for the NSW Border Rivers Unregulated River Water Sources 2024.

Background

The department is responsible for surface and groundwater management, including ensuring water security for NSW. We also ensure equitable sharing of surface and groundwater resources, and that water entitlements and allocations are secure and tradeable.

Water sharing plans are the primary legal framework for managing and sharing water in NSW. They are made under the NSW Water Management Act 2000 (WM Act) and are valid for 10 years. The rules in the plans allow equitable sharing of water for all water users, including the environment.

They do this by:

- providing water for the environment by protecting a proportion of the water available for fundamental ecosystem health

Engagement at a glance



5

phone consultation



108

unique website visits



14

formal submissions



16

public information session attendees



8

live webinar attendees

- setting limits on the total volume water extracted to ensure security for the environment and water users
- protecting the water needed to meet basic landholder rights
- providing water users with a clear picture of when and how water will be available for extraction
- providing flexibility for licence holders in the way they can manage their water accounts
- specifying rules to minimise impacts of extraction on other groundwater users, groundwater-dependent ecosystems, culturally significant sites, water quality and the integrity of the aquifer
- specifying the rules for water trading, that is buying and selling water licences and water allocations
- setting the mandatory conditions that apply to licence holders.

Under the *WM Act* water sharing plans are subject to review every 10 years and may be replaced to deliver better outcomes for all water users, including the environment.

Consultation

Consultation is an essential part to developing the Water Sharing Plan for the NSW Border Rivers Unregulated River Water Sources 2024.

From 6 November 2023 to 17 December 2023 the draft replacement Water Sharing Plan for the NSW Border Rivers Unregulated River Water Sources 2024 (the plan) was exhibited publicly.

We encouraged stakeholders to give feedback directly and through written submissions. The website included a 'Have your say' section that gave people different ways to make a submission, including via email, direct mail and a downloadable feedback form.

Following public exhibition, the department undertook additional targeted consultation on the protection of significant wetlands. We contacted landholders who had a proposed significant wetland on their property and provided further opportunity to provide written feedback.

In addition to the feedback provided by those who attended face-to-face and webinar sessions, we received 7 written submissions during public exhibition. Seven more submissions were received during the targeted consultation process after public exhibition.

The valuable feedback received during the public exhibition period and through submissions has helped the department finalise the draft replacement water sharing plan.

How did we consult?

Between 6 November 2023 and 17 December 2023, the department consulted with stakeholders and sought their views on the proposed changes to the plan. We identified stakeholders with a potential interest in the plan. These included WaterNSW customers (water access licence holders and water supply work approval holders), environmental interest groups, Local Aboriginal Land Councils community groups, irrigation groups, horticulture and dairy groups and local councils.

WaterNSW customers were contacted via mail (325 letters) and other groups and individuals were contacted via email (378 recipients). Both these communications informed recipients of the plan replacement, ways to access information and invited them to attend one of the public information sessions. Face-to-face engagement with the Yuurun Aboriginal Corporation was arranged for 29 November 2023 at Inverell, however the meeting did not go ahead at the request of the Nation.

Three public information sessions were planned over the 41-day exhibition period and included webinars and face-to-face sessions with a plan-specific presentation and communication materials available. Department staff were in attendance to speak with stakeholders and answer questions.

In response to feedback received during public exhibition, the department sent 92 letters out to landholders who had a proposed significant wetland on their property. Targeted consultation with Border Rivers Food and Fibre was also undertaken on 13 February 2024. This additional consultation was to provide opportunity for additional feedback regarding the new rules to protect significant wetlands.

Table 1 shows the locations chosen for face-to-face community information events.

Face-to-face information sessions

We held 3 face-to-face stakeholder meetings during the 41-day exhibition period, held in locations that were convenient for the majority of stakeholders in each area likely to be impacted by proposed changes to the plan. We used a presentation and discussion approach for the meetings in which staff were available over 2 hours at each location to discuss the plan changes and answer questions. Stakeholders could watch the presentation, gather printed information, inspect maps and discuss any questions or concerns one-on-one with staff.

Table 1 summarises participation for each meeting.

Table 1. Attendance at face-to-face meetings

Location	Date	Registered to attend	Attended
Goondiwindi	28 November 2023 10am – 12pm (NSW time)	10	6

Location	Date	Registered to attend	Attended
Tenterfield	28 November 4pm – 6pm	6	3
Inverell	29 November 11am – 1pm	13	7

Webinar sessions

The department held a live webinar session using a virtual meeting platform. We presented the proposed changes to the plan and attendees could post questions in the live chat. We allocated time at the end of the presentation for clarification, questions and discussion.

Table 2 summarises the attendance at the webinars.

Table 2. Attendance at webinars

Location	Date	Registered to Attend	Attended
Webinar – Microsoft teams	12 November 2023	13	8

Phone Consultations

We held two phone consultations with stakeholders during the public exhibition period.

What we asked

The online submission form focused on the following key proposed changes between the 2012 plan and the 2024 plan:

- Introduction of management zones in the Mole River Water Source
- Stream gauge-based cease to pump rules for the Glen Innes and Inverell Water Sources and for Mole River Management Zone 1
- 24 hour first flush rule in Mole River Management Zone 2
- Trading rules
- Protection of replenishment flows in the Boomi River
- Protection of significant wetlands

Although these were the key issues, comments, and discussion on all aspects of the plan were welcome and encouraged.

What we heard

Stakeholders raised issues in consultation session, formal submissions and via correspondence. When reviewing whether or not issues raised were in or out of the scope of this consultation the department considered the following:

- Is the issue within the scope of the water sharing plan?
- Is the suggestion consistent with the *WM Act*
- Are existing programs/processes or other departments addressing the issue?
- Does it relate to water charges, costs, operational activities or licensing matters outside of the scope of the water sharing plan?
- Is it likely to affect water availability for basic landholder right users and licence holders, and if so, how?
- Can current legal mechanisms enable the change, or is legislative change required?
- Is it consistent with current policy settings, and if not, can we develop robust, alternative policies within the timeframe for developing the water sharing plan?
- Are there additional costs for the NSW Government?
- Can we investigate the issues within the timeframe for developing the water sharing plan?

Issues raised from public consultation that were out of scope of the water sharing plan, are summarised in Appendix 1. These issues will not be explored further as part of the replacement plan.

Key issues

We received feedback on the proposed changes during multiple consultation sessions and through submissions about the proposed rule changes. The feedback is summarised in Table 3 and is being considered to finalise the plan.

Table 3. Summary of submissions about the proposed rule changes

Issue	Comments
<p>Access rules – OML/day at Macintyre at Wallangra gauge in the Inverell Water Source</p>	<p>There was no support at the Inverell public information session for the proposal to manage access for the Inverell Water Source using the Macintyre at Wallangra gauge site. Discussions indicated the gauge is too far downstream of the majority of access and would be more appropriate at a location further upstream.</p> <p>‘The proposed Wallangra Gauge is approx. 50km downstream from our WAL location which has potential to create more harm to flows than what you are trying to avoid’.</p> <p>‘We are very concerned that flows will have moved past our pumping location and won’t trigger potential to pump until the flow has moved through limiting the capacity to use our water allocation’.</p> <p>‘Gauge based access rules should not be applied in downstream reaches of the river as downstream is generally losing streams in these water sources’.</p> <p>‘I have discretionary conditions that are set much higher than the current access rules which are managed at the Tintot gauge. The conditions are designed with the aim of extracting water sustainably and do not permit take until flows are greater than 67.5ML/day. The proposed changes would move our access reference point to the Macintyre at Wallangra gauge which would undermine the purpose of the negotiated take arrangements.’</p>
<p>Access rules - 24 hour first flush in Management Zone 2 of the Mole River Water Source</p>	<p>Concern the 24 hour first flush rule will have large implications on downstream users considering there are licences that have the ability to draw down their pools by 30 or 50cm depending on the time of year.</p> <p>Strong support for first flush however concern the objectives that may be achieved by a first flush rule will vary from one event and location to another. They include protection of some low flows, although not in the tails of events, and not if small events just fill one or two pools that people are allowed to pump down again.</p> <p>It is unfair and ineffective to restrict the taking of very low and brief flows by some licensees only to refill a pool downstream from which someone else now has the privilege to take additional flows</p>

Issue	Comments
<p>Protection of Significant Wetlands</p>	<p>'IRN commends the list of significant wetlands included in Schedule 4'.</p> <p>'Support the inclusion of new rules to prevent trade and new works within or 3 km upstream of Ramsar wetlands or within these significant wetlands is supported.'</p> <p>'We do not support Ministerial discretion to consider allowing new works in significant wetlands'</p> <p>'Significant concerns with the number and physical reality of the new "wetlands" identified.</p> <p>'Many of these proposed wetlands occur on privately held land and so BRFF believe the Department need to provide landholders with personalised notice of this potential change and appropriate consultation and ground-truthing before the draft plan is finalised.</p> <p>'It would be useful for the Department to provide a full definition of what constitutes a wetland so that irrigators in possession of these "wetlands" can properly respond to the potential categorisation'</p> <p>'Some of the alleged wetlands are currently used as irrigation storage facilities. The trade in restrictions are therefore going to provide a huge implication for commercial activities on what is likely to be disputed as a wetland and has never before been considered as such'</p> <p>'the minimal harm test could also be applied to the trade in provisions as well as the works provisions'</p> <p>Targeted consultation post public exhibition</p> <p>Most stakeholders did not oppose new rules to protect significant wetlands and several expressed support for the new rules. However, stakeholders expressed concerns about the method used to identify proposed significant wetlands as some of the nominated areas included farmland, irrigation storages facilities or houses.</p>

Issue	Comments
Trade rules	<p>General support for trade expressed at the Inverell and Goondiwindi public sessions, however no support at the Tenterfield Creek session.</p> <p>‘Do not support changes to trade as it will have a negative effect to communities creating greater divide within the agricultural industry by driving smaller business out’.</p> <p>‘This proposed rule to increase entitlement in some water sources is highly likely to increase the number of days of no visible flow in the affected water sources.’</p> <p>‘Trade should not be permitted into Camp Creek and Campbells Creek as it will increase pressure on low flows’</p> <p>‘Trade in should not be permitted into Ottleys Creek due to the high number of significant wetlands identified under Schedule 4.’</p> <p>‘BRFF members have a range of views on the broadening of trading rules. Members directly affected by the proposed changes are often strongly opposed due to the potential impact on local economies and communities from water leaving a particular valley, or part thereof. More broadly, BRFF is not opposed to water trading’.</p>
Prohibiting in-river dams in 3rd order or higher streams, with an exemption for town water supply	<p>‘we do not support the exemption for town water supply purposes. A policy for off-stream storages for town water supply is necessary to protect flow connectivity and important habitat values’.</p> <p>‘Support for prohibition of instream dams but notes Inverell, Kings Plains and Yetman Water sources have been omitted and should be included’</p>
Protection of Replenishment flows	<p>‘Support for the protection of BLR and Stock and Domestic flows’.</p>

Other issues

During the consultation period many additional issues were raised. Some of the other issues raised that are within scope of the water sharing plan are:

- The majority of water sources have a cease-to-pump rule when there is no visible flow at the pump. This does not protect any water for the environment and does not provide the commitment for physical presence of water under the definition of planned environmental water.
- Pool draw down rules should be removed or should be available to all

- To meet the WMA principles and objectives, all entitlements should have stronger rules to protect low flows in all water sources.
- The draft replacement plan fails to identify and protect water-dependent Aboriginal cultural assets and also fails to provide access licences for Aboriginal cultural activities.
- The Plan vision, objectives and performance indicators have been simplified compared to the former water sharing plan. The targeted environmental objectives and performance indicators in the 2020 amended plan should remain in the replacement plan
- The Long Term Average Annual Extraction Limit for the plan area needs to account for all forms of extraction including harvestable rights and diversion of overland flow
- Planned Environmental Water provisions - having the environmental provisions distributed through the replacement plan across Part 4 and Part 6 diminishes the importance of planned environmental water and its protection
- concerned that the focus on only using gauges from which realtime data is currently collected is a constraint that introduces additional problems.

Protection of Significant Wetlands

The most commonly raised concern in consultation sessions and correspondence was the impact the proposed new rules to protect significant wetlands may have on landholders when it comes to every day operations and on farm management. The following messages were shared with stakeholders:

- The new rules intend to protect wetlands by ensuring the current volume extracted from a nominated area does not increase beyond the current entitlement
- The new rules govern where a new water supply work can be constructed and where water can be traded into.
- Water supply works that are already constructed within these nominated areas are still valid and can be replaced provided they do not increase in size.
- The new rules are relevant to water sharing plans only, they do not affect any other form of farm management such as construction of roads, land use etc
- The method to identify wetland areas has been modified and the wetlands nominated as significant have been re-assessed to ensure that only areas appropriate for water sharing plans are protected.

Next steps

Feedback and issues raised within scope of the water sharing plan are considered by the department before recommending a replacement water sharing plan to the Minister for Water.

Before deciding to replace the plan, the Minister must seek agreement from the Minister for the Environment. The department expects the Water Sharing Plan for the NSW Border Rivers Unregulated River Water Sources 2024 will be in force by 1 July 2024.

The department will publish a background document this will include a summary of the changes made because of public consultation.

More information

The draft Water Sharing Plan for the NSW Border Rivers Unregulated River Water Sources 2024 and supporting factsheets are available on the department's [water website](#) until the new plan commences on 1 July 2024. After that date, the new plan and supporting information will be available [here](#).

Appendix 1: Out-of-scope issues

Managing water resources in New South Wales relies on a range of legislation, initiatives and cooperative arrangements with other agencies. Many issues that are out of scope of a water sharing plan are managed by other agencies, including some issues relating to:

- complying to plan rules
- assessing development applications
- the costs and process of obtaining water licenses and works approvals
- pollution and contamination of water sources.

Table 4 outlines the criteria for and examples of out-of-scope issues.

Table 4. Assessment criteria for identifying whether an issue is out of scope

Assessment criteria	Comment/Example
Does the issue relate to water charges, costs, infrastructure proposals, operational activities or a licensing matter?	These are issues with the implementation and operation of water management that a water sharing plan cannot address
Is the issue about including descriptions or explanations within the Plan?	The water sharing plan is a legal document and states the rules relevant to water sharing. Other documents provide supporting information that describe how water is managed and how decisions have been made.
Is another program or process addressing the issue, or is it the responsibility of another department?	Proposed or current land development activities such as mine approvals, road tunnel developments or water pollution are managed under other legislation by other departments. The <i>Access Licence Dealing Principles Order 2004</i> is the basis for assessing the local impacts of water extraction, when an applicant seeks approval to trade water or construct a new water supply work.
Does the issue require time and resources beyond the time frame to review the water sharing plan?	For example, a study on the effects of climate change in a particular groundwater source.
Is the issue consistent with the current legislative and policy framework?	A water licence is required for any activities that intercept or extract groundwater unless a valid exemption applies.

Table 5 summarises issues raised during public consultation that are outside of scope of the water sharing plan.

Table 5. Summary of submissions on out-of-scope issues

Issue	Comments
Gauging stations	The focus on only using gauges from which realtime data is currently collected is a constraint that introduces additional problems, particularly if the gauge is a long time downstream from many points of take. This should not prevent protection of very low flows
RAMSAR wetlands	None of the Border Rivers wetlands are currently declared under the Ramsar convention although many of them do meet the Conventions criteria
Regulated River to Unregulated River trade	Trade from the unregulated River should be permitted into the Regulated River provided they are connected
Monitoring and Evaluation	How has the Department measured the current impacts and how does the Department propose to measure the changes after the implementation of the new plan?