

**NOTICE BY MURRAY-DARLING BASIN MINISTERIAL COUNCIL UNDER SECTION 43A(4)
OF THE WATER ACT 2007**

This notice advises that the Murray-Darling Basin Ministerial Council (Council) and its members have comments on various aspects of the Proposed Basin Plan transmitted to the Council on 28 May 2012. This notice specifies the disagreements with the Proposed Basin Plan.

Comments and matters of disagreement that are specified by the Council as a whole are set out in Attachment A of the notice.

Comments and matters of disagreement that are specified by one or more than one Council member but are not specified by the Council as a whole are set out as follows:

Australian Capital Territory :	<u>Attachment B</u> ;
Commonwealth :	<u>Attachment C</u> ;
New South Wales :	<u>Attachment D</u> ;
Queensland :	<u>Attachment E</u> ;
South Australia :	<u>Attachment F</u> ;
Victoria :	<u>Attachment G</u>

Issued by the Authority of the Murray-Darling Basin Ministerial Council

9 July 2012

**NOTICE BY MURRAY-DARLING BASIN MINISTERIAL COUNCIL UNDER SECTION 43A(4)
OF THE WATER ACT 2007: COMMENTS AND DISAGREEMENTS OF THE COUNCIL AS A
WHOLE**

Introduction

1. Murray-Darling Basin Ministerial Council (Council) comments and disagreements on the Proposed Basin Plan transmitted to the Council on 28 May 2012 are set out in this Attachment.
2. Council considers the Basin Plan to be a key element of reforms sought by all Basin Governments to achieve a healthy working Basin.
3. Council has considered the Murray-Darling Basin Authority's (the Authority) request, in the Authority Chair's letter to the Council Chair transmitting the Proposed Basin Plan, that Council advise the Authority on the issues of downstream apportionment and a Sustainable Diversion Limit (SDL) adjustment mechanism, as had been raised in submissions on the Proposed Basin Plan released for public consultation on 28 November 2011. The Council supports the inclusion in the Plan of provisions addressing these issues, as outlined below.
4. Council requests that the Plan be modified as outlined below.

SDL adjustment mechanism

5. Some jurisdictions believe the environmental outcomes envisaged within the Proposed Basin Plan are not sufficiently ambitious. There is some support for the outcomes at the outer limits of those contemplated by the Authority within the Chair's letter of transmission. Consensus on a mechanism of the type detailed below may be possible if the environmental objectives were sufficiently ambitious and the mechanism were used to deliver equivalent or improved outcomes as in the Basin Plan.
6. Council considers that the environmental and socio-economic outcomes anticipated under the Basin Plan could be achieved more efficiently or enhanced through initiatives that remove constraints on the use of environmental water; implement environmental works and measures that achieve given environmental outcome with less water; or improve the efficiency of river operations by changes to rules and procedures, or enable growth in water availability for environmental purposes without further adverse socio-economic impact.
7. Accordingly, Council requests that the Authority work with Basin States to develop a proposed 'SDL Adjustment Mechanism' for its consideration that recognises the effect of such initiatives. It would be essential that the Adjustment Mechanism operates on a transparent and legally sound basis using the best available science, and a methodology developed in consultation with jurisdictions.
8. The SDL adjustment mechanism could operate to:
 - a. reduce the need to recover consumptive water for environmental uses (increase the SDL) where equivalent environmental outcomes can be achieved with less water

through initiatives including environmental works and measures, rules changes and improved river operations; and

- b. increase the recovery of consumptive water for environmental use (reduce the SDL) where improved environmental outcomes can be achieved without worsening socio-economic outcomes as a result of initiatives, particularly:
 - i. removing certain constraints which create the scope for additional efficient and effective use of environmental water; and
 - ii. recovering that additional water through water use efficiency improvements and other measures which neutralise any adverse socio-economic impacts.
9. Council considers that the proposed mechanism should determine the quantum of SDL adjustment via the application of an objective scoring method. The objective method should be included in the *SDL Adjustment Guidelines*, a copy of which must be available on the Authority website. These guidelines should also contain additional detail on applying the method, and should be available at the time the Plan is tabled in Parliament. Council requests that the Authority's 2,750GL benchmark modelling run as outlined in the Authority report 'Hydrologic modelling to inform the proposed Basin Plan, February 2012' be used in the first instance, noting that the water recovery target set out in the final Basin Plan may be different, in which case, a new agreed baseline run may be required. Further possible details on the adjustment methodology, which require further development, are in the Annex.
10. Council requests the Authority work with Basin jurisdictions to further develop the Adjustment Mechanism methodology, benchmark modelling and relevant draft Basin Plan provisions and advise the results to Ministers by the end of July 2012.
11. Council envisages the SDL Adjustment Mechanism operating at least within the range of 2400-3200GL as indicated in the Authority Chair's transmittal letter, and potentially further.
12. Council notes the Commonwealth envisages that, in the first instance, it would align its water recovery strategy to reflect the possibility that up to 650GL would be achieved through environmental works and measures. The water recovery strategy would be reviewed when any SDL adjustments have been made in 2016, and again in 2019. Ministers envisage that the SDL adjustment mechanism would operate by 30 June 2015, based on proposed initiatives, and be recalculated in mid 2019, in light of progress with the initiatives. The results would be announced on both occasions. Adjustments attributable to initiatives that are already in operation by mid 2019 would have immediate effect. Adjustments attributable to initiatives that will come into operation between 2019 and 2022 would have effect once they have commenced operation.
13. To support the operation of the mechanism, Council proposes to develop a Work Program of SDL Adjustment Initiatives, and an inter-jurisdictional governance procedure that would identify, assess and agree on proposals that may activate the SDL adjustment process included in the Basin Plan. It is envisaged that the Basin Plan Implementation Intergovernment Agreement (IGA) will set out the inter-relationship between these mechanisms. It is also envisaged that the Commonwealth Water Recovery Strategy and the Environmental Watering Plan would take into account the SDL Adjustment Mechanism.

14. Council envisages that upon receipt of a request from the Basin Officials Committee (BOC) that the SDL adjustment mechanism be applied to initiatives identified by the BOC, the Authority would apply the mechanism to these initiatives. The BOC would endeavour to finalise its request by 30 June 2015. An estimate of the SDL adjustment would be notified by the Authority immediately following the operation of the mechanism. This timing would ensure clarity over the remaining 'gap' that must be bridged by Commonwealth water recovery efforts before mid 2019.

Constraints Management Strategy

15. To assist in the preparation of that part of the Work Program of SDL Adjustment Initiatives dealing with constraints, Council suggests the Basin Plan require the preparation within 12 months of the Basin Plan being made, of an initial version of a 'Constraints Management Strategy' which would:
 - a. identify and describe the physical, operational and management constraints that are affecting, or have the potential to affect, environmental water delivery;
 - b. evaluate options, opportunities and risks associated with relaxing or removing key constraints and improving the effective and efficient delivery of environmental water; and
 - c. assess the impacts on environmental water delivery and third parties as well as downstream impacts and assess options to address the impacts.
16. Council requests that the Constraints Management Strategy, and any updates, be prepared by the Authority in consultation with the Basin governments and that the Authority report to Council annually on progress with the Strategy.

Apportionment

17. Council has considered whether and how the SDL resource unit shared reduction amounts ('downstream SDL reduction') in the Proposed Basin Plan should be expressed at the jurisdiction level in the final Basin Plan. Council has concluded, on balance, it would support the inclusion in the Plan of apportionment between jurisdictions provided the principles for such apportionment and consistent, equitable and transparent.
18. In the case of the downstream SDL reduction for surface water in the southern Basin zone ('southern shared SDL'), Council considers there is benefit in apportionment of any downstream SDL reduction apportioned to each State in the Basin Plan, and that States would determine the apportionment of the State share to catchments within their jurisdictions. Each State will advise preliminary catchment apportionments for the period up to 2016 by the time of commencement of the Basin Plan, which will then be incorporated into the Water Recovery Strategy for that period. Following the operation of any SDL Adjustment Mechanism, the States will advise final within-catchment apportionments for the purposes of preparation of Water Resource Plans according to the requirements of the Basin Plan, which would incorporate this apportionment. The Water Recovery Strategy would then be revised accordingly.
19. Council acknowledges there are different approaches that may be taken to determining apportionment shares. Council has considered options for apportionment of the southern shared SDL based on surface water diversions less water for Critical Human Water Needs,

on surface water diversions less urban water use and on all surface water diversions. Council will give further consideration to this matter, noting that, if agreed, this could be incorporated into the Basin Plan prior to it being made. At this stage, subject to resolution of matters concerning the sourcing of apportioned water in each state, Council would give consideration to the proposal that apportionment be based on surface diversions less urban water use or surface diversions less critical human water needs.

20. In the case of the downstream SDL reduction for surface water in the northern Basin zone ('northern shared SDL'), Council recommends an active program of work to be completed by the end of 2015 to establish the basis for the northern shared SDL and its equitable apportionment. This work may include consideration of any impacts on southern connected Basin water resources and environmental outcomes. This work will be undertaken by the Authority, in consultation with the Commonwealth, New South Wales and Queensland, resulting in a report to Council. If Council finds that this program of work reveals significant new knowledge about the scientific and hydrological basis for the northern shared SDL and its apportionment, Council may request the Authority to undertake a review of the SDL based on the issues that are raised and for any apportionment to be considered following that review. On the basis of that review, Authority may seek an amendment to the Basin Plan to reflect the new SDL. Council may also advise the Authority of its proposed apportionment between Queensland and New South Wales following this consideration, after which New South Wales and Queensland may advise the Authority of the proposed apportionment at the catchment level to be incorporated into the revision of the Plan. Pending the outcome of this review, Council understands the Commonwealth intends to arrange its water recovery in the northern zone so as to focus largely on 'in-catchment' requirements.
21. Following the provision of the report envisaged in paragraph 19, irrespective of whether Council calls for a review of the SDL, NSW and Queensland will advise final within-catchment apportionments for the purposes of preparation of Water Resource Plans according to the requirements of the Basin Plan, which would incorporate this apportionment. The Water Recovery Strategy would then be revised accordingly.
22. For both the northern and southern Basins, Council is concerned to ensure that changes to the SDL due to the application of any proposed SDL adjustment mechanism not have disproportionate impacts in any catchment. Changes to apportionment between the preliminary and final apportionments advised by the States would be consistent with the results from the SDL adjustment mechanism.

2015 Review

23. Council does not see any need to proceed with the substantive 2015 Review as provided for in the Proposed Basin Plan, subject to the processes outlined above. Council recognises that reviews and amendments to the Basin Plan may be proposed consistent with the provisions of the Water Act

Commencement of SDLs

24. Council notes that, under the Water Act, State water resource plans are accredited for 10 years, and the SDLs included in accredited State water resource plans will therefore have effect for 10 years. Council requests that, to provide certainty for Basin communities, the

Basin Plan make clear that SDLs incorporated into accredited State water resource plans will be in effect for the 10 year accreditation period.

25. Council requests the final Basin Plan should clearly state that SDLs take formal effect in 2019, as was requested by the Council at its meeting of 27 May 2011, while noting implementation of some SDLs may be deferred through the operation of the SDL adjustment mechanism, subject to the following clause.
26. Council notes the Commonwealth commits to bridging the gap by the SDL commencement date in the Plan. Council expects the IGA to include strong provisions on this matter of 'Bridging The Gap', to ensure the commitment can be fully delivered by 2019 and States' water sharing plans can be implemented accordingly. The obligation to bridge the gap, including through SDL compliance arrangements, will not at any point be passed from the Commonwealth to the States. Council observes that, for this purpose, the Plan may specify the use of reasonable excuse provisions in the compliance mechanism to address transitional issues, including if anticipated works associated with any SDL adjustment mechanism are not completed by this time.

Trading rules

27. Council requests that the trading provisions be clarified to ensure that they do not impose unintended restrictions on Commonwealth and Basin States trading activity, particularly those intended to deliver the Commonwealth's 'bridging the gap' commitment or trading of environmental water.

Requirements for determining 'actual take'

28. Council requests that the Basin Plan specify that the determination of 'actual take' be made by using cost-effective, fit-for-purpose methods, for water resource planning, accounting, monitoring and enforcement purposes. These methods may include an actual measurement, a method which may include modelling or an informed estimation, including a permitted error margin. The method and duration of the estimate to be used in a Water Resource Plan should be agreed between the Authority and the relevant Basin State, taking into account cost effectiveness.
29. Council requests that this requirement be clarified through amendments to section 9.15, so it allows for the use of a combination of approaches as appropriate to the resources of the water resource plan area and by specifying what kind of information is required in different data availability circumstances, having regard to cost effectiveness and risk management.

Jurisdictional implementation obligations

30. The Council is concerned to ensure that the implementation of the Basin Plan takes place in a way that achieves its objectives in an efficient and cost-effective way recognising the obligations of States to implement the Basin Plan. The Council requests that the Basin Plan include a general provision where obligations under the Plan impose additional costs on Basin States, the Authority and the States must use their best endeavours to enter, within two years after the commencement of the Basin Plan, into an agreement with each Basin State in relation to implementation of those obligations. It should also be clear that one of the matters to be taken into account in the settling of the above agreement are any jurisdictional funding arrangements under related Commonwealth-State agreements.

Water quality and salinity

31. In order to further underpin the status of relevant content of the Murray-Darling Basin Agreement (Schedule 1 of the Commonwealth Water Act), Council requests it be made clear that Basin Plan content regarding targets for managing water flows, and salinity targets, not limit the operation of clause 141 or schedule B of that Agreement.
32. Council notes that the phrase “must have regard to” is used in several chapters of the proposed Basin Plan (e.g. s7.20(2), s12.05(3)) in addition to the Water Quality & Salinity Management Plan with slightly different contextual basis in many cases. In the interests of providing a consistent approach to defining the term which does not inadvertently create inappropriate interpretations, Council requests that the Basin Plan define the phrase “must have regard to”.
33. Chapter 8 must clarify that, aside from the continued operation of Schedule B targets under the Murray-Darling Basin Agreement, targets contained in the Chapter are not mandatory. To give effect to this, Council requests that a note be placed in section 8.09, making it clear that, without limiting the operation of Schedule B of the Agreement, ‘must have regard to’ as it relates to targets under this Chapter does not mean that water quality targets are the sole consideration for decision makers or mandate that targets must be met. Instead, it places a positive obligation to consider the water quality targets in preparing water resource plans and making decisions related to the management of water flows, or in the case of environmental water holders, when making decisions on the use of environmental water.
34. Council also considers it highly desirable that the Basin Plan clarify that the operation of targets under Chapter 8 is intended to have no third party impacts, with a provision along the following lines:

Without limiting the operation of Schedule B of the Agreement, where targets under this Chapter are exceeded, action is not mandated. The process outlined in the guideline to Chapter 8 will determine the response to an exceedence, based on the associated costs and benefits and the expert judgement of the water manager, and the principle of no impact on the amount of water delivered under State Water shares (i.e. there should be no impact on the volume of water available to the States).
35. Council considers it would be useful to clarify that the response to an exceedence of a target in the Basin Plan through inclusion of a note to the effect that, without limiting the operation of Schedule B, guidelines to Chapter 8 will outline a process to determine the response to an exceedence, having regard to associated costs and benefits, and no impact on the amount of water delivered under State Water shares.
36. Council requests that all salinity targets in Chapter 8 and Schedule 9 be expressed as EC only, to improve clarity as the unit is widely used in the community and well understood (with a note providing conversion factors to apply in different regions to allow estimation of corresponding values in mg/L).

37. Council request the following changes to the targets for managing water flows to reflect updated modelling of outcomes under the 2800GL/year reduction scenario, better monitoring sites and management under low flows:
- Morgan set at 800 EC (the same numeric value as the Schedule B Basin salinity target that applies to this location, removing potential confusion that could arise if two different numeric values applied at the same location);
 - Burtundy retained at 830 EC (with guidelines for this site to be prepared in consideration of the river operational constraints under low flow and low storage conditions); and
 - The Lock 6 target set at 580 EC (revised target value based on consistency between Morgan and Lock 6 on the 'headroom' between the modelled benchmark period value and the proposed target at each location).
38. The guidelines for Chapter 8 must outline the process to have regard to the operational salinity target.
39. Council suggests that the term 'Salt Load Target' should be renamed as a 'Salt Load Outcome', and in line with the non-mandatory underpinning of the Chapter as outlined above, could therefore remain at 2 million tonnes per year minimum.
40. Council requests that further work be done to ensure consistency between the corresponding sections of Chapter 9 of the Basin Plan (i.e. sections 9.29 – 9.35, *Water Quality Objectives*), so they reflect the non-mandatory nature of the targets in Chapter 8 and that targets have no third party impact.
41. In accordance with this, section 9.33 should be modified to note that water quality management plan under a water resource plan, may identify potential water quality management options but are not expressly required to identify measures. Measures in this context refer to water quality management options.

Environmental Watering Plan

42. The Council is concerned to ensure that the implementation of the Environmental Watering Plan (EWP) under the Basin Plan takes place in a way that:
- is collaborative and flexible;
 - involves the community, building on existing jurisdictional engagement frameworks;
 - maximises the efficiency of environmental water use, and optimises delivery with consumptive water where possible;
 - protects priority assets and sites during drought; and
 - is capable of capturing the outcomes of any adjustment to the SDL in 2016.
43. Accordingly, Council requests that in finalising the Basin Plan, the Authority investigate and consider the following issues:
- a. The Basin-wide environmental watering strategy is intended to provide guidance on the environmental watering requirements of priority assets and functions from a Basin-wide

perspective, to support the development of consistent valley-based long term watering plans. Council requests the Plan be amended to clarify that intent.

- b. The Basin-wide environmental watering strategy needs to be reviewed and updated to reflect the operation of any proposed SDL adjustment mechanism. In line with this, the strategy must be capable of giving effect to the implementation of environmental works and measures, the removal of constraints and any agreed changes to river operations, including potential uses for Commonwealth held environmental water and other relevant held environmental water.
 - c. The Authority should describe the way in which Basin annual environmental watering priorities will be determined in consultation with the Commonwealth Environmental Water Holder and Basin States.
 - d. There may need to be particular elements of the mandatory content for Basin States' long term watering plans and annual watering priorities, where a level of discretion and flexibility is required. Provisions should be included that allow for long term watering plans and annual watering priorities to vary mandatory content in specific cases, where this has been agreed by the Authority and the Basin State.
 - e. The need for clarity of the intent and application of the Basin-wide environmental watering strategy in relation to the timeframe for its development, its interaction with the state long-term watering plans and the process for identifying priority assets and functions and their watering requirements.
44. More broadly, Council considers it important that the EWP also:
- a. Allow for the development of agreements for long term watering arrangements for the use of environmental water, developed in consultation with the Authority, the Commonwealth and Basin States, and/or the relevant environmental water holders.
 - b. Specify a requirement that a clear process be developed for making decisions by environmental water holders to apply environmental water both within a water allocation period and across water allocation periods.
 - c. Provide for the use of Commonwealth and other relevant held environmental water, as far as practical, to maintain water levels above a minimum of 0.0 metres AHD in the Lower Lakes.
45. To support the above, Council regards it as highly desirable that all environmental watering activities under the Plan be done in close consultation, and wherever appropriate by agreement, between the Authority, the Commonwealth Environmental Water Holder and the Basin States. This approach is consistent with the cooperative nature of Basin environmental watering activities to date. To ensure the continuation of these cooperative arrangements, Council requests that the intent of 'close consultation, coordination and cooperative arrangements and wherever appropriate by agreement', be made as clear as possible within the EWP.

Groundwater SDLs

46. The Council supports the adoption of the precautionary principle for all aquifers, consistent with the National Water Initiative, for the establishment of extraction limits based on best available science.

47. Council notes the views of some Basin States that there is some potential for changes to proposed groundwater SDLs based on further consideration of existing data, knowledge and science, including state-based modelling and scientific expertise.
48. Council also notes the potential to adjust groundwater SDLs in future years, consistent with the Water Act, subject to additional science and data and consideration of potential impacts on surface water.
49. Council requests that the states provide all information to the Authority necessary to support any further consideration of groundwater SDLs and that the Authority works with the States' hydrogeologists within the next three weeks to finalise the SDLs for the next version of the Basin Plan.

**METHODOLOGY FOR BASIN PLAN SUSTAINABLE DIVERSION LIMIT ADJUSTMENT
MECHANISM**

The proposed adjustment mechanism should operate through an objective method which will determine the quantum of SDL adjustment and include consideration of the following matters:

- Scoring the predicted ecological outcomes by assessing the flood frequency, duration and length of dry spells generated from model runs taking into account the area of inundated land, a measure of environmental significance, water quality and in-channel health and any other relevant matters, and
- Applying the method to score and compare the benchmark modelling run and a modelling run with the agreed suite of eligible initiatives which would be processed collectively.

ENDS