



Australian Government



MURRAY-
DARLING
BASIN AUTHORITY

MDBA/NSW Bilateral agreement implementation commitments

MDBA's assessment of progress

July 2019

Action	Additional requirements	Timeframe	MDBA assessment of progress as at 16 June 2019	
<p>Overall</p> <p>NSW has submitted reports against the bilateral agreement with the MDBA. This interagency bilateral agreement is in place to ensure that key Basin Plan commitments are able to be given effect by 1 July 2019 despite the delays in delivery and accreditation of water resource plans (WRPs).</p> <p>Noting that Action Item 6 of the agreement is not yet due, NSW has provided reports and information to address all action items in the agreement. In an overall sense, the MDBA's review of these reports suggest that NSW has committed to key components of the Basin Plan, and has provided material that can be applied despite WRP delays, or demonstrates progress against key Basin Plan commitments.</p> <p>Conclusions of "partially met" against some of the action items in this report recognise that, although the material provided by NSW is operable against the action or demonstrates progress, additional work is required on the material before it is finalised in WRPs submitted for accreditation. In some cases consideration of whether the action items in the bilateral agreement have been adequately progressed was informed by material in draft NSW WRPs that are currently on public exhibition. The release of these draft plans contributes to transparency and public assurance of NSW commitment to the implementation of the Basin Plan.</p>				
1	<p>Specify for each form of take within each sustainable diversion limit (SDL) resource unit in the WRP area, a method for determining the maximum quantity of water that NSW will permit to be taken for consumptive use during a water accounting period after 30 June 2019 for the WRP area.</p>	<p>A method must be one that is consistent with the requirements of s 10.10 of the Basin Plan, including requirements relating to accounting in s 10.12, and with the Authority's SDL Reporting and Compliance Framework.</p> <p>A draft proposal for the method must be provided to the Authority prior to the final method.</p>	<p>Draft by 16 April 2019</p> <p>Final on or before 16 June 2019</p>	<p>Groundwater Final Report Surface Water Final Report</p> <p>Partially met</p> <p>The MDBA is satisfied that NSW have provided a method of annual permitted take that can be applied to surface water and groundwater areas. Noting some issues that have emerged (summarised below), the method outlined in the NSW final report is largely consistent with s 10.10 and 10.12 of the Basin Plan.</p> <p>Matters associated with the material provided for annual permitted take calculations will need to be resolved before the first WRPs are submitted to the MDBA for assessment against Basin Plan requirements. This means that NSW will need to continue to work closely with the MDBA to resolve groundwater issues before the Lachlan Alluvium WRP is submitted in July 2019, and surface water issues before the Gwydir surface water WRP is submitted in October 2019.</p> <p>Surface Water Various parts of the nominated method for surface water are potentially inconsistent with the Basin Plan. The method provided for this report could be used to determine SDL compliance for 2019-20, however NSW will need to further improve this method before the submission of WRPs. The MDBA is working closely with NSW to determine whether there may be a better method to apply for the take associated with floodplain harvesting for annual permitted take and annual actual take for the 2019-20 year and until the NSW Floodplain Harvesting Policy is fully implemented.</p> <p>Groundwater Table 4 of the groundwater report details SDL resource units where a variable permitted take method will apply. The Upper Murray Alluvium isn't included in the table. However, the draft Murray Alluvium WRP on public exhibition suggests that a variable method will apply to that unit. As such the MDBA considers the method also applies to the Upper Murray Alluvium.</p>
2	<p>For each SDL resource unit in the WRP area, set out a demonstration that the method referred to in action 1 relates to the SDL of that unit in such a way that, if applied over a repeat of the historical climate conditions, it would result in meeting the SDL for the resource unit, including as amended under s 23B of the Act.</p>	<p>A demonstration must be one that is consistent with the requirements of s 10.10(4) of the Basin Plan, including requirements relating to accounting in s 10.10(5) as required.</p> <p>A draft proposal for the demonstration must be provided to</p>	<p>Draft by 16 April 2019</p> <p>Final on or before 16 June 2019</p>	<p>Groundwater Final Report Surface Water Final Report</p> <p>Partially met</p> <p>The surface water report includes a table from the draft Gwydir surface water WRP that is intended to set out a demonstration that the annual permitted take over the climatic record (1895-2009) will comply with the SDL (Table 4 – Surface Water Final Report). The demonstration provided relates to the Gwydir surface water WRP only, as a template for the application of the method for all surface water systems.</p>

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		the Authority prior to the final demonstration.		<p>However, the table provided has a number of gaps that require further work before WRP submission to ensure consistency between the demonstration of the SDL and annual permitted take methods.</p> <p>For groundwater areas, the demonstration (Table 17 – Groundwater Final Report) is complete, with the exception of a single area where compliance with the SDL was not demonstrated. This will need to be resolved before WRP submission.</p>
3	<p>For each SDL resource unit in the WRP area, specify rules that will be applied by NSW after 30 June 2019 to ensure, as far as practicable, that the quantity of water actually taken for consumptive use in a water accounting period for the SDL resource unit does not (after making any adjustments for the disposal or acquisition of held environmental water) exceed the unit's annual permitted take for the period.</p> <p>For this action, 'annual permitted take' means the sum of the maximum quantity of water permitted to be taken by each form of take for consumptive use from the SDL resource unit, determined in accordance with the method specified in action 1.</p>	<p>The rules must be consistent with the requirements of s 10.11 of the Basin Plan.</p> <p>A draft proposal for rules must be provided to the Authority prior to the final rules.</p>	<p>Draft by 16 April 2019</p> <p>Final on or before 16 June 2019</p>	<p>Groundwater Final Report Surface Water Final Report</p> <p>Met</p> <p>The rules included in the blue box text for section 5.3 of the Surface Water Final Report align with the draft water sharing plan (WSP) provided in the draft Gwydir surface water WRP that was released for public exhibition. As a set of rules, they establish a framework that ensure as far as practicable that actual take does not exceed annual permitted take for a water year. Included in this bundle of rules are arrangements that allow for take to be constrained if growth in diversions occur at a level that results in SDL exceedance.</p> <p>Groundwater</p> <p>The material provided is consistent with groundwater WRPs and WSPs previously reviewed by the MDBA. The example text provided in the Groundwater Final Report includes extracts from the Lachlan Alluvium WSP that allow for the NSW Minister to allocate less water for consumptive use in circumstances where SDL compliance issues are encountered. Although not included in the final report, WSP rules included in draft groundwater WRPs released for public exhibition by NSW include rules that ensure individual water users must legally comply with their water allocations and account limits. Taken together, this bundle of rules can ensure that actual water use does not exceed annual permitted take to the extent practicable.</p>
4	<p>1) Subject to (3), for each surface water SDL resource unit in a WRP area, specify the limits that will be placed on take for consumptive use by:</p> <ul style="list-style-type: none"> (a) take under basic rights; or (b) take by runoff dams; or (c) net take by commercial plantations. <p>so that take does not exceed the level specified in column 2 of Schedule 3 to the Basin Plan, for that form of take in that SDL resource unit.</p> <p>(2) Subject to (3), for the SDL resource units in the Barwon–Darling, Border Rivers, Gwydir, Namoi and Macquarie–Castlereagh WRP areas, specify the limits that will be placed on take for consumptive use by floodplain harvesting so that take does not exceed the level:</p> <ul style="list-style-type: none"> (a) estimated by the Authority to be taken under BDL conditions when the Basin Plan was made, or (b) estimated under a revised estimate presented to meet action 7 of this Schedule. 	A draft proposal for the specification must be provided to the Authority prior to the final specification.	<p>Subject to the outcomes of the independent review of the NSW Floodplain Harvesting Policy implementation, and the Natural Resources Commission review of the Barwon–Darling WSP:</p> <ul style="list-style-type: none"> • Draft proposal required by 16 April 2019. • Final specification for public consultation during the WRP public exhibition process required on or before 16 June 2019. 	<p>Surface Water Final Report</p> <p>Partially met</p> <p><i>Action 4(1):</i> There is no specific text in the Surface Water Final Report to address the limits on the forms of take relevant to this action.</p> <p>However, versions of surface water WRPs that have been released by NSW for public exhibition explicitly limit take under basic rights, by runoff dams and by commercial plantations to the levels specified in the Basin Plan.</p> <p><i>Action 4(2):</i> The text provided to satisfy this action does not explicitly state a limit for floodplain harvesting, as this work is still being undertaken by NSW as part of their floodplain harvesting program. As a part of this program, improved estimates of the volume of floodplain harvesting that could be taken under limits imposed by the Basin Plan will be reviewed. The MDBA is confident that processes including the independent review of the revised floodplain harvesting modelling in northern NSW will lead to an improved understanding of the limits for this form of take.</p>

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	<p>(3) Limits placed on a form of take specified in (1) or (2) may be increased above the specified limits, if:</p> <p>(a) reductions are specified in another form of take in that SDL resource unit that ensures there is no overall change in the long-term annual average quantity of water that can be taken, and</p> <p>(b) take by the forms of take affected by the changes are capable of being accurately measured, or, if such measurement is not currently possible, being reasonably estimated using the best available method, and</p> <p>(c) the changes are not expected to result in take from the SDL resource unit ceasing to be an environmentally sustainable level of take.</p>			<p>However, the MDBA has significant concerns over the delays to this project and whether improved information will be available on floodplain harvesting limits and take in time for WRP submission. The MDBA is working closely with NSW to ensure that floodplain harvesting management arrangements in WRPs meet Basin Plan requirements and address community concerns. This includes work to ensure that the best available information can be applied to WRPs that are submitted by NSW prior to floodplain harvesting reform being completed.</p> <p>While NSW is progressing significant reform to the management of floodplain harvesting, a significant effort is required over a relatively short period of time to ensure appropriate management arrangements are included in WRPs that will be in effect while this reform is finalised.</p> <p><i>Action 4(3):</i> NSW has not included material to explicitly address this requirement in the report. However, WRPs released for public exhibition do include material that would meet the terms of Action 4(3) (which is related to s 10.13 of the Basin Plan). There remains the need for refinement to material in WRPs on public exhibition before final WRPs are submitted for accreditation.</p>
5	<p>For each SDL resource unit in the WRP area, specify how the quantity of water actually taken for consumptive use by each form of take will be determined after the end of a water accounting period using the best information available at the time.</p>	<p>The specification must be consistent with the requirements of s 10.15(2), (3) and (4) of the Basin Plan.</p> <p>A draft proposal for the specification must be provided to the Authority prior to the final specification.</p>	<p>Draft by 16 April 2019</p> <p>Final on or before 16 June 2019</p>	<p>Groundwater Final Report Surface Water Final Report</p> <p>Met</p> <p>Surface water The submitted content is considered representative of all SDL resource units. However, some additional detail will be required in final WRPs to clarify estimation methods for some forms of take. The MDBA is working closely with NSW to determine whether there may be a better method to apply for the actual take associated with floodplain harvesting for the 2019-20 year and until the NSW Floodplain Harvesting Policy is fully implemented. The detail for a different method would be required to be specified in final WRPs.</p> <p>Groundwater Table 19 of the groundwater report, outlines how annual actual take will be determined by referring to relevant sections of Schedule I. Schedule I is also available in groundwater WRPs currently on public exhibition in NSW (for example, see pages 91-105 of the Draft Murray Alluvium Water Resource Plan), and contains substantial material on how the quantity of water taken for consumptive use is measured or estimated.</p> <p>However, more work is required before submission of WRPs to clarify estimation methods, to ensure consistency amongst groundwater WRPs, and to ensure that the content is updated to meet Basin Plan requirements.</p>
6	<p>For the 2019–20 water accounting period, report to the Authority, within four months after the end of the water accounting period:</p> <p>(a) the quantity of water permitted to be taken from each SDL resource unit of the WRP area for consumptive use, determined by applying the method specified in action 1 or, where there is a WRP for the relevant WRP area, by applying the accredited method.</p> <p>(b) The quantity of water actually taken from each SDL resource unit, determined by applying the method or</p>	<p>For paragraphs (c) and (d) of this action, compliance with the SDL must be assessed in accordance with the method specified in the Basin Plan Chapter 6 Part 4, and as if:</p> <ul style="list-style-type: none"> – The quantity reported in paragraph (a) of this action was annual permitted take for s 6.10(1) (surface water) or s 6.12B(1) (groundwater) and 	<p>Within four months after the end of the 2019–20 water accounting period.</p>	<p><u>No reporting available as actions not due.</u></p>

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	<p>methods specified for action 5 or, where there is a WRP for the relevant WRP area, by applying the accredited method.</p> <p>(c) As assessment of compliance with the SDL of each SDL resource unit (determined by reference to inputs submitted by NSW under paragraphs (a) and (b)).</p> <p>(d) If there has been non-compliance with the SDL of an SDL resource unit – the actions that NSW proposes to take to ensure that the limit is complied with in the future.</p>	<ul style="list-style-type: none"> – The quantity reported in paragraph (b) of this action was annual actual take for s 6.10(2) (for surface water) or s 6.12B(2) (groundwater). – for any of the period during which there is no WRP for the WRP area -the application of the method and rules in Actions 1 and 3 of this Schedule is taken to be the operation of the WRP, for s 6.12(4)(a) for surface water, or 6.12C(4)(a) for groundwater. <p>The Authority will use the report provided under this action as an equivalent to the report required by s.71(1)(g) and (h) of the Act, to track NSW performance in meeting Basin Plan expectations, including compliance with SDLs.</p>		
7	<p>Propose amended estimates of BDL for each SDL resource unit in the WRP area.</p> <p>For this action, 'estimates of BDL' are estimates set out as Notes to the description of BDL in Column 2 of Schedule 3 to the Basin Plan.</p>	<p>Proposed amendments of estimates of BDL must be based on best available information supported by documented evidence.</p> <p>An initial draft proposal for the amendment must be provided to the Authority prior to the final proposal.</p>	<p>Draft by 16 April 2019</p> <p>Final on or before 16 June 2019</p> <p>Subject to the outcomes of the independent review of the NSW Floodplain Harvesting Policy implementation</p>	<p>Surface Water Final Report</p> <p>On track</p> <p>NSW has provided updated BDL models which will be used to update BDL estimates. While there are a number of outstanding issues to be resolved, an agreed process is in place which should resolve these issues in an acceptable timeframe. Appendix 1 of the final report outlines remaining BDL model issues, and contributes strongly to the transparency of the work being undertaken.</p>
8	<p>For each of the following WRP areas:</p> <ul style="list-style-type: none"> – Murrumbidgee (item 8 in Schedule 1) and – NSW Murray and Lower Darling (item 9 in Schedule 1) <p>(1) Demonstrate that appropriate policy settings are in place for the implementation of the measures described in the Basin Plan as unimplemented policy measures (see s 7.15), by 30 June 2019.</p> <p>(2) Develop and agree a timetable with the Authority for NSW delivery of PPM implementation evidence and Authority comments.</p>	<p>Pre-requisite policy measures (PPMs) are those referred to in s 7.15 of the Basin Plan as 'unimplemented policy measures' as agreed between NSW and the MDBA.</p> <p>PPMs are to be implemented as agreed by NSW and the MDBA, including through preparation of operational documentation that gives effect to PPMs.</p> <p>A timetable for submission of PPM implementation evidence is to be submitted to the Authority with</p>	<p>Final timetable to be provided by 7 March 2019.</p> <p>Measures, which have been assessed by the Authority as adequate, to be in place by 16 June 2019.</p>	<p>Surface Water Final Report</p> <p>On track (finalised)</p> <p>NSW submitted evidence of PPM implementation to the MDBA by 16 June 2019, and the assessment of those arrangements was commenced.</p> <p>At time of writing (4 July), the Authority had determined the NSW PPMs were in effect. The Authority also noted the commitment by NSW to a PPM working group; and the commitments made by NSW to refine and improve PPM implementation over time. The Authority, when making their determination that PPMs are in effect, noted the importance of ongoing improvements to PPM implementation.</p>

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		<p>sufficient time for the Authority to make a determination on adequacy of the proposed measures before 30 June 2019.</p> <p>NSW must demonstrate that appropriate policy settings are in place to meet the requirements of s 7.15 of the Basin Plan.</p>		
9	<p>For each of the following WRP areas:</p> <ul style="list-style-type: none"> — Barwon–Darling Watercourse (item 2 in Schedule 1) — Gwydir (item 4 in Schedule 1) and — Macquarie–Castlereagh (item 6 in Schedule 1) <p>(1) Provide a clear work plan setting out a pathway including milestones for progressing solutions to better manage environmental water where relevant under NSW law</p> <p>Solutions include, but are not limited to nor prescribed as:</p> <ul style="list-style-type: none"> • better understand northern connectivity • managing resumption of flows in the Barwon-Darling after an extended dry period • limiting daily water take in the Barwon-Darling • actively managing environmental water in stream in the Barwon-Darling, and relevant water sources in the Gwydir and Macquarie-Bogan unregulated water sharing plans where regulated held environmental water is delivered. <p>(2) Publish a progress report on delivery of the roadmap for <i>Better management of environmental water— Interim Solutions Package</i> (NSW Government, June 2018).</p> <p>(3) Share the draft rules to improve the management and protection of environmental water in the Barwon-Darling, Gwydir and Macquarie-Bogan catchments with the MDBA, noting that these will be publically released as part of the draft WRP public exhibition process.</p> <p><i>Note: The Natural Resources Commission review of the Water Sharing Plan for the Barwon–Darling Unregulated and Alluvial Water Sources 2012 under section 43A of the Water Management Act 2000 has commenced. The timing, process and recommendations of this review may influence the content and timing of the deliverables specified in this action. Notwithstanding this, it is anticipated that public exhibition may commence in August 2019.</i></p>	<p>The workplan must set out quarterly milestones for progressing the solutions.</p> <p>As previously agreed any new rules or measures identified are to be given effect under NSW legislation or in relevant WRPs. Relevant WRPs will be submitted to the MDBA for accreditation assessment in 2019. Any proposed new or revised rules or measures must not be inconsistent with the framework provided in Chapter 10 of the Basin Plan where they are to be included in WRPs.</p> <p>The progress report on the roadmap delivery must set out any relevant draft rules or measures and identify which WSP or WRP they pertain to.</p>	<p>Workplan to be provided to the Authority by 13 March 2019.</p> <p>The progress report to be publicly released by 16 June 2019.</p>	<p>Surface Water Final Report</p> <p>Partially met</p> <p><i>Action 9(1):</i> NSW provided MDBA a workplan in February/March 2019 that was then updated in April 2019.</p> <p><i>Action 9(2):</i> In June 2019 NSW provided the MDBA the 'Better Management of Environmental Water – Progress Report' and has subsequently published the report on their website.</p> <p>The MDBA notes that while the report shows that good progress has been made, many actions are up to six months behind schedule. These delays largely reflect the complexities and difficulties associated with this large work program.</p> <p>There will be a need for NSW to continue to invest effort in progressing the work detailed in the schedule. MDBA anticipates that draft WRPs (due for submission towards the end of 2019) will deliver on these commitments.</p> <p><i>Action 9(3):</i> NSW have not yet provided the MDBA all draft rules to improve the management and protection of environmental water in the Barwon–Darling, Gwydir and Macquarie–Bogan catchments. These rules are still in development, and various scenarios have been tested with NSW Stakeholder Advisory Panels during this process.</p> <p>The draft Barwon–Darling WRP is scheduled to go to public exhibition in September 2019. To date the MDBA— as an observer on the Barwon–Darling Stakeholder Advisory Panel — has received a series of modelling and policy papers discussing options for rules that could be included in the WSP and/or the WRP to improve protection of environmental water in the Barwon–Darling WRP area. In the context of the Gwydir and Macquarie–Castlereagh WRP areas, draft WRPs have gone to public exhibition that included rules for management and protection of environmental water. Some of these rules have changed from those in place under the 2012 WSPs.</p> <p>Neither of the draft WRPs yet contain rules that give effect to the 'active management' commitments under the northern Basin toolkit measures. Provisions have been made in the associated NSW WSPs to introduce such rules at a later time as part of the WRPs.</p> <p>The MDBA notes that the Natural Resources Commission is conducting a review of the WSP for the Barwon–Darling Unregulated and Alluvial Water Sources 2012. Submissions to the review of the above plan have now</p>

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				closed. The Commission is considering submissions, provided for the purpose of the review, prior to developing recommendations.
10	<p>For the Murrumbidgee WRP area (item 8 in Schedule 1):</p> <p>(1) Work with the ACT to develop a process for enabling two-way interjurisdictional water trading between NSW and the ACT,</p> <p>(2) Provide a workplan to establish the required arrangements, including principles, milestones, and timing.</p> <p><i>Note: NSW acknowledges the Ministerial Council agreement on 14 December 2018 to enable two-way interjurisdictional water trading between NSW and the ACT.</i></p>	<p>The agreed process to enable interstate trade, the workplan for the agreement, is to be agreed by both the ACT and NSW.</p> <p>NSW will engage with the Authority on the possible implications of the approach on interstate trade and any amendments that would be required to either Schedule D of the Act or its protocols.</p>	<p>Advise the Authority by 13 March 2019 of the NSW/ACT agreed process through which interstate trade arrangements will be enabled.</p> <p>NSW/ACT agreed workplan to be provided to the Authority on or before 16 April 2019.</p> <p>Progress report on workplan implementation on or before 16 June 2019.</p>	<p>Surface Water Final Report NSW-ACT trade framework workplan</p> <p>Partially met</p> <p><i>Action 10(1):</i> In March 2019 NSW advised the Authority of an agreed process and workplan.</p> <p>In April 2019, NSW provided the MDBA the workplan agreed by ACT and NSW, detailing responsibilities of NSW and the ACT and the proposed arrangements, milestones and timing to the extent possible.</p> <p><i>Action 10(2):</i> In June 2019, NSW provided the MDBA a progress report against the agreed workplan.</p> <p>While the workplan establishes a clear commitment to establish a retail trade framework between ACT and NSW, options on how to progress this issue are still being developed.</p> <p>As a consequence, the progress report provides limited detail on how issues will be resolved or fixed timelines for completion of the remaining milestones.</p> <p>The progress report indicates a need for both NSW and ACT to invest greater effort in identifying options in order to bring about an NSW/ACT trade framework. NSW and the ACT continue to work together to progress interstate trade arrangements, and workshops were held in late June to develop more detailed options for implementation.</p>