

Approach to monitoring and compliance: water resource plans

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Acknowledgement of the Traditional Owners of the Murray–Darling Basin

The Murray–Darling Basin Authority acknowledges and pays respect to the Traditional Owners, and their Nations, of the Murray–Darling Basin, who have a deep cultural, social, environmental, spiritual and economic connection to their lands and waters. The MDBA understands the need for recognition of Traditional Owner knowledge and cultural values in natural resource management associated with the Basin.

The approach of Traditional Owners to caring for the natural landscape, including water, can be expressed in the words of the Northern Basin Aboriginal Nations Board:

...As the First Nations peoples (Traditional Owners) we are the knowledge holders, connected to Country and with the cultural authority to share our knowledge. We offer perspectives to balance and challenge other voices and viewpoints. We aspire to owning and managing water to protect our totemic obligations, to carry out our way of life, and to teach our younger generations to maintain our connections and heritage through our law and customs. When Country is happy, our spirits are happy.

The use of terms 'Aboriginal' and 'Indigenous' reflects usage in different communities within the Murray–Darling Basin.

Cover image: Map of water resource plan areas for surface water (MDBA 2012)

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Introduction

This document sets out the approach that the Murray–Darling Basin Authority (MDBA) will take in ensuring compliance with water resource plans. The document clarifies for Basin states, infrastructure operators and other water users how the MDBA will exercise its water resource plan compliance role. This includes principles that underpin the regulatory framework for water resource plans, and how the MDBA will undertake compliance monitoring.

In the first instance, the MDBA expects that all entities subject to obligations in the water resource plans will comply with those obligations. Water resource plan compliance represents a new arrangement (both for entities with obligations and for the MDBA as the regulator). The MDBA is committed to working with the Basin states and other entities with obligations under the water resource plans to develop a workable and effective arrangement.

Ensuring the water resources of the Murray–Darling Basin are used in accordance with the water resource plans is one of a number of regulatory roles the MDBA is responsible for under the Water Act. As such, this document should be read in conjunction with the MDBA's broader compliance strategy. The compliance strategy outlines the MDBA's approach to administering and enforcing aspects of the *Water Act 2007* (Cwlth) and the *Basin Plan 2012* (Cwlth).

The compliance strategy is available on the MDBA's website at mdba.gov.au/basin-plan/basin-plan-compliance.

Our role

The MDBA was established as an independent expertise-based statutory agency in 2008. For the first time in the Basin's history, one Basin-wide institution is responsible for planning the management of the Basin's water resources, with planning decisions made in the interest of the Basin as a whole.

Our primary roles include:

- preparing, implementing and reviewing an integrated plan for the sustainable use of the Basin's water resources
- operating the River Murray system and efficiently delivering water to users on behalf of partner governments
- measuring, monitoring and recording the quality and quantity of the Basin's water resources
- supporting, encouraging and conducting research and investigations about the Basin's water resources and dependent ecosystems
- advising the Australian Government Minister for Water Resources on the accreditation of state water resource plans
- providing water rights information to facilitate water trading across the Basin
- engaging and educating the Australian community about the Basin's water resources.

The MDBA works in collaboration with other Australian Government agencies, Basin state governments, local governments, regional bodies, industry groups, landholders, environmental

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organisations, scientists, research organisations, Murray–Darling Basin communities including Aboriginal communities, and the broader Australian community.

Under section 137 of the Water Act, the MDBA is the ‘appropriate enforcement agency’ for contraventions relating to Part 2 of the Water Act (Management of Basin water resources, including the Basin Plan and water resource plans) and the information gathering provisions of Part 10 of the Water Act.

Obligations under the Water Act and the Basin Plan

The majority of the obligations under Part 2 of the Water Act and the Basin Plan lie with the Basin states and Australian Government agencies. Australian Government agencies, including the MDBA, the Commonwealth Environmental Water Holder, the Department of the Environment and Energy and the Department of Agriculture and Water Resources, must perform their functions and exercise their powers consistently with, and in a manner that gives effect to the Basin Plan and/or water resource plans (sections 34 and 58 of the Water Act). Other regulated entities such as Basin states, infrastructure operators and holders of water access rights, ‘must not do an act, or fail to act, in relation to Basin water resources or the water resources of a water resource plan area, if the act or failure to act is inconsistent with the Basin Plan and/or the relevant water resource plan’ (sections 35 and 59 of the Water Act).

Obligations imposed in relation to the Basin Plan are subject to Section 1.09 which states that ‘If the Basin Plan purports to impose an obligation on a Basin State to do a particular thing and the imposition...would contravene a constitutional doctrine...the Basin Plan is taken...to confer discretion on the Basin State to do the thing.’

Water resource plans

The Water Act requires that there be a water resource plan that is consistent with the requirements of the Basin Plan for each water resource plan area in the Basin. Basin states are developing water resource plans, as agreed in the Basin Plan Implementation Agreement, and will submit these to the MDBA for assessment as they are finalised. These water resource plans bring together existing state rules and instruments, along with other supplementary material, to provide a plan for managing water resources in a way that is consistent with the Basin Plan.

The MDBA's roles in regard to water resource plan preparation are to assist Basin states to develop the plans, and assess the plans to provide a recommendation to the Australian Government minister on whether the water resource plan is consistent with the Basin Plan (and should be accredited under the Water Act). The MDBA is also responsible for ensuring relevant entities are compliant with accredited water resource plans.

Interplay with sustainable diversion limit compliance

Sustainable diversion limits take effect on 1 July 2019. Sections 6.09 to 6.12 of the Basin Plan set out the method for determining compliance with the sustainable diversion limits. This method draws upon the processes and methods in the water resource plans to determine both permitted and actual take each year. There is therefore a close relationship between sustainable diversion

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limit and water resource plan monitoring and compliance. The approach to water resource plan monitoring and compliance set out in this document is separate from, but designed to be consistent with, those provisions and any related position statements or other guidance material relating to sustainable diversion limit monitoring and compliance.

Principles for exercising our functions and powers

Consistent with the MDBA's obligations under Section 58 of the Water Act, the MDBA will exercise its monitoring and compliance functions and powers consistently with, and in a manner that gives effect to, the water resource plans. Additionally, the MDBA will do so in accordance with the following principles.

Principle 1: The MDBA will adopt a risk-based approach to water resource plan compliance

Consistent with the MDBA's commitment in the Basin Plan Implementation Agreement and the MDBA's compliance strategy, a risk-based approach will underpin our approach to water resource plan compliance.

All obligations in the water resource plans must be complied with. However, we will apply greater scrutiny to some obligations than others, depending on the likelihood and consequence of the risks to Basin Plan outcomes or risks identified in a particular water resource plan area. For example, in undertaking compliance monitoring, the MDBA will focus its resources on the water resource plan obligations that have the greatest implications for outcomes. These include compliance with sustainable diversion limits, protection of planned environmental water, and compliance with Basin Plan water trading rules.

Under a risk-based approach, we will also seek to verify that obligations with the most significant implications for outcomes in a water resource plan area have been fulfilled more rigorously than obligations with less implications for outcomes.

Principle 2: Basin states have primary responsibility for water resource plan compliance

Water resource plans may impose obligations on the Basin states (for example to monitor and report) as well as on other parties like water users (for example to comply with rules on water access rights), infrastructure operators (for example to release translucent flows), environmental water holders or other parties, including the MDBA.

Water resource plans may impose such obligations by either incorporating existing state law, or by independently imposing an obligation that does not have effect under existing state law. Where obligations have effect under existing state law, the MDBA expects that states will conduct appropriate monitoring and compliance activities consistent with existing regulatory frameworks. The MDBA expects that Basin states will conduct appropriate monitoring and compliance activities consistent with existing regulatory frameworks. If there is non-compliance with obligations that exist under state law, the MDBA expects the Basin state to take appropriate compliance action. If there is non-compliance with obligations that exist under Commonwealth law, the MDBA will take appropriate compliance action.

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As water resource plans come into effect in the Basin states, we will establish an appropriate approach for monitoring and compliance on a water resource plan-by-water resource plan basis in consultation with each Basin state.

Principle 3: Reporting on water resource plan compliance will be coordinated through Schedule 12, Matter 19 reporting in the Basin Plan

Once accredited, the Basin states must report on compliance against their water resource plans annually, under Matter 19 in Schedule 12 of the Basin Plan. This reporting will focus on compliance with ongoing obligations imposed by the water resource plans, and will form the primary means of water resource plan compliance monitoring.

The MDBA's water resource plan position statement 1M — *Water resource plan imposing obligations* sets out the expected obligations a water resource plan will impose on Basin states, water managers and users. The obligations imposed by individual water resource plans will depend on the nature of the particular water resource plan area, the content of the particular Basin Plan requirement and how that requirement is satisfied in the water resource plan. As such, it is likely that the nature of Matter 19 reporting will differ between jurisdictions and water resource plans. The MDBA will work with the Basin states to agree appropriate content for Matter 19 reporting.

As more water resource plans come into effect, the MDBA may issue further guidelines on Matter 19 reporting requirements under section 13.16 of the Basin Plan. We may also complement Matter 19 reporting with other information (for example by requesting additional information from the Basin states about water resource plan compliance on a case by case basis).

Principle 4: The MDBA is committed to a cooperative approach but will use its compliance powers where necessary to achieve appropriate outcomes

All parties are responsible for complying with the water resource plans, and many are responsible for reporting on compliance. The MDBA's powers in respect to water resource plan compliance are detailed in the MDBA's compliance strategy, and include injunctions, declarations, enforceable undertakings and enforcement notices. While the MDBA does have these powers to use at its discretion, we recognise that the best outcomes will be achieved by working together. In the first instance we are committed to working cooperatively with parties subject to obligations in the water resource plans to ensure voluntary compliance with those obligations and to foster stewardship of Basin water resources. However, where an entity is not acting in good faith or demonstrates a lack of willingness to comply, we will rely on mediation or the more formal enforcement powers available.

Principle 5: The MDBA will encourage transparency and accountability in water resource plan compliance through leading by example

Ensuring transparency and accountability to the public is important in building confidence that the objectives of the Water Act and the Basin Plan are being achieved. The MDBA is committed to demonstrating its own accountability by reporting publically on its own compliance obligations under the water resource plans where it has a role as a water user. The MDBA will also apply this transparency principle to its conduct as a regulator, by publishing compliance activities such as audits, evaluations and actions to manage non-compliance on our website, where appropriate.

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Consistent with our commitment in the Basin Plan Implementation Agreement, the MDBA will establish arrangements to ensure there is no conflict of interest in our conduct of the water resource plan compliance program in relation to our own obligations. This will include having appropriate systems in place to ensure we remain compliant with our own water resource plan and other Basin Plan obligations.

Conclusion

The MDBA's approach to water resource plan monitoring and compliance reflects the ongoing development of our regulatory role, including the strategic priority in the MDBA's Corporate Plan 2016–17 to 2019–20 to 'continue to strengthen the MDBA's regulatory posture'.

It is also informed by our understanding of water resource use in the Basin, principles of better practice regulation, and feedback from Basin states and other stakeholders.

As part of continual improvement, we will regularly review this statement to ensure that it is consistent with the MDBA's evolving role and incorporates lessons learned. We invite ongoing feedback on our regulatory approach.

Glossary of terms

Basin states

References to the Basin states include all states and territories that rely on the water resources of the Murray–Darling Basin. They are Queensland, New South Wales, Victoria, South Australia and the Australian Capital Territory

River Murray system

The River Murray system includes Dartmouth and Hume dams, Lake Victoria, the barrages at the Lower Lakes, weirs and locks from Yarrawonga in Victoria to Blanchetown in South Australia, as well as salt interception schemes, forest regulators, environmental works and the hydrometric data network.

Environmentally sustainable level of take

An environmentally sustainable level of take is the amount of water that can be taken for town water supplies, industry, agriculture and other human or consumptive uses, while ensuring there is enough water to achieve healthy river and groundwater systems.

Sustainable diversion limit

The Basin Plan sets a sustainable diversion limit for each catchment and aquifer in the Basin, as well as an overall limit for the Basin as a whole. The sustainable diversion limits are like a new 'Cap' on water use. They regulate the amount of water that can be used for consumptive purposes in the Basin. The sustainable diversion limits in the Basin Plan also apply to groundwater and mean that for the first time there are comprehensive limits on groundwater take across the Basin.

Take

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Take is the removal of water from, or the reduction in flow of water into, a water resource.

Water resource plans

Water resource plans are documents that set out how water will be managed in an area.