



Australian Government



# MDBA/NSW Bilateral agreement implementation

MDBA's assessment of progress

August 2021

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### Acknowledgement of the Traditional Owners of the Murray–Darling Basin

The Murray–Darling Basin Authority pays respect to the Traditional Owners and their Nations of the Murray–Darling Basin. We acknowledge their deep cultural, social, environmental, spiritual and economic connection to their lands and waters.

The guidance and support received from the Murray Lower Darling Rivers Indigenous Nations, the Northern Basin Aboriginal Nations and our many Traditional Owner friends and colleagues is very much valued and appreciated.

Aboriginal people should be aware that this publication may contain images, names or quotations of deceased persons.

NSW Action	Authority action	Timeframe	MDBA Assessment of Progress as at 30 June 2021
<p><b>Overall</b> NSW has submitted reports against the <a href="#">bilateral agreement with the MDBA</a> (as amended 30 June 2021). This interagency bilateral agreement is in place to ensure that key Basin Plan commitments are able to be given effect despite the delays in delivery and accreditation of water resource plans (WRPs).</p>			
<p><b>1</b></p> <p>1.1 For each WRP area, for each water accounting period, NSW will report to the Authority:</p> <p>1.1.1 the quantity of water permitted to be taken from each SDL resource unit of the WRP area for consumptive use; and</p> <p>1.1.2 the quantity of water actually taken from each SDL resource unit: and</p> <p>1.1.3 and assessment of compliance with the SDL of each SDL resource unit: and</p> <p>1.1.4 if there has been non-compliance with the SDL of an SDL resource unit – details of any claim for reasonable excuse for the excess and the actions NSW will take to ensure that the limit is complied with in the future.</p> <p>1.2 The quantity permitted to be taken, and the quantity actually taken, must be determined in accordance with the methods specified in relation to the requirements of sections 10.10, 10.12 and 10.15 of the Basin Plan:</p> <p>1.2.1 in the proposed WRP for the area; or</p> <p>1.2.2 if material has been submitted in accordance with action 2 for the period – in that material.</p> <p>1.3 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> <p>1.3.1 the quantity reported in paragraph 1.1.1 was annual permitted take for s 6.10(1) (surface water) of 6.12B(1) (groundwater) of the Basin Plan; and</p> <p>1.3.2 the quantity reported in paragraph 1.1.2 was annual actual take for s 6.10(2) (surface water) of 6.12B(2) (groundwater) of the Basin Plan; and</p> <p>1.3.3 for s 6.12(4)(a) (surface water) or s 6.12C(4)(a) (groundwater) of the Basin Plan, ‘the operation of the WRP’ means the application of:</p> <p>1.3.3.1 the methods referred to in paragraph 1.2, and</p> <p>1.3.3.2 rules set out in the proposed WRP in relation to the requirement in s 10.11 of the Basin Plan or, if material has been submitted in accordance with action 2 for the period, material which addresses the matters set out in s 10.11 of the Basin Plan.</p> <p>1.4 Consistent with the requirements of the Authority's <i>SDL Reporting and Compliance Framework 2018</i>, where methods referred to in paragraph 1.2 have been updated from the previous water accounting period, NSW will include in the report updated estimates of the quantity of water permitted to be taken from each SDL resource unit of the WRP area for consumptive use using the new methods from 1 July 2019.</p> <p>1.5 A report for this action will be prepared consistently with s 71 of the Act, Basin Plan Chapter 6 Part 4, and the Authority's associated <i>SDL Reporting and Compliance Framework 2018</i>.</p>	<p>The Authority will use the report provided under this action as 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 in relation to compliance with SDLS.</p> <p>The Authority will publish on its website content provided from this report.</p>	<p>NSW will provide the report within 4 months after the end of each water accounting period.</p>	<p><b>Action 1: No action required</b></p> <p>For 2020-21 reporting period, Action 1 applies to the following WRPs:</p> <ul style="list-style-type: none"> <li>- <b>Murrumbidgee SW</b></li> <li>- <b>Barwon–Darling SW</b></li> <li>- <b>NSW Border Rivers SW</b></li> <li>- <b>Gwydir SW</b></li> <li>- <b>Macquarie–Castlereagh</b></li> <li>- <b>Namoi SW</b></li> <li>- <b>Lachlan SW</b></li> <li>- <b>Intersecting streams SW</b></li> <li>- <b>NSW Murray and Lower Darling SW</b></li> <li>- <b>Lachlan Alluvium</b></li> <li>- <b>Macquarie–Castlereagh Alluvium</b></li> <li>- <b>Murrumbidgee Alluvium</b></li> <li>- <b>NSW Great Artesian Basin Shallow</b></li> <li>- <b>NSW Murray–Darling Basin fractured rock</b></li> <li>- <b>Darling Alluvium</b></li> <li>- <b>Gwydir Alluvium</b></li> <li>- <b>Murray Alluvium</b></li> <li>- <b>Murray–Darling Basin Porous Rock</b></li> <li>- <b>Namoi Alluvium</b></li> <li>- <b>NSW Border Rivers Alluvium</b></li> </ul> <p>The timeframe for reporting against this action is four months after the end of the water accounting period of 30 June 2021.</p>

<p><b>2</b></p>	<p>2.1 For each WRP area, for each water accounting period in which there is not a proposed WRP, or a proposed WRP has been submitted but withdrawn before 30 June in that period, NSW must submit to the Authority material which addresses:</p> <p>2.1.1 all matters set out in sections 10.10, 10.11, 10.12, 10.13 and 10.15 of the Basin Plan; and</p> <p>2.1.2 where interception has been assessed as having a significant impact in any WRP area, all matters set out in sections 10.23, 10.24 and 10.25 of the Basin Plan; and</p> <p>2.1.3 any proposed amended estimates of the surface water BDL (as currently specified in Column 2 of Schedule 3 of the Basin Plan) for SDL resource units in the WRP area as at 30 June in that period, based on best available information supported by documented evidence; and</p> <p>2.1.4 supporting documented evidence of the basis for the proposed amended estimates.</p> <p>2.2 For each WRP area, for a water accounting period in respect of which the MDBA and NSW <b>agree</b> that new or improved information, methods or models relating to any matter specified in paragraph 2.1 should be applied to or contained in a proposed WRP for that area (whether the proposed WRP has been withdrawn or not), NSW will submit to the Authority such <b>additional or alternative material</b> as required to address such matter or matters.</p> <p>2.3 If an agreement has been made for the purposes of paragraph 2.2, NSW must include in the material submitted for paragraph 2.1 for that WRP area a statement, identifying the matter or matters to which the agreement relates, and that further material will be provided to the Authority before 30 September following the end of the water accounting period to which the agreement applies.</p> <p><i>Note: it is expected that NSW would draw on the most up-to-date draft methods that have been prepared in consultation with the Authority (pursuant to its functions under s 67 of the Act) for this Action, or reference suitable content that is available publicly.</i></p>	<p>The Authority will publish on its website:</p> <p>(1) content provided from material referred to in paragraph 2.1; and</p> <p>(2) any agreement made for the purposes of paragraph 2.2.</p> <p>Any agreement for the purposes of paragraph 2.2 must be executed before 30 June prior to the end of the water accounting period to which the agreement applies.</p>	<p>NSW will provide the material required by paragraphs 2.1 and 2.3 on or before 30 June each year. NSW will provide the material required by paragraph 2.2 on or before 30 September following the end of the water accounting period to which the agreement applies.</p>	<p><b>Action 2: Largely met</b></p> <p>2.1 For the 2020-21 reporting period, Action Item 2.1 applies to the following WRPs that were withdrawn before 30 June 2021:</p> <ul style="list-style-type: none"> <li>- <b>Murrumbidgee SW</b></li> <li>- <b>NSW Murray and Lower Darling SW</b></li> <li>- <b>Darling Alluvium</b></li> <li>- <b>Gwydir Alluvium</b></li> <li>- <b>Murray Alluvium</b></li> <li>- <b>Murray–Darling Basin Porous Rock</b></li> <li>- <b>Namoi Alluvium</b></li> <li>- <b>NSW Border Rivers Alluvium</b></li> </ul> <p>NSW has stated at <b>Attachment D</b> to the progress report that SDL reporting and compliance methodologies for 2020-21 will be in accordance with the methodologies in the respective WRPs (Chapter 5 and associated schedules) submitted for accreditation by 30 June 2020, whether or not a WRP was withdrawn at 1 July 2021, unless amended as specified (refer item 2.2 below). The MDBA will publish the relevant components of the withdrawn WRPs to provide transparency regarding the methods that will apply for SDL compliance assessment in 2020-21.</p> <p>This includes WRPs for both surface and groundwater WRP areas.</p> <p>2.2 For the 2020-21 reporting period, the MDBA notes that an agreement for the purposes of matter 2.2 has been made.</p> <p>The agreement provides for updated, new or improved methods in relation to Baseline Diversion Limits, section 10.10 and section 10.15 of the Basin Plan for specified WRP areas. This agreement is available on the MDBA website at: <a href="#">MDBA-NSW bilateral agreement – improved methods for 2020-21 water year</a></p> <p>For the 2020-21 water year, Action Item 2.2 applies to the following WRPs:</p> <ul style="list-style-type: none"> <li>- <b>Barwon–Darling SW</b></li> <li>- <b>NSW Border Rivers SW</b></li> <li>- <b>Gwydir SW</b></li> <li>- <b>Macquarie-Castlereagh</b></li> <li>- <b>Namoi SW</b></li> <li>- <b>Lachlan SW</b></li> </ul> <p>2.3 NSW has included material in <b>Attachment D</b> to the progress report relevant to the agreement reached for item 2.2.</p>
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<p><b>3</b></p>	<p>3.1 For the Barwon-Darling Watercourse, Gwydir and Macquarie-Castlereagh WRP areas, for each water accounting period in which there is not a proposed WRP for all three WRP areas, or a proposed WRP for one or more areas has been submitted but withdrawn before 30 June in that period, NSW will provide to the Authority a report which includes:</p> <p>3.1.1 a progress report on delivery against the <i>Better management of environmental water work program</i>. (NSW Government, April 2019); and</p> <p>3.1.2 the draft rules proposed to improve the management and protection of environmental water in the Barwon-Darling Watercourse, Gwydir and Macquarie-Castlereagh WRP areas.</p> <p>3.2 If any part of the delivery of the <i>Better management environmental water work program</i> is not complete, or draft rules referred to in paragraph 3.1.2 are not complete, NSW will provide, in addition to the report required by paragraph 3.1, a report explaining the reasons for non-completion.</p>	<p>The Authority will publish on its website content provided from these reports.</p>	<p>NSW will provide the reports on or before 30 June each year.</p>	<p><b>Action 3: Good progress</b></p> <p>3.1.1 NSW provided a report for this action on 9 July 2021 which complements a more comprehensive progress report NSW published in June 2020.</p> <p>3.1.2 The report notes key milestones completed include:</p> <ul style="list-style-type: none"> <li>- Legislative and WSP amendments</li> <li>- Improved transparency and access to information about DPIE management and protection of environmental water</li> <li>- Enduring solutions to better manage and protect environmental water</li> </ul> <p>With respect to the draft rules proposed to improve the management and protection of environmental water in the Barwon-Darling Watercourse, Gwydir and Macquarie-Castlereagh WRP areas, NSW commenced active management on 1 December 2020 in the three unregulated water sources. The three other aspects of the reform (first flush rule, daily extraction limits and increases to some A Class access thresholds) came into effect from 1 July 2020 in accordance with the amended Water Sharing Plan for the Barwon–Darling unregulated water source. These enduring arrangements replace interim arrangements NSW has implemented in recent years to protect water for the environment, including use of temporary water restrictions to protect water for the environment through the Barwon–Darling.</p> <p>As a demonstration of the new rules and arrangements in practice, active management was coupled with implementation of the new ‘resumption of flow’ rule to prevent Barwon-Darling irrigators access to environmental water released upstream in January 2021. This was the first time the new ‘resumption of flow’ rule was activated since it was introduced by NSW in 2020. It prohibited irrigation licence access until enough water was forecast to flow through the system to provide system connectivity from</p>

				<p>Bourke to Wilcannia. In total, 8,000 ML was protected using the resumption of flows rule.</p> <p>3.2 There are some aspects of the <i>Better management environmental water work program</i> that are ongoing:</p> <ul style="list-style-type: none"> <li>- Work on monitoring, evaluation and reporting that includes an independent review into the initial implementation of IDECs, the resumption of flow rule and active management in addition to regular annual reporting and review of active management.</li> <li>- Building on the work completed to better understand northern Basin connectivity, NSW is working on implementing the Interim Unregulated Flow Plan for the North-west in addition to a range of other northern Basin connectivity initiatives and investigations being undertaken as part of the Regional Water Strategies and Healthy Floodplains programs.</li> </ul> <p>NSW were not required to provide a report explaining reasons for non-completion because these activities were always expected to be longer term and they have delivered all aspects of the work program and draft rules expected by 30 June 2021.</p>
4	<p>4.1 NSW will provide to the Authority a report on delivery of the <i>Floodplain Harvesting Action Plan</i> (NSW Government, September 2019).</p> <p>4.2 If any part of the delivery of the <i>Floodplain Harvesting Action Plan</i> is not complete, NSW will provide, in addition to the report required by paragraph 4.1, a report explaining the reasons for non-completion.</p> <p>4.3 This reporting requirement will continue until all floodplain harvesting licences have been issued and there are WRPs for the New South Wales Border Rivers, Barwon- Darling Watercourse, Gwydir, Namoi and Macquarie-Castlereagh WRP areas incorporating floodplain harvesting management policy.</p>	<p>The Authority will publish on its website content provided from these reports.</p>	<p>NSW will provide the reports on or before 30 June each year.</p>	<p><b>Action 4: Partially met</b></p> <p>4.1 NSW provided a report for this action on 9 July 2021.</p> <p>4.2 Commentary provided in above report. NSW has committed significant resources to progress this issue and the MDBA welcomes this work. MDBA note a number of <u>targets</u> have been rescheduled.</p> <p>While NSW continues to make progress on many of its commitments (noting some slippage in timeframes), critically, and of key concern is the fact that implementation of the proposed floodplain harvesting (FPH) licencing framework has been substantially delayed due to the key regulatory amendments (including for FPH measurement) being disallowed in the NSW parliament.</p> <p>We understand a NSW Select Committee inquiry into the governments management of floodplain harvesting is now underway. This is looking at how floodplain harvesting can be licensed, regulated, metered and monitored so that it is sustainable and meets the objectives of the <i>Water Management Act 2000</i> and the Basin Plan</p> <p>In parallel NSW are progressing a number of activities to facilitate measurement and data instrumentation. The</p>

			<p>measurement team in NSW are going ahead with preparing landholders to be measurement ready with communication activities, measurement demonstration sites and continuing to facilitate more FPH measurement and data transmitting instrumentation to be available on the market.</p> <p>However, the failure to regulate the take of water through floodplain harvesting in five northern catchments, and have that take supported by metering, measurement and compliance is of great concern, and threatens ongoing progress and public confidence.</p> <p>4.3 No specific action.</p> <p>While there have been delays in the delivery of the action plan, the MDBA notes that NSW has agreed to improve the methods to be used for floodplain harvesting for s71 reporting for 2020-21 under action 2.2 above, as an interim step until the licensing framework is in place.</p> <p>Further, the MDBA commends NSW for applying the rules in the water sharing plan to reduce allocations to supplementary licence holders in the NSW Border Rivers and the Gwydir - to address the total growth in use in these SDL resource units and meet Basin Plan requirements.</p>	
5	<p>5.1 For the Murrumbidgee WRP area, NSW will:</p> <p>5.1.1 work with the ACT Government to develop a process for enabling two-way interjurisdictional water trading between NSW and the ACT; and</p> <p>5.1.2 provide to the Authority a report on progress against the NSW/ACT agreed workplan.</p> <p>5.2 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 1 of the Act or its protocols.</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>	The Authority will publish on its website content provided from these reports.	NSW will provide the reports on or before 30 June each year.	<p><b>Action 5: Delayed</b></p> <p>5.1.1 NSW has continued to engage with the Commonwealth, MDBA and the ACT to enable water trade between the ACT and NSW. Although agreement on a trading mechanism has not yet been reached between the ACT and NSW, discussions have progressed over the past year. Both jurisdictions will need to continue to fully invest in further engagement to agree to a trade mechanism and progress this agreement.</p> <p>5.1.2 NSW has provided the Authority a report on the progression of the agreed workplan which outlines the key issues related to the stalled implementation of the workplan to enable ACT/NSW water trading.</p> <p>5.2 NSW has agreed to investigate the inclusion of the ACT in Schedule D of the Murray-Darling Basin Agreement. A formal recommendation to include the ACT in Schedule D (or its associated Protocols) is still subject to a trading mechanism between NSW and the ACT being agreed.</p>

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**Office locations – First Nations Country**

**Adelaide** – *Kurna*

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**Griffith** – *Wiradjuri*

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