

NOTICE BY THE NSW GOVERNMENT UNDER SECTION 43A(4) OF THE WATER ACT 2007

This section outlines additional points for the s43A notice that expand on those raised in the consensus section and other points of disagreement with the Proposed Basin Plan that the NSW Government is seeking to be adopted by the MDBA in finalising the Basin Plan.

Water recovery volume

1. NSW still has serious concerns regarding the scientific basis of the SDLs in the revised draft Plan. NSW requires that the MDBA provide a detailed public report to accompany the Basin Plan to validate the methodology and the outcomes of the proposed SDLs.
2. NSW notes that the use of the 2009 baseline masks the water recovery efforts that have been undertaken in the past decade. The current proposed SDL reduction of 2750 GL, plus water recovered prior to 2009 through State planning and water recovery programs, takes the environmental water recovery closer to 4000 GL and this has not been properly communicated.

SDL adjustment mechanism

3. NSW strongly supports the investigation of an SDL adjustment mechanism to allow for the outcomes of environmental works and measures and rules review to offset the SDL reductions.
4. NSW further supports an SDL adjustment range that provides for limit of a maximum of 2100 GL in held environmental water by the Commonwealth pending the outcome of future SDL adjustments and other proposed work program reviews in 2016.
5. NSW requires that The Living Murray environmental works and measures should be incorporated into the SDL adjustment mechanism to potentially contribute to an offset reduction.
6. The benchmark modelling run for the SDL adjustment mechanism should be as documented in the MDBA's February 2012 report "Hydrologic modelling to inform the Proposed Basin Plan." Where any proposed modelling changes have the potential to affect the benchmark modelling run, these should be overseen by a multi-jurisdictional working group established under the auspices of the Basin Officials Committee.
7. The baseline for environmental and socio-economic factors is critical to the successful application of the SDL adjustment mechanism and needs to be agreed with States.

Apportionment

8. NSW requires apportionment for the Southern Basin shared downstream reduction to be included in the Basin Plan and at a minimum a process to review the shared northern reduction and its apportionment for the northern Basin by 2015/16.
9. The principles for apportionment of the downstream shared reduction components in the northern and southern basin must be consistent to enable equitable apportionment between States across the Basin. NSW requires that the principles for water apportionment between states be included in the Basin Plan, and that apportionment be based on State water shares.
10. This is necessary irrespective of the Commonwealth's intent to focus its water recovery program in the time period prior to 2016 on meeting in-valley requirements in the northern basin and for maximum held environmental water of 2,100 GLs by 2016.

NSW groundwater SDLs

11. The SDLs for some aquifers in NSW have been set by the MDBA in the revised draft Plan without reference to the information, modelling and scientific expertise held by NSW Office of Water's hydrogeologists and without recognising the precautionary and conservative methods already adopted by NSW in managing these aquifers.
12. The NSW approach to setting extraction limits uses best available data and science to determine recharge, a conservative allocation of a proportion of the recharge only and an application of a reduction factor to further apply the precautionary principle.
13. The SDL reductions in the revised draft plan in six aquifers will not only restrict use of an already very limited portion of brackish or saline water with nil or limited connection to surface water, in one aquifer it will potentially limit the operation of the jointly funded Salt Interception Scheme on the upper Darling River near Louth which is intended to remove saline groundwater entering the Darling River and achieve an estimated Basin surface water salinity benefit of 3.5 EC at Morgan.
14. NSW requires that the Plan be amended to include the following recommended Groundwater SDLs:

Groundwater source name	Basin Plan SDL area ID	Current Draft Basin Plan SDLs (May 2012) GL/yr	Recommended SDLs GL/yr
Western Porous Rock	22	116.6	225.9
Lachlan Fold Belt (all catchments)	30, 31, 32, 33 and 34	259.0	608.75
Eastern Porous Rock (all areas)	62,63, 64	127.68	260.33 + 164.60 (one-off access to storage consistent with NSW buried aquifer policy)
New England Fold Belt (all catchments)	50, 52	54	138
Adelaide Fold Belt	19	4.43	15.15
Upper Darling Alluvium	55	6.59	9.6

Requirements for determining actual take

15. NSW requires that the determination of take provisions include estimations and the use of most appropriate and cost effective methodology.

Consideration of interception

16. NSW is concerned that the interception estimates are not well founded and in some localities make up a significant proportion of the Baseline Diversion Limits (BDLs).

17. The MDBA should commence a program of work to refine the estimation of BDLs, in particular interception estimates, in agreement with States. The work program can be timed for delivery to Council in 2016 with the SDL adjustment review and the work program report on the northern Basin.

Commencement of SDLs

18. NSW acknowledges that the Council prefers to set a timeframe of 2019 to commence enforcement of SDLs in order to provide some certainty for communities and ensure continuing progress towards meeting environmental needs. NSW also acknowledges that projects under contract but not necessarily completed will be allowed for to contribute to the SDLs.

19. However the NSW position remains that the water recovery to meet the SDLs should be allowed to operate over a longer time frame than 2019, particularly if, after the SDL adjustment process is finalised in 2016, there is still a substantial gap remaining that can only be bridged by water purchase. NSW position remains that water purchase to bridge the gap should be limited to 3 percent of BDL per water source per 10 year period.

20. NSW Water Resource Plans cannot be finalised for any given area until the gap has been bridged in that area. NSW will require adequate time after the gap has been bridged to finalise and accredit a plan. This needs to be provided for in the Basin Plan.

No compulsory acquisition

21. NSW requires the Plan to include a specific statement that nothing in the Plan will require the compulsory acquisition of land, water licences or easements, regardless of the Commonwealth's responsibility to compensate water users.

Enforcement of SDLS

22. NSW requires a provision ensuring that the States will not be required to enforce compliance with the Basin Plan if the Commonwealth has failed to bridge the gap by 2019.

Water Recovery Strategy principles

23. NSW acknowledges the work being undertaken by the Commonwealth to develop a water recovery strategy which is currently in draft form. NSW supports that the Water Recovery Strategy should be in the form of a flexible policy document. However NSW requires the water recovery principles outlined below to be included in the Basin Plan to provide clarity and transparency to all key stakeholders:

- a. **Consultation** - The Commonwealth must consult with and gain approval of States in the development, implementation and periodic review of its water recovery strategy.
- b. **Recovery through diverse mechanisms** – The Water Recovery Strategy must include the full spectrum of water recovery mechanisms, with priority on mechanisms which meet environmental outcomes while having a neutral or positive social and economic impact, at regional and local scale and in both short to long term.
- c. **Strategic purchase** - Water recovered by licence purchase must be strategic. Strategic purchase is to be defined in the Plan as purchase programs agreed in consultation with each State.

- d. **Measured recovery through purchase** – Water recovery through entitlement licence purchase should be limited to no more than 3% BDL per valley per decade except where agreed by the relevant state.
- e. **Progress** - The Recovery Strategy must include regularly updated outline of water recovery achieved and anticipated which identified:
 - i. volume of water recovery for each area
 - ii. types of entitlement or recovery method for each area
 - iii. timeframe for recovery for each area, by recovery type
- f. **Recover local gap** first – Where a catchment area has a local and downstream recovery gap, any water recovered should first be attributed to local reductions until the SDL adjustment mechanism has been completed in 2016.
- g. **Agreed timeframes** – The Commonwealth must plan its water recovery, with input from Basin States, to take place over a practical timeframe that ensures the full range of measures for water recovery can be explored and for those communities with larger reductions time to adjust. This may require a longer time frame to bridge the gap than the Commonwealth’s preferred date of 30 June 2019 in some locations where there is a large gap to bridge or the water recovery program may take longer to realise savings.
- h. **Social and economic impacts** - The Commonwealth must link its water recovery strategy to a Commonwealth funded socio-economic adjustment package, which must outline its actions to provide structural adjustment assistance for Basin communities

Delivery mechanisms

- 24. NSW is aware that recent delivery of environmental water has had unintended third party impacts due to the flooding of private land and access to land. Regardless of responsibility to compensate for third party impacts, NSW seeks the Basin Plan to set in place mechanisms whereby third party impacts will be avoided from occurring to the greatest extent possible.
- 25. NSW requires that the Basin Plan include the requirement for the Basin Environmental Watering Plan to incorporate a delivery plan which specifically considers planning to avoid third party impacts.

Trading rules

- 26. NSW is concerned that the proposed Basin Plan trading rules will not permit the implementation of water shepherding. Under the current Water Shepherding Memorandum of Understanding (MOU) between the Commonwealth and NSW governments, a framework is being developed to enable shepherding of Commonwealth’s held environmental water to occur and this is being developed through water dealing rules. The draft Plan trading rules appear to prevent water shepherding.
- 27. To resolve these concerns NSW requires that the Basin Plan be amended so that the trading rules do not apply to water shepherding. This could be achieved through one or more of the following amendments:

- a. **Amend definitions of trade and/or restrict**_ Amend definition of “trade” and/or “restrict” “in cl 1.07 to specifically exclude water shepherding as defined in the MOU.
- b. **Amend chapter 11** – Amend chapter 11 to specifically provide that it does not apply to water shepherding as defined in the MOU. This could be achieved in a number of ways for example by having a general clause that stated that the chapter did not apply to water shepherding or including water shepherding as a permitted restriction under clause 11.18.

Jurisdictional implementation obligations

28. NSW has limited capacity to deliver on the wide range of implementation obligations placed on Basin States by the revised draft Plan. NSW notes that the proposed Basin Plan has yet to be supported by agreements between the Commonwealth and Basin States that set out the implementation activities for States, commencement dates for each activity, and a Commonwealth commitment to fund the activities.

29. NSW also considers that a wide range of the implementation obligations on Basin States in the revised draft Plan have been worded unclearly or may have adverse outcomes as currently drafted. NSW supports the development of an agreement between the MDBA and each Basin State regarding implementation obligations for those obligations which give rise to additional costs to States.

30. In addition, it is critical that the MDBA clarifies the implementation requirements for States before it finalises the Plan for return to the Ministerial Council for further consideration and comment. This review should ensure that all water management requirements in the Plan are appropriate to achieve defined, improved water management outcomes. Appendix E of the NSW Submission on the draft Murray Darling Basin Plan 13 April 2012 outlined numerous specific clauses for which the intent was unclear or which may have unintended or adverse outcomes if implemented as currently drafted.

31. To resolve these concerns NSW requires that:

- a. The Commonwealth must have in place before the commencement of the Basin Plan, an agreement with NSW for upfront funding of new or extended activities for NSW for the life of the Plan.
- b. The MDBA must review the detailed concerns raised by NSW regarding the meaning and application of specific implementation requirements before the Basin Plan is returned to Ministerial Council, and
- c. The Plan must require that the MDBA prepare guidelines for key implementation requirements in consultation with Basin States before those implementation requirements commence. Note that consultation with States should be meaningful and allow adequate timeframes for input and due consideration of State input. States must also have adequate opportunity to consider and negotiate the details of related funding agreements with the Commonwealth prior to commencement of implementation requirements.

Water quality and salinity

32. NSW requires that the Basin Plan make clear that the water quality targets are not mandatory and do not limit State water shares and water availability and reliability to water

users. The Plan needs to fully define “the have regard to” clauses, particularly with respect to water operational decisions.

33. NSW requests that the zone-based water quality targets in Schedule 9 for lakes and wetlands be removed. The variable nature of these water bodies and the impact of land management practices makes such blanket targets meaningless in terms of ecological processes. The targets for streams and rivers will contribute to the protection of the lakes and wetlands that are connected to those watercourses.

Environmental Watering Plan

34. NSW requires that the Environmental Watering Plan is prepared in a consultative manner with jurisdictions and communities and similarly that the Basin wide environmental Water strategy is consistent with valley based plans. The strategy will also need to be updated to reflect the operation of the SDL adjustment mechanism in 2015/16.

Range of environmental assets

35. NSW is concerned at the lack of consideration given to native fish, in particular threatened native fish species, populations and communities as assets with environmental water requirements. Much of the focus on environmental watering in reports released to date by the MDBA has been on floodplain and wetland assets with little or no consideration for recovery of threatened native fish. The 2008 SRA confirmed the poor condition of fish populations across the basin.
36. The annual and long-term Environmental Watering Plans developed under the Basin Plan should include a requirement for decisions on the delivery of environmental water to adequately consider the recovery of native fish.
37. The guidelines would require consideration on the use of held environmental water for maintenance of drought refugia, base and low flow management and restoration of natural spawning and movement cues to maintain aquatic ecosystem health.