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## **Submission on the draft report to the assessment of the management of the 2020 northern Murray-Darling Basin first flush event**

Thank you for the opportunity to comment on the draft report to the assessment of the management of the 2020 northern Murray-Darling Basin first flush event.

MLDRIN wishes to submit the following key points in relation to the assessment and draft report.

1. For our member Nations and First Nations in generally, water and rivers are sacred sources of life that have agency and rights to exist and flourish in their own right. This is the foundational principal that informs our position on management of flows on the Barka (Darling River).
2. First Nations along the Barka have experience a prolonged period of distress and degradation of cultural values as a result of the increasing frequency and duration of cease-to-flow events on the river. The issue of water justice is critical to the management of the Barka and first flush events. Barkandji and other First Nations people have suffered the worst impacts of water management and derived the least benefit from the allocation and extraction of water resources in the region.<sup>1</sup> More must be done to demonstrate that water management is being conducted in accordance with the objects of the Water Management Act.
3. The rainfall that occurred in and around February 2020 was a critical opportunity to restore connectivity and replenish degraded landscapes and First Nations' water-dependent assets, values and uses.

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<sup>1</sup> Hartwig, L et al (2018). 'Recognition of Barkandji Water Rights in Australian Settler-Colonial Water Regimes'. *Resources* 2018, 7(1), 16; <https://doi.org/10.3390/resources7010016>

4. This opportunity was undermined through the management of the first flush event, in particular the lifting of 324 orders to allow significant extraction before key connectivity and flow objectives had been achieved.
5. We are concerned that the Draft Report Executive Summary and Findings frames the issue of first flush management as a communications and public relations challenge. The report suggests that concerns regarding the outcomes of the 2020 event are the result of misunderstanding and poor communication. In fact, there are substantive issues and genuine impacts that need to be addressed and accounted for in the review of the February 2020 event and planning for future First flush management. Communication is important, but the genuine concerns of First Community members should not be written off as ‘perceptions;’ based on limited understanding of the facts.
6. MLDRIN understands that the series of decisions that occurred in February 2020 resulted in significant diversion of critical flows from the Barwon-Darling at a time of severe ecological, cultural and social stress. These diversions diminished the potential positive cultural outcomes of an important rainfall event and exacerbated community distress.
7. While rainfall across the Barwon-Darling catchment undoubtedly produced positive impacts, with flows returned to critically stressed waterways throughout the system, the lifting of 324 order to allow extraction significantly diminished the long term ecological, social and cultural outcomes.
8. We wish to stress to the panel that ensuring longitudinal connectivity along the length of the waterway should be the primary objective for management of first flush events on the Barka and other rivers. This connectivity objective *must* be achieved before other objectives are addressed or met. We support Recommendation 1 in principle but feel that it must be strengthened to identify how future first flush management will meaningfully address the provisions of the Water Management Act 2000.
9. We contend that future first flush management should embed the principle that no extractions or diversions (beyond that necessary for critical human needs) should be permitted at least until the entire length of the waterways has received adequate flows, ensuring re-connection of the system. Connectivity targets should be met, not just be ‘forecast to be met’, before

any extractions are permitted. This will safeguard ecological social and cultural outcomes and address genuine community distress.

10. We are deeply concerned about the way that hypothetical damage to floodplain harvesting infrastructure was used as a rationale for lifting restrictions on extraction. The evidence as outlined in the draft report was that there was limited if any damage to infrastructure. Further, we understand, as reported in the Sydney Morning Herald that 'On the day that the notice [lifting restrictions on floodplain harvesting] was issued for the Namoi - and the day after it was issued for the Gwydir - a public servant emailed irrigator groups asking them for examples of risks to infrastructure from landholders not being able to do floodplain harvesting.'<sup>2</sup> The panel has not adequately investigated this matter or addressed community concerns about how this reasoning was used to justify lifting embargoes. The recommendations should clearly state that damage to private infrastructure on the floodplain should never be used to dictate terms of river management or influence the management of a first flush event.
  
11. The draft report has alluded to, but failed to address, the critical issue of how water requirements to address First Nations' rights and interests, and service Native Title rights, are properly incorporated into the management of first flush events. We understand that there is no provision in current management arrangements to ensure that water requirements for Native Title rights and to support First Nations' cultural and uses more generally, are understood or addressed. The draft report at p. 52 concedes that '[i]nadequate consideration was given to Native Title rights generally,' in the principles and targets guiding first flush management, 'as evidenced by their exclusion from the objectives in managing the event.' This is stark reflection of the lack of the failure of the management arrangements to address the rights of formally recognised Native Title holders and to implement the objects of the Water Management Act. We also note that the example provisions for water sharing plans provided under Draft Report recommendation 7 notes that 'Implementation will require quantifying native title / cultural rights and developing reasonable use guidelines'.

Water Sharing Plans do not currently quantify volumetric allocations to Native Title rights or cultural rights. The recently amended Barwon-Darling unregulated WSP and Murray Lower Darling Regulated Rivers WSPs do not include any volumetric allocation for Native Title rights. Instead they identify

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<sup>2</sup> <https://www.smh.com.au/national/nsw/how-would-you-like-to-handle-it-the-minister-the-irrigators-and-a-flood-20200218-p541yv.html>

water requirements to satisfy native title rights as ‘water that may be taken in the exercise of native title rights in accordance with the Native Title Act 1993’<sup>3</sup>. This circular definition provided no inherent protection for or security for Native Title holders. This is despite the 2019 Natural Resources Commission review of the Barwon-Darling WSP recommending that the NSW Government should “identify Aboriginal water-related values, objectives and outcomes, and develop final agreed flow allocations in consultation with all relevant Aboriginal organizations, including traditional owners and Aboriginal Land Councils.”<sup>4</sup> There is currently no program or provision in place in NSW to resource or support the identification of required flow allocations for native title or cultural purposes. This data is a major omission from management arrangements. We question how first flush management can effectively implement the objects of the water act if there are no provisions in place for 1) recognition of First Nations water values, uses and objectives or 2) flow targets or volumetric allocations for cultural rights or native title.

12. In light of point 11, and building on the reference in draft Recommendation 5, above we strongly urge the panel to include an explicit recommendation in the final report for the NSW Government to develop a program to identify objectives, flow targets and volumetric allocations to satisfy Native Title rights and to ensure protection of First Nations cultural values and uses. This work is critical to support effective and equitable management of first flush events. There are readily available methodologies to support the identification of First Nations’ watering objectives, including the National Cultural Flows Research Project First Nations water-planning tool. We note that the Water Resource Plans for the Barwon Darling and Murray-Lower Darling (recently submitted to MDBA) include the commitment that “[w]here appropriate, NSW Department of Planning, Industry and Environment will work with traditional owners and Aboriginal organisations and adopt the processes developed in the Pathway to Cultural Flows in Australia and Cultural Flows – A guide for First Nations.” This provides further policy support for an explicit recommendation in the panel’s final report.

13. We strongly support draft recommendation 4, in relation to the need for close review and revision of objectives, principles and targets for first flush events by Traditional Owners. Objectives, principles and targets that account

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<sup>3</sup> *New South Wales Water Sharing Plan for the Barwon–Darling Unregulated River Water Source 2012* p. 21 and *Water Sharing Plan for the New South Wales Murray and Lower Darling Regulated Rivers Water Sources Order 2020*. P. 21

<sup>4</sup> NSW Natural Resources Commission (2019) *Final report: Review of the Water Sharing Plan for the Barwon-Darling Unregulated and Alluvial Water Sources 2012*. P. 12.

14<sup>th</sup> August 2020

for Native Title and cultural water needs must be developed and refined in partnership with Traditional Owners as part of this process.

14. We suggest that draft recommendation 10 should be updated to more effectively highlight the information needs and engagement protocols of First Nations. First Nations, and Native Title holders in particular, are rights-holders, with cultural rights and responsibilities for management of water on their Country, not 'stakeholders' or people with a 'general interest in water'. This recommendation must recognise First Nations' unique role and status as custodians of water resources on Country.

Should the panel have any further questions regarding information and points contained in this submission, please contact MLDRIN's Executive Officer Will Mooney on [REDACTED]