

Response to issues raised with the proposed Murray–Lower Darling Water Sharing Plan

This document is a supplement to ‘We’ve listened–proposed new or amended Water Sharing Plans’. It provides additional information specific to the NSW Murray Regulated River Water Source in response to issues raised at the Murray–Lower Darling stakeholder advisory panel meetings of March and April 2020 as well as by water user groups.

River Murray increased flows

Concerns with River Murray increased flows (RMIF) water being defined as planned environmental water rather than being ‘held’ under a licence

Water users view it as fair and reasonable to categorise RMIF as licensed Held Environmental Water to ensure no (or limited) change to the characteristics of how that water is managed. It should be treated the same as other acquired environmental water.

Water users also believe that the holder of this water should pay water charges to recover the costs associated with its management, rather than those costs effectively being borne by other entitlement holders. They are also concerned that RMIF management will have an impact on the reliability of supply for general security licences in the Murray Valley, and will put further pressure on delivery of water through the Barmah choke.

Response

The RMIF water was recovered by the Snowy Joint Government Enterprise (Water for Rivers) and is managed under The Living Murray framework. New South Wales, Victoria and the Australian governments committed to providing up to 70 gigalitres each year for environmental purposes in the River Murray.

The RMIF water has been used in the Murray since 2006–07, and RMIF is now a sustainable diversion limit adjustment mechanism (SDLAM) project. This will contribute up to 35 gigalitres per year of NSW water for enhanced environmental outcomes and reduces the requirement for further recovery in the NSW Murray system by this volume. Initial discussions proposed establishing the RMIF water as an entitlement, with different characteristics to other entitlement types in the NSW Murray Regulated River Water Source.

The inclusion of the RMIF in the NSW water management framework has been an outstanding issue for over 10 years. The department has now included the rules governing the RMIF water as a planned environmental water account in the draft *Water Sharing Plan for the Murray and Lower Darling Regulated River Water Sources*.

The Water division of the Department of Planning, Industry and Environment has considered the issues raised by stakeholders, the past operation and use of the RMIF water and the requirements for the SDLAM project and determined that the:

- draft water sharing plan rules for the crediting of the account, the spilling of water from the account, the carrying over of unused water from one water year to the next, and the release and debiting of water from the account all align with Part V of Schedule F of the Murray–Darling Basin Agreement and the operational practice that has historically applied
- rules have been designed to ensure that there is no impact on other water users. For example, RMIF is the first NSW water to spill in the event of a major event in the Murray

- RMIF account has been in operation outside the water sharing plan for many years, and the rules in the draft plan will not result in any change to the management of this water.

As such, there is no water reliability impact on licence holders from formalising RMIF account rules in the water sharing plan.

The department will consider creating a new licensed entitlement for the RMIF water in lieu of the planned environmental water provisions in the draft water sharing plan. An amendment provision has been included in the draft plan to enable this at a future date.

Several factors will need to be carefully considered before a decision is made either way. These include:

- the type or category of licence. A new form of entitlement would need to be created that:
 - has special conditions that differ from all other licence types in the Murray and reflects the unique management arrangements for this water
 - maximises the environmental benefit from the SDLAM project while mitigating the impacts on other water users
 - has a unique available water determination process
- consistency with government's preference for less red and green tape and cost reductions
- the pricing structure for this unique licence type, which would be a matter for the Independent Pricing and Regulatory Tribunal (IPART).

There will be no change in the current costs to water users from including the RMIF account rules in the draft water sharing plan because the account has existed for many years. Furthermore, the relevant minister can ask IPART to isolate the costs of the operation of the RMIF account from future pricing determinations.

Barmah–Millewa Allowance

Changing the operation of the Barmah–Millewa Allowance to provide more certainty and confidence for general security licence holders.

For the Barmah–Millewa Allowance, water users requested:

- an increase to the 'payback' trigger for water borrowed from the allowance for the consumptive pool when general security allocations are low. That is, water would not have to be paid back until general security allocations reached 1 megalitre per unit share (100%), and that the payback be staged. In addition, they want borrowed water to be distributed to conveyance licences as well as general security licences
- a provision in the Water Sharing Plan requiring any flows returning from the Barmah–Millewa to the river to be re-regulated into the consumptive pool for general security allocation
- that the clause permitting the use of the Barmah–Millewa Allowance for other environmental purposes be removed, or as a minimum its use for other environmental purposes be treated as a 'borrow' that must be repaid.

Response

The Barmah–Millewa Forest is the largest river red gum forest in Australia covering 66,000 hectares and is listed under the Ramsar International Convention on Wetlands as a significant breeding site for waterbirds. The forest is one of The Living Murray icon sites.

NSW and Victoria share responsibility for the management of the Barmah–Millewa Allowance. The operating rules are set out in the *Operating Rules for the Barmah-Millewa Forest Environmental Watering Allocation* approved by the Murray–Darling Basin Ministerial Council. The rules managing the NSW Barmah–Millewa Allowance are in the *Water Sharing Plan for the Murray and Lower Darling Water Source*.

The rules in the water sharing plan have been re-written to simplify them, and improve readability, legal robustness and certainty. The intent of the rules has not changed. Some small changes have been made to the rules to enable the allowance to be classified as a SDLAM project. It contributed 35 gigalitres to the NSW water recovery target. The changes mean that:

- release from the allowance is not initiated or continued if a continuous four monthly flood has already occurred
- target flow releases from the allowance are not automatically triggered in December.

All other Barmah–Millewa Allowance rules are unchanged, including the ability to extend watering to maintain water bird nesting events through to completion in January in years when major breeding events occur. These changes will enable the allowance to be used more effectively and improve the number of successful environmental events that can be delivered with the same overall volume of allocation.

The changes proposed by water users would impact the effectiveness of the Barmah–Millewa Allowance, which is defined as planned environmental water under the water sharing plan. The Basin Plan (section 10.28) requires that there is ‘no net reduction’ in the protection of planned environmental water. This means that any changes cannot decrease the volume or effectiveness of planned environmental water and as such the proposed changes cannot be made.

Announcement of supplementary water events

Concern that access to supplementary events has diminished over time

Water users are concerned that current water sharing plan provisions may prohibit supplementary event announcements. They observe that these events are announced less frequently than in the past, even when the warming and drying trend of the last decade is considered. Water users have proposed:

- removal of provisions for use of supplementary water for waterbird breeding event and to support flow variability, given that these provisions have never been activated
- removal of provisions relating to the use of supplementary water for beneficial flooding of the Barmah–Millewa forests or other Murray Water Source riverine ecosystems, and constraints of access to supplementary flows in the Lower Darling Water Source.
- removal of references to limitations on access to supplementary flows from Part 4 (Environmental Water Provisions).
- inclusion of provisions that require supplementary access events to be announced if there is an unregulated flow that exceeds channel capacity and the flow cannot be reregulated downstream.
- inclusion of a provision requiring the department to regularly report on the volume of unregulated flows, and the likelihood of the unregulated flows exceeding the channel capacities.

Response

The current provisions managing access to supplementary events, including those raised by water users, have not changed since the first Water Sharing Plan for Murray and Lower Darling Regulated Rivers Water Sources commenced in 2004.

The Basin Plan (section 10.28) requires that there is ‘no net reduction’ in the protection of planned environmental water. This means that any changes cannot decrease the volume or effectiveness of planned environmental water.

The proposals to remove provisions could be considered a weakening of the legal protection of planned environmental water as the environmental outcomes would not be considered in a decision to allow supplementary access. The additional provision requested by the water users for an announcement of supplementary access when unregulated flows exceed channel capacity could be considered a reduction in the volume of planned environmental water under the Basin Plan. Therefore, these proposals cannot be adopted at this time.

The exception is the removal of references to supplementary flow access from Part 4 of the water sharing plan, consistent with plans for other regulated river water sources in the state.

Trade issues—exchange rate and trading zone

Concern that trade of entitlements in a downstream direction is having a negative impact on the reliability of supply for general security licence holders

A small number of the stakeholder advisory panel members advocated for exchange rates to be applied to downstream trade of licences. Some also proposed establishing a trading zone on the Murray downstream of Mulwala, with an exchange rate applied to any trade across the boundary.

Response

An exchange rate is a conversion factor applied to water traded from one trading zone and/or jurisdiction to another that considers transmission losses associated with delivering water further down a regulated river system.

Exchanges rates are not currently applied in any NSW Murray–Darling Basin regulated river, and it is the policy of NSW, Victoria and South Australia not to apply exchange rates in the shared Murray system. Any losses associated with the downstream trade of water are socialised through the operation of the system.

Under the Murray–Darling Basin Agreement, the Murray–Darling Basin Authority in consultation with the Basin Officials Committee can make protocols determining trade zones and exchange rates. However, section 12.21 of the Basin Plan explicitly states that exchange rates are not to be used in a regulated system. The Basin Plan allows exceptions in limited circumstances; however, it is unlikely that the Murray would fall into this category.

Given the current NSW policy, the Murray–Darling Basin Agreement issues and the Basin Plan restrictions, the proposal for an exchange rate and trading zone has not been progressed.

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