

Office of the Chief Executive

Ref: EC23-000584

The Hon Tanya Plibersek MP
Minister for the Environment and Water
PO Box 6022
Parliament House
CANBERRA ACT 2600

Dear Minister

Accreditation of the proposed Intersecting Streams Water Resource Plan

I am writing to give you the proposed Intersecting Streams Water Resource Plan ('proposed WRP') submitted by New South Wales (**Attachment A**), and the Murray-Darling Basin Authority's recommendation on accreditation of the proposed WRP (**Attachment B**) in accordance with section 63 of the *Water Act 2007* (Cth) ('the Act').

NSW formally submitted a proposed WRP on 22 December 2022. The resulting package of documents forms the proposed WRP (**Attachment A**) that is the subject of this recommendation.

I have also provided:

1. a detailed assessment report (**Attachment C and C1**), including the Authority's reasoning; and
2. a copy of the advice the Authority received for the Intersecting Streams WRP area from i2i Development Global Pty Ltd (i2i Global) on whether the proposed WRP is consistent with the requirements regarding Indigenous values and uses in Part 14 of Chapter 10 of the *Basin Plan* (Cth) ('Basin Plan') (**Attachment D**).

The Authority has undertaken its assessment of the proposed WRP and recommends that you accredit this proposed WRP.

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Officers from the MDBA have worked closely with New South Wales government officers during New South Wales' preparation of the proposed WRP, providing advice and assistance as contemplated by section 67 of the Act.

The Authority has undertaken a comprehensive assessment and while it considers the proposed WRP meets requirements for accreditation, it has identified the following key implementation issues and risks which will require ongoing monitoring and review.

Baseline Diversion Limit estimate revision

The proposed WRP contains estimates of the baseline diversion limit (BDL) for the SDL resource unit in the WRP area which are different from the estimates set out in column 2 of Schedule 3 of the Basin Plan.

The SDL is set out in Schedule 2 of the Basin Plan for each SDL resource unit and is expressed as the BDL less the specific amount of water recovery. The BDL is an estimate of how much water was used in the Basin before the Basin Plan, and generally represents the level of water use allowed under state law in 2009. Initial BDL estimates were included in the Basin Plan in 2012.

However, the BDLs need to consider the best available information, and will adjust as new information comes to hand about what could be taken before the Basin Plan was in effect. As the SDLs and BDLs are linked, any change to the BDL will result in a change to the SDL. A change to the BDL may change the understanding of the proportion of water that was used before the Basin Plan, however it does not change the amount of water needed to achieve an environmentally sustainable level of take.

The Authority is satisfied that the revised estimate of the BDL used to calculate the SDL is based on the best available information and better reflects the level of diversion noted in Schedule 3 of the Basin Plan.

Incorporation and application of long-term annual diversion limits

A WRP must be consistent with 'any long-term annual diversion limit for the water resources of the water resource plan area (or for a particular part of those water resources)' (section 55(2)(b) of the Act). These limits are set by Chapter 6 of the Basin Plan.

The assessment notes that unlike all other NSW surface water resource plan areas, water management in the Intersecting Streams WRP area is not underpinned through the operation of a hydrological model.

As such the BDL, SDL, annual permitted take (APT) and annual actual take (AAT) for this WRP area are all based on long term average estimates. The Authority is advised that through the development of this and connected proposed WRPs (eg the Barwon-Darling Watercourse WRP), the MDBA and NSW have worked together to ensure the estimates set out in the proposed WRP are based on what is currently the best available information.

Notwithstanding the use of what is currently the best available information and the low levels of consumptive take in this WRP area, it is appropriate that NSW should make reasonable efforts to bring water management in this WRP area in line with the rest of the State. This is all the more relevant given the role the WRP area plays in linking flows from Queensland WRP areas into the Barwon-Darling Watercourse WRP area.

Indigenous values and uses

First Nations' advice was sought on whether the proposed WRP is consistent with Basin Plan requirements regarding Indigenous values and uses. The First Nations' advice, received on 9 June 2023 (Attachment D), was coordinated by i2i Development Global Pty Ltd (i2i Global). In preparing this advice, i2i Global undertook consultation with relevant First Nations representatives from the WRP area on the adequacy of the Part 14 content of the proposed WRP. As a result of this process, i2i Global expressed a view that the proposed WRP is predominantly consistent with Basin Plan requirements.

Concerns raised in the i2i Global advice relate to: inadequate regard to the views of First Nations people about active and informed participation in preparing the WRP and risks to Aboriginal values and uses; and a failure to seek views on cultural ties to land and water when seeking views on cultural flows.

With respect to s. 10.54 of the Basin Plan (cultural flows), the i2i Global advice (**Attachment D**) finds that the requirements are not met. The i2i Global advice notes that delegates acknowledged that cultural flows were discussed as part of Nation consultation, but that views regarding the link between cultural flows and the cultural ties that First Nations people have to land and water were not captured. Whilst the Authority notes this concern, the assessment (**Attachment C**) determined that the requirements of s. 10.54 have been met.

The Authority also notes that some of the views set out in the i2i Global advice mean that the rating for some requirements have been downgraded for parts of the proposed WRP compared to advice received on the 2020 version of the proposed WRP.

The Authority's assessment (**Attachment C**) has found that the proposed WRP has incorporated significant amounts of new material to meet the Indigenous values and uses requirements of the Basin Plan as compared to the 2020 version of the proposed WRP. This new material, particularly in relation to views on: cultural flows (WRP s. 4.6.1); strategies to address risks to objectives and outcomes (WRP s. 3.4 and Table 3-2); native title (WRP Table 3-2 and Schedule C Table 1); and Aboriginal heritage (WRP ss. 1.7 and 4.6.2), addresses concerns raised in previous advice from Northern Basin Aboriginal Nations (NBN) coordinated Part 14 advice from First Nations regarding the 2020 version of the proposed WRP) about the adequacy of the Indigenous values and uses content in the 2020 proposed WRP.

The Authority further notes that Nation Consultation Reports for the Barkandji/Maljangapa and Gomeroi/Kamilaroi/Gamilaroi/Gamilaraay Nations are not incorporated into the proposed WRP and that as a consequence, Barkandji/Maljangapa and Gomeroi/Kamilaroi/Gamilaroi/Gamilaraay Nations objectives and outcomes for water management based on their values and uses are not yet identified.

The Authority was advised that the MDBA received correspondence from NSW explaining why Nation Consultation Reports for the Barkandji/Maljangapa and Gomeroi/Kamilaroi/Gamilaroi/Gamilaraay Nations are not available and details are provided in the assessment report (**Attachment C**).

In response, NSW has committed in the proposed WRP to seek further opportunities to consult with the Barkandji/Maljangapa and Gomeroi/Kamilaroi/Gamilaroi/Gamilaraay Nations, with the aim to finalise the identification of objectives and outcomes based on the Nations' values and uses for the water resources of the WRP area, and to incorporate those objectives and outcomes – subject to each Nations' agreement – into the WRP. The proposed WRP also commits NSW to report back to the MDBA regarding progress within two years of accreditation.

The assessment (**Attachment C**) sets out the assessment against each requirement of Part 14 taking account of i2i Global advice. Despite the i2i Global advice, the assessment concludes the proposed WRP contains sufficient material to address all requirements in Part 14 of Chapter 10. As such, the Authority has determined that the Indigenous values and uses content of the proposed WRP is consistent with the Basin Plan.

While the proposed WRP (**Attachment A**) meets requirements, the Authority recognises that more work is needed by NSW to build a stronger relationship with First Nations and to bring consideration of First Nations' concerns more fully into the NSW water planning and management framework.

In addition to commitments to seek further consultation with those Nations where Nation Consultation Reports could not be incorporated into the proposed WRP, the proposed WRP also commits NSW to further consultation with First Nations people of the WRP area over the coming 12 months to resolve any outstanding concerns in relation to the Indigenous values and uses requirements.

Given the concerns raised by i2i Global, the Authority strongly encourages NSW to make full use of this 12-month commitment to engage with the First Nations people of the WRP area in a culturally appropriate way.

The Authority strongly encourages NSW to adopt the engagement principles of Free, Prior and Informed Consent (FPIC) and the Akwé:Kon Guidelines. These frameworks ensure that Traditional Owners are engaged in an appropriate manner. This includes providing adequate information about the consent process, appropriate time and information.

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The Authority notes that the Hon Rose Jackson MLC, NSW Minister for Water wrote to the MDBA in July 2023 outlining the key features of the new NSW Aboriginal Water Program. One of the objectives of the Program is to deliver on the commitment in accredited NSW WRPs to consult with First Nations about issues raised during the consultation on Part 14 requirements. A copy of the Minister Jackson's letter is available [here](#).

The Authority welcomes this NSW initiative and is hopeful that the new Aboriginal Water Program will provide for meaningful engagement with First Nations that responds to concerns raised by First Nations about being part of the decision making processes for water management.

The Authority's Roadmap to the 2026 Basin Plan Review recognises the opportunities to further strengthen what the Basin Plan requires of a Basin State in relation to First Nations and water management by identifying First Nations as one of the four key themes of the Review. This theme will explore opportunities to better incorporate First Nations' values and uses in relation to Basin water management and work under this theme will be carried out in consultation with Indigenous people.

Connectivity

The Intersecting Streams WRP area is located on the western border of the Murray–Darling Basin and shares a boundary with three Queensland surface water WRP areas. The Intersecting Streams connects most of Queensland's Basin water resources to the Barwon–Darling Watercourse WRP area.

Surface water connectivity within the WRP area is managed through limits on access licences. NSW and Queensland are developing accounting arrangements which will further improve the protection of environmental water from Queensland to the Barwon–Darling. Once this work is complete, an amendment to this WRP will be required.

The WRP area has varying hydrological connection to several groundwater resources. The potential risks to surface water are considered in the respective ground water risk assessments and will be managed through rules in the associated groundwater WRPs.

Monitoring and responding to localised impacts

The proposed WRP (**Attachment A**) identifies that interception by runoff dams has the potential to have a significant impact on the water resources of the WRP area. In order to address this potential impact, the proposed WRP commits to monitoring the growth in the number of runoff dams every five years, and ongoing monitoring of potential impacts. Where impacts are identified, the proposed WRP will address these via compliance mechanisms set out in the relevant water sharing plan.

The MDBA will work with the Inspector-General of Water Compliance to manage compliance with this monitoring regime. Further, in the event that monitoring identifies growth in the

volume of take by runoff dams, the Authority expects that NSW will bring forward an amendment to this WRP to ensure this increased take is reflected in the WRP.

Measuring and monitoring water take

The NSW Water Management (General) Regulation 2018 requires all new and replacement meters installed from 1 April 2019 to have been compliant with Australian Standard 4747 by December 2021. The Authority notes that full implementation of the new and replacement meters with the requirements of the regulations has not been achieved for a range of reasons, including lack of network coverage in some instances preventing installed telemetry on meters being able to transmit water take data as required and insufficient numbers of 'duly qualified persons' to install and/or verify meters.

Noting the issues raised above regarding the unmodelled nature of water management in the WRP area, the importance of full implementation of the metering requirements and standards in the Intersecting Streams WRP area is high. The use of long term average estimates to determine annual actual take rather than observed (metered) diversions runs contrary to the principle of 'no meter, no take'.

While the proposed WRP meets the measuring and monitoring water take requirement to identify the timeframe for implementing improvements to metering, there is a need for NSW to support and enforce the implementation of the agreed metering standards.

Environmental Water Management

The proposed WRP identifies Planned Environmental Water (PEW) consistently with the Act and Basin Plan requirements. Rules and arrangements in the proposed WRP operate such that PEW is managed through the protection of volumes of water from extraction.

The Basin Plan requires a WRP to ensure that there is no net reduction in the level of protection of PEW compared to that which was provided under state water management law immediately before the commencement of the Basin Plan. The assessment report at (Attachment C1) sets out the assessment of the changes to the relevant NSW state instruments and reflects that the proposed WRP does ensure that there is no net reduction in the protection of PEW that was provided in state water management law prior to the commencement of the Basin Plan.

The Authority also notes that the proposed WRP describes a range of existing arrangements that are in place to coordinate the use and management of environmental water in the Intersecting Streams WRP area. These include commitments that NSW has made under the Intergovernmental Agreement on implementing water reform in the Murray—Darling Basin to improve protection, coordination and accounting of environmental flows.

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In view of the significance of these issues, we would encourage you to raise them with the NSW water minister should you accept the Authority's recommendation to accredit the proposed WRP.

The Authority looks forward to achieving an important milestone in the implementation of the Basin Plan with you, through your consideration of this proposed WRP.

If you have any questions or require further information about this WRP accreditation package, please contact me (tim.goodes@mdba.gov.au or 02 6279 0500), or Megan Winter, General Manager, Basin Plan Implementation (megan.winter@mdba.gov.au or 02 6279 0164)

Yours sincerely



Tim Goodes
A/g Chief Executive

15 September 2023

List of Attachments

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| Attachment A: | The proposed WRP |
| Attachment B: | The Authority's recommendation on the proposed WRP |
| Attachment C: | The assessment report relating to the proposed WRP |
| Attachment C1: | Planned environmental water report: assessment of no net reduction |
| Attachment D: | Intersecting Streams First Nations advice |