

Submission to Natural Resource Commission on Murrumbidgee Water Sharing Review June 2023.

I believe that this plan has NOT contributed to environmental outcomes to any significant extent.

1. The plan reserves all water remaining above the long term average annual extraction limit for the environment. This extraction limit has already been determined as insufficient to maintain a healthy river system.
2. The plan has the objective of maintaining and enhancing the ecological condition of this water source and its dependant ecosystems (instream, riparian and floodplain ecosystems) over the long term. The plan has failed to maintain connectivity between the water source and its dependant riparian and floodplain ecosystems.
The pre river regulation or Natural River and the contemporary “working river” are polar opposites in terms of river/floodplain connectivity. The natural river is an overflow system whereas the working river, through significant abstractions and dams, denies this from happening in all but a small percentage of years. Bridging the gap between the two requires a manmade intervention based on weir diversions putting water through viable wetland areas and back into the river. This to date has not occurred in any systematic way.
3. Under the Water Management Act 2000 the environment has precedence over consumptive diversions. Any license issued after the introduction of this act should comply with the act in this regard. This is not the case with consumptive supplementary licenses that were issued after 2000, which have been given precedence over environmental supplementary water. The plan should comply with the Act.

“The management and sharing of water in New South Wales is regulated by the NSW WM Act. The guiding principles of that Act are the water management principles set out in s 5 of the Act. Section

5(1) identifies the general water management principles, which include ecological, social, cultural and economic principles which are unlikely to all be separately achievable and will require some degree of trade off. The water management principles specific to water sharing are of a different character and are set out in s 5(3):

(3) In relation to water sharing:

(a) sharing of water from a water source must protect the water source and its dependent ecosystems, and

(b) sharing of water from a water source must protect basic landholder rights, and

(c) sharing or extraction of water under any other right must not prejudice the principles set out in paragraphs (a) and (b)

The meaning of this provision was held by the Land and Environment Court of New South Wales and quoted with approval by the Court of Appeal to mean:

...every drop of water that is necessary to protect the water source is a drop not available for any other purpose. Every drop necessary to protect water dependent ecosystems is not available for basic landholder rights. Every drop available for basic landholder rights is not available for persons extracting under other rights [emphasis added].

The water management principles create an approach which is not dissimilar to the approach taken in the Federal Water Act, through an SDL limiting consumptive extraction on the basis of an ESLT.

The way in which water sharing principles are to be applied under the Act is set out in s 9(1) of the NSW WM Act as follows:

(1) It is the duty of all persons exercising functions under this Act:

(a) to take all reasonable steps to do so in accordance with, and so as to promote, the water management principles of this Act, and (b) as between the principles for water sharing set out in section 5 (3), to give priority to those principles in the order in which they are set out in that subsection.

This provision makes it clear firstly that the water management principles are to be applied in the development of water sharing plans under the Act, including when the plan is prepared by the Minister, and secondly that the water sharing principles in s 5(3) are to guide the priority in which water is allocated in water sharing plans.”

(Walmsley and Brennan, Australian Environmental Review June 2019)