

Our ref: V23/18#7

Your ref: D23/1612

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22 June 2023

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**Audit of implementation of three northern inland regulated river water sharing plans**

Dear Professor Durrant-Whyte

I refer to your letter of 24 May 2023 concerning the audit of the implementation of three southern inland regulated river Water Sharing Plans (WSP).

It is pleasing to note that the report included positive findings in relation to airspace and flooding provisions; Available Water Determination (AWD) provisions; systems, processes and procedures to support the implementation of provisions relating to the granting of access licences; management of access licences and approvals of water supply works; access licence dealing provisions; mandatory conditions on water access licences; non-mandatory amendments; and Long-Term Average Annual Extraction Limits (LTAAEL) assessment and compliance processes.

It is also noted that there are several areas where further work is required.

The Department of Planning and Environment (DPE) - Water has considered each of these findings and recommendations with suggested actions, and our response is in the attached tables. The majority of these recommendations are fully agreed and accepted. The only exception is one finding and recommendation (F2.10/ R2.10) where interpretation of the provision differs as outlined and two others (F9.1/R9.1 and F9.2/R9.2) where the WSP amendments of December 2022- which took place after the audit - mean the findings and recommendations are overtaken by events. However, our response does outline and address the specifics raised by the NRC.

DPE Water is also progressing work which will contribute to addressing matters identified in this and other audits including:

1. development of monitoring and evaluation frameworks for water sharing plans which will inform plan assessment and monitoring (Recommendation R1.1)
2. annual assessment of LTAAEL compliance and publish these assessments (Recommendation R3.1)
3. addressing gaps in conditions on WaterNSW Statement of Approvals to support implementation of plan provisions (Recommendation R9.3).

DPE Water continues to work collaboratively with WaterNSW to ensure consideration and implementation of NRC recommendations.

I understand that WaterNSW is working on addressing the eight recommendations that the NRC either assigned directly to them, or that they need to work with other agencies to resolve.

These include:

- making environmental flow releases in accordance with Plan rules and accounting for any shortfalls
- analysing our water ordering data (relative to water taken)
- complying with channel capacity constraints
- operating protocols for rates of change to storage releases once the procedures are developed by DPE-Water
- assessment templates for supplementary water, and
- Water Access License (WAL) and approval holder notifications for mandatory conditions once any gaps are addressed by DPE Water.

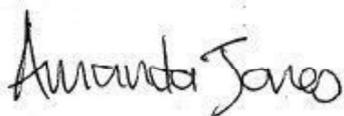
WaterNSW is in the process of assessing the recommendations in order to develop appropriate action plans to address them. This will include a combination of administrative steps and changes to operations, systems, processes and documentation, as appropriate to each individual recommendation. Some changes will be relatively straight forward and in some cases, those have already been made. Some will be more complex and take some time to address and some are dependent on prioritised actions by other agencies.

A further separate response will be provided from WaterNSW and will include a more detailed description of the proposed actions and realistic timeframes to address the recommendations.

The outcomes of this work, along with the Commission's audit, will inform the next steps in relation to these management plans. If your office requires any additional information or to discuss these matters further, please contact Kate Masters, A/Director Inland Planning, in the Department, at [kate.masters@dpie.nsw.gov.au](mailto:kate.masters@dpie.nsw.gov.au).

I would like to thank the Commission for its work in this important process.

Yours sincerely,

A handwritten signature in black ink that reads "Amanda Jones". The signature is written in a cursive, slightly slanted style.

Amanda Jones

Deputy Secretary, Water

## Attachment A – Tables

**Table 1: Audit findings and recommendations relevant to DPE Water**

- *Water Sharing Plan for the Murrumbidgee Regulated River Water Source 2016*
- *Water Sharing Plan for the Lachlan Regulated River Water Source 2016*
- *Water Sharing Plan for the NSW Murray and Lower Darling Regulated Rivers Water Sources 2016*

| Findings  | Recommendations   | DPE Water Response  |
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| F1.1 Provisions related to vision, objectives, strategies, and performance indicators under Part 2 of the Plan were not implemented in the audit period.  | R1.1 DPE-Water to lead the monitoring and evaluation of performance indicators to measure the success of the strategies to reach the objectives set out in Part 2 of the plans. | Agree. DPE-Water is developing a robust and defensible evaluation framework and program to inform WSP performance assessment and monitoring plans that include what monitoring is required, where, when, how often and who is responsible for doing and reporting it. Implementation of the Evaluation program will commence in 2023, following method development. |
| F2.2 No water was credited to the Lake Brewster Environmental Water Allowance under the Lachlan plan in 2018-2019 when the 50% general security trigger threshold was met as required under Clause 27(2). | R2.2 DPE-Water to credit Lake Brewster EWA when triggers are met, even if water is not available in the Lake at the time.   | Agree. A line item will be included in the resource assessment to show crediting of Lake Brewster allowance and also any undeliverable amount due to insufficient capacity of Lake Brewster. Note: The storage was empty and there was no material relevance to crediting the account. Action completed.  |
| F2.3 Water has been forfeited from Environmental Water Allowance 1 in the Murrumbidgee in 2018-2019 which may have been carried over under Clause 38(1) of the Murrumbidgee plan.                         | Nil. No recommendation, addressed during the audit period.  |   |

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| <p>F2.4 There is no evidence to indicate that a Barmah-Millewa Overdraw Environmental Water Allowance has been maintained during the audit period as required under Clause 26(1)(b) of the Murray plan.</p>  | <p>R2.4 DPE-Water to maintain a Barmah-Millewa Overdraw Environmental Allowance in documentation and account tracking systems for the Murray.</p>          | <p>Agree. An overdraw account will be maintained in accordance with the WSP. Note: The overdraw account has never been utilised. It generally can only be triggered when wet conditions are supporting full allocations, usually associated with spilling dams, during which period incidental forest watering occurs naturally anyway. Target completion 1 July 2023.</p> |
| <p>F2.6 The Water Quality Allowance for the Lachlan has been credited with 20GL with the assumption that this will cover a two year period, whereas 20GL is required each year under Clause 28(2) of the Lachlan plan which may be used. Implementation of this clause in accordance with DPE-Water's planning horizon for essential supplies would require planning for 40GL over two years to support a 20GL allocation to the WQA each year, which has not been the practice.</p>   | <p>R2.6 DPE-Water to credit 20GL per year to the Lachlan Water Quality Allowance, and therefore provide 40GL for two years in the resource assessment.</p> | <p>Agree. DPE-Water to credit water to the Lachlan WQA in accordance with the WSP, Clause 56(2) (formerly 28(2)) currently 20 GL per year, on 1 July annually.</p> <p>Note: WQA is not mentioned at Clause 58 Maintenance of Water Supply, therefore the 20GL for year 2 will be accrued in year 1.</p>  |
| <p>Maintenance of supply provisions in the Lachlan, under Clause 29 have not been given full effect during the audit period for the following reasons:</p> <ul style="list-style-type: none"> <li>▪ F2.7.1 Sufficient water has not been budgeted for the Lachlan Water Quality Allowance. In the event that this allowance is required in full in one year, a resource deficit would need to be made up to provide the following year's Water Quality Allowance allocation, which may impact other allocations.</li> <li>▪ F2.7.2 Water for Local Water Utility access licences in</li> </ul> | <p>Nil. No recommendation, addressed following the audit period.</p>   | <p style="background-color: #cccccc;"> </p>  |

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| <p>the Lachlan has been re-allocated during the audit period on the assumption that usage will follow historical patterns, this practice may impact Local Water Utility supply.</p>   |   |  |
| <p>F2.8 Replenishment flows and continuous flow at Booberoi Creek in the Lachlan plan (clause 30) were restricted in 2019-2020 due to drought mitigation measures which is not in accordance with the provisions of the plan.</p>   | <p>R2.8 DPE-Water to ensure replenishment flows and continuous flow at Booberoi Creek are provided during drought to supply for town water supply and stock and domestic rights, except in cases where Clause 30 of the Lachlan plan is not in effect due to a water sharing plan suspension.</p> | <p>Agree. DPE-Water will comply with the WSP Clause 59 Replenishment Flows (formerly Clause 30(2)) and will arrange suspension of relevant WSP clause/s where it becomes necessary, for example to manage a severe water shortage.</p> |
| <p>Channel capacity constraints have not always been met in the Murrumbidgee and Murray during the audit period:</p> <ul style="list-style-type: none"> <li>▪ F2.9.1 operation of the Hydro Electric Power Scheme in the Murrumbidgee in 2016 caused a channel capacity exceedance at Oddy's Bridge for three consecutive days.</li> <li>▪</li> </ul> | <p>Nil. No recommendation, addressed during the audit period.</p>   |  |

F2.10 There is no method approved by the Minister to guide priority of extraction when supply capability is insufficient to satisfy all water requirements as required under Clause 33 of the Lachlan plan, Clause 44 of the Murrumbidgee plan and Clause 36 of the Murray plan.

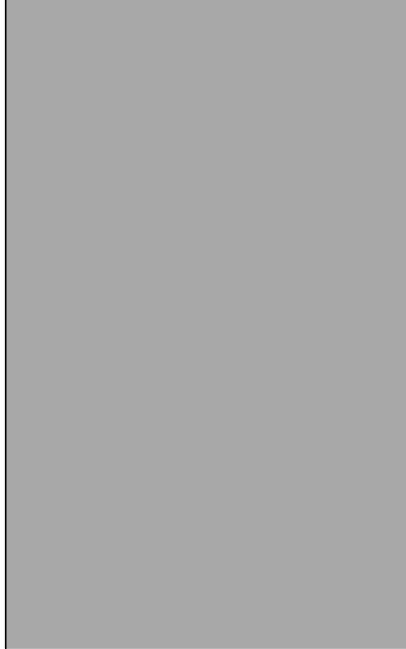
R2.10 DPE-Water to develop a method for priority of extraction when supply capability is insufficient to satisfy all water requirements in any section of the water source, incorporating water user advice.

Disagree. There is no requirement to develop a method, however, if one is to be developed, it must be developed in consultation (61(3)) and must be followed (61(2)). While DPE is working through the Capacity Policy Working Group to establish policies and is developing a Shortfall Response Plan for the shared Murray regulated valley, in conjunction with WaterNSW and NRAR, this initiative forms part of states (NSW, Vic, SA) input to an MDBA framework. However, elsewhere in NSW the relevant WSP Clauses (61(2) in the Lachlan, formerly Clause 33) require that sharing be administered in accordance with any procedures established by the Minister, that is, if a procedure is developed (not that procedures must be established). Nevertheless, priority of extraction, particularly during extreme events, is guided by the NSW Extreme Events Policy, and valley-specific incident response guides. WaterNSW and DPE Water are currently developing drought management plans for each valley to help guide operational decision-making. Target completion 31 Dec 2023. Out of this work a method for approval by the Minister for sharing may be developed, agreed and implemented. Until then, the priorities prescribed at relevant clauses (Clause 61 (Lachlan)) will be implemented.

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| <p>F2.11 There are no rules in place to guide rates of change for releases from water storages for the Lachlan and Murrumbidgee plans (Clauses 35 and 46 respectively).</p>   | <p>R2.11.1 DPE-Water to establish procedures in relation to the rates of change for releases from water storages for the Lachlan and Murrumbidgee. Procedures should consider environmental considerations, damage to river banks and public safety.</p> | <p>Agree. DPE-Water to consider safe rates rise/fall for regulated rivers (including the Lachlan and Murrumbidgee) and have them documented in operational protocols endorsed for implementation by WaterNSW.<br/>Target completion 31 Dec 2023.</p>   |
| <p>F3.1 LTAAEL compliance assessments were not implemented within the audit period every year as required by Part 7 Division 1 of the plans.</p>  | <p>R3.1 DPE-Water to manage LTAAEL and assess LTAAEL compliance in accordance with Part 7 Division 1 of each plan.</p>   | <p>Agree. DPE-Water will assess LTAAEL compliance annually and publish assessments on the website. It is noted that this has not been completed for some of the audit period, and there are not plans to do this retrospectively. Compliance action will be undertaken when required to bring extractions within limits. This will be undertaken annually. An LTAAEL for the Murray Lower Darling will be published for the first time by July 2023.</p> |
| <p>F3.1 applies as it relates to the application of AWDs for supplementary and general security access licences should LTAAEL be exceeded, as required under Clauses 62(4) and (5), 65(2) and 66(2) of the Murrumbidgee plan, and Clauses 48(5) and (6) and 49(3) of the Murray plan.</p> | <p>R3.1 applies</p>  | <p style="background-color: #cccccc;"></p>   |

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| <p>F4.1 No water was allocated to Lake Brewster Environmental Water Allowance under the Lachlan plan at the commencement of 2018-2019 when this should have been triggered (see F2.2). Therefore, sufficient planned environmental water was not set aside before making the high security AWD at the commencement of the 2018-2019 water year as required under Clause 46(4)(a).</p> | <p>R2.2 applies</p>   |   |
| <p>F5.1 Water access licence holders did not receive written notice of the mandatory conditions for each WAL under the 2016 plans until January 2018 (Lachlan and Murrumbidgee plans) and April 2018 (Murray plan) (19 and 22 months respectively after plan commencement), giving delayed effect to Sections 67(3) and 67(4) and 66(1a) of the Act.</p>                              | <p>Nil. No recommendation, addressed during the audit period.</p> |  |
| <p>F3.1 applies as it relates to the implementation of a take limit under Clause 54(1)(a) of the Lachlan plan, should LTAAEL be exceeded.</p>   | <p>R3.1 applies</p>   |  |

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| <p>F7.1 Approval holders of existing water supply work approvals granted under the previous plans did not receive written notice of the mandatory conditions under the 2016 plans until January 2018 (Lachlan and Murrumbidgee plans) and April 2018 (Murray plan) (19 and 22 months respectively after plan commencement), giving delayed effect to Sections 102(4) and 102(5) and 100(1a) of the Act.</p> | <p>Nil. No recommendation, addressed during the audit period.</p> |  |
| <p>F7.2 WaterNSW was not notified of all relevant mandatory conditions under its Statements of Approval (70WA604607 for the Lachlan, 40WA405734 for the Murrumbidgee, 50WA511767 for the Murray) to give full effect to Part 11 of the Plans.</p>   | <p>R9.3 applies</p>   |  |
| <p>F7.3 For the Lachlan, Murrumbidgee and Murray plans, the capacity of the works was not consistently stated in advertisements as required under Section 26(8)(d) of the Regulation.</p>   | <p>Nil. No recommendation, addressed during the audit period.</p> |  |

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| <p>F8.1 The assessment summary sheet checklists used to grant or refuse applications for 71W dealings does not include the requirements triggered by Clause 20(3)(c) of the Access Licence Dealing Principles Order 2004, regarding the nomination of water supply and extraction points for specific purposes access licences</p>   | <p>Nil. No recommendation, addressed during the audit period</p>  |   |
| <p>F5.1, F7.1 and F7.2 apply in relation to notification of mandatory conditions to access licence and approval holders.</p>   | <p>Nil. No recommendation, addressed during the audit period.</p>   |    |
| <p>F9.1 Mandatory conditions on WALs were missing to give effect to:</p> <ul style="list-style-type: none"> <li>▪ Lachlan plan: Part 9 rules for managing access licences, including provisions such as debiting rules, maximum volume taken or held under a general security access licence and carryover rules, as required by clause 65(1)(a).</li> <li>▪ Murrumbidgee plan: Division 1 Part 9 (clause 68) rules for water allocation account management, including provisions such as debiting rules, maximum volumes for general security and conveyance licences and carryover rules, as required by clauses 80(1)(a) and 80(5), and Division 2 Part 9 (clauses 69-71) rules for access to supplementary water and taking of water without debit, as required under clauses</li> </ul> | <p>R9.1 DPE-Water to address gaps in mandatory conditions on WALs in the Lachlan, Murrumbidgee and Murray to ensure all relevant mandatory conditions to the plans are adequately addressed and instruct WaterNSW to notify WAL holders. This includes:</p> <ul style="list-style-type: none"> <li>▪ Relevant Part 9 rules in the Lachlan plan, Part 9 Division 1 and 2 rules in the Murrumbidgee plan and Part 9 Division 1 rules in the Murray plan for managing access licences, which relate to WAL holder entitlements, such as debiting and carryover provisions</li> <li>▪ Logbook provisions for the purpose of water take (Clause 65(2)(b)(iv) of the Lachlan plan, Clause 80(2)(b)(iv) of the Murrumbidgee plan and Clause 65(2)(b)(iv) of the Murray plan).</li> </ul> | <p>Disagree, but noting the three Plans were amended on 23 December 2022, so this is no longer current.</p> <p>In relation to the rules for managing access licences and their accounts, in the Murrumbidgee and Lachlan the requirement to impose a mandatory condition on access licences to give effect to the relevant water allocation account management rules were repealed. In the Lachlan there is a requirement that a mandatory condition is imposed on reg river (general security) access licences specifying the holder may only take water available in their account and in accordance with accounting rules.</p> <p>In relation to the logbook conditions, the purpose for which water is taken is covered by a condition on water supply work approvals the access licences nominate, so we</p> |

80(1)(b) and clause 80(5) (which applies to clause 71 only).

- Murray plan: Division 1 Part 9 rules for water allocation account management, including provisions relating to the maximum amount that can be credited to general security licences, debiting rules and carryover rules, as required under clause 65(1)(a)
- all plans: Logbook provisions for the purpose of water take under clause 65(2)(b)(iv) of the Lachlan plan, clause 80(2)(b)(iv) of the Murrumbidgee plan, and clause 65(2)(b)(iv) of the Murray plan.

consider this issue to be very minor. We consider the other applicable conditions have been applied and notified, including removing the conditions requiring reporting at the end of the water year, which no longer apply. The logbook conditions will now be superseded by the metering requirements under the Regulation which apply from 1 June 2023.

We are currently reviewing the mandatory condition requirements for the 23 Dec 2022 amendments and will make any condition changes required to give effect to the amendments. This work is proposed to be completed by 30 August 2023.

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| <p>F9.2 Mandatory conditions on water supply works were missing to give effect to:</p> <ul style="list-style-type: none"> <li>▪ Lachlan plan: A water supply work used to take water under an access licence must comply with the Part 9 rules for that licence, as required under Clause 66(1)(a).</li> <li>▪ Murrumbidgee plan: Logbook provisions under Clause 81(2)(b).</li> <li>▪ Murray plan: Nil</li> </ul>   | <p>DPE-Water to address gaps in mandatory conditions on water supply work approvals in the Lachlan and Murrumbidgee to ensure all relevant mandatory conditions to the plans are adequately addressed and instruct WaterNSW to notify approval holders. This includes:</p> <ul style="list-style-type: none"> <li>▪ Provisions for approvals in the Lachlan for a water supply work to take water under an access licence in accordance with the Part 9 rules for that licence (Clause 66(1)(a))</li> <li>▪ Provisions for approvals in the Murrumbidgee for logbook use in accordance with the plan (Clause 82(2)(b)).</li> </ul> | <p>Disagree, since the two Plans were amended on 23 December 2022, so this is no longer current. For the Lachlan, we are currently reviewing the mandatory condition requirements for the 23 Dec 2022 amendments and will make any condition changes required to give effect to the amendments. For the Murrumbidgee, we consider the applicable conditions have been applied and notified, noting that these conditions will now be superseded by the metering requirements under the Regulation which apply from 1 June 2023. This includes removing the conditions requiring reporting at the end of the water year, which no longer apply. This work is proposed to be completed by 30 August 2023.</p> |
| <p>F9.3 Mandatory conditions on WaterNSW Statements of Approval were missing to give effect to:<br/>Lachlan Statement of Approval (70WA604607): No condition giving effect to priority of extractions provisions under Clause 33 of the Lachlan plan.</p> <ul style="list-style-type: none"> <li>▪ Murrumbidgee Statement of Approval (40WA405734): No condition giving effect to priority of extractions provisions under Clause 44 of the Murrumbidgee plan.</li> <li>▪ Murray Statement of</li> </ul> | <p>R9.3 DPE-Water to address gaps in mandatory conditions on the WaterNSW Statements of Approval for the Lachlan, Murrumbidgee and Murray to give effect to all relevant requirements of Part 6 system operation provisions of the plans and notify WaterNSW. This includes:</p> <ul style="list-style-type: none"> <li>▪ Provisions for priority of extraction (Clause 33 in the Lachlan plan, Clause 44 in the Murrumbidgee plan and Clause 36 in the Murray plan)</li> <li>▪ Provisions for the spilling of</li> </ul>  | <p>Agree – DPE-Water will address gaps in mandatory conditions on WaterNSW Statements of Approvals in the Lachlan, Murrumbidgee and Murray by 30 June 2023</p>  |

Approval (50WA511767): no condition giving effect to priority of extractions provisions under Clause 36 of the Murray plan, and insufficient detail on accounting for the spilling of environmental water to give effect to Clause 30 of the Murray plan.

environmental water for the Murray (Clause 30 in the Murray plan).

