



**The Honourable Matt Kean MP**  
Minister for Energy and Environment

MD21/4099

The Hon Melinda Pavey MP  
Minister for Water, Property and Housing  
GPO Box 5341  
SYDNEY NSW 2001

Dear Minister

Thank you for your letter seeking my concurrence to make the *Water Sharing Plan for the NSW Border Rivers Regulated River Water Source 2021* (the proposed WSP). Again, I want to thank your officials and your office for their engagement over recent days in seeking to resolve the issues identified in my letter of 30 June 2021.

I am satisfied that the proposed WSP adequately addresses my concerns in relation to the use of limited climate data in calculating water reserves and the consideration of downstream flow conditions when declaring periods of supplementary access. I look forward to engaging in the reviews in relation to both of these issues and to subsequent plan amendments to strengthen the robustness of reserve and allocation processes and improve connectivity with the Barwon Darling River.

I am now satisfied that the proposed WSP meets the principles of the *Water Management Act 2000* and maintains the volume and effectiveness of planned environmental water. I am therefore pleased to give my concurrence to the making of the *Water Sharing Plan for the NSW Border Rivers Regulated River Water Source 2021*.

If you have any further questions about this issue, your staff can contact Mr Derek Rutherford, Director Water for the Environment, Environment, Energy and Science Group on 9995 6030 or at [derek.rutherford@environment.nsw.gov.au](mailto:derek.rutherford@environment.nsw.gov.au).

Yours sincerely

A handwritten signature in blue ink, appearing to be 'Matt Kean'.

1 July 2021

**Matt Kean MP**  
Minister for Energy and Environment

Department of Planning, Industry and Environment - Record released under GIPAA - DPIE - 22 - 1797



The Honourable Matt Kean MP  
Minister for Energy and Environment

Ref: MD21/3404  
B21/3785

The Hon Melinda Pavey MP  
Minister for Water, Property and Housing  
GPO Box 5341  
SYDNEY NSW 2001

Dear Minister

Thank you for your letter seeking my concurrence to make the *Water Sharing Plan for the NSW Border Rivers Regulated River Water Source 2021* (the **Proposed WSP**). At the outset, I want to thank your officials and your office for their engagement on the issues associated with the Proposed WSP. However, I regretfully write to inform you that I do not provide concurrence to the Proposed Plan, as drafted.

I set out the reasons for this decision below, however, in summary, it is because I consider that water sharing plans should allocate and reserve water based on the latest climatic data and that further protections are required to ensure river connectivity during extreme dry periods. In circumstances such as the present, where (as I understand it) robust modelling is not available to give those principles effect, in my view, there should be a requirement that the relevant plan be amended once that work is complete.

## Background

As you are only too aware, NSW has recently emerged from its worst drought on record. That drought followed the millennium drought, which was the State's second worst drought on record.

Only a couple of years ago, drought was causing substantial human and environmental harm in NSW: a number of regional towns' potable water supply were so depleted that they had to be carted water. Dubbo was within six months of fully depleting its water resources, while Tamworth, Bathurst and Orange were within 12 months of running out of water. Substantial water restrictions were imposed on many communities. Major rivers in NSW stopped flowing, in part causing massive fish deaths which were the subject of substantial community concern, and causing other substantial environmental damage such as the drying of parts of the Macquarie Marshes. The drought put huge numbers of farming businesses and families under immense financial and mental stress.

As a result of a number of these extreme impacts, the NSW Parliament was required to pass the *Water Supply (Critical Needs) Act 2019* to provide an expedited approval path for a number of water infrastructure projects.

These impacts are happening in the context of a changing climate. Climate change is complex and involves uncertainty. However, the MDBA's 2020 Basin Plan Evaluation found (at 21) that inflows into the Murray Darling Basin over the last 20 years were approximately 39% lower than the historical average of the record that preceded it, based on data provided by CSIRO. The CSIRO also found (at 23) that the most plausible climate scenario would see a decrease in rainfall across the Murray Darling Basin of 10% in the period of 2046-2075 and mean annual flows experiencing a 20-50% reduction in the same period compared to the historical record. While this period is clearly beyond that of the Proposed WSP, it identifies a trend which will be continuing during the period of the Proposed WSP.

Having regard to these trends, and the impacts if those risks eventuate, I consider it essential that the Proposed WSP have regard to the most recent data.

Acknowledging your leadership during the drought and since, I highlight these matters because they provide the context to my concerns.

### **Issue 1: Climate sequence used for calculating reserves prior to making available water determinations**

The Proposed WSP currently does not account for the most recent drought in the setting aside of water reserves and subsequent water allocation processes: it currently provides that in calculating reserves to maintain water supply, the consideration of water source inflows is limited to *“information held by the Department prior to 1 July 2009”*. This risks an over-allocation of water to lower priority licences and insufficient reserves being set aside for basic rights, stock and domestic, town water and high security licences.

I understand that the State and Regional Water Strategy framework is proposed to review climate risk and consider appropriate changes to relevant water sharing plans. However, there is no amendment provision in the Proposed WSP to facilitate this and ensure that the plan reflects a contemporary understanding of climate risk.

In my opinion water allocation decisions must be made taking into account the full record of climate data available to the Department at any point in time. I therefore consider that, once the work proposed under the Regional Water Strategies is complete and no later than 1 July 2023, this and other regulated river water sharing plans must then be amended to ensure water supply maintenance and allocation provisions are informed by the full record of flow information held by the Department.

An amendment clause should be included within the Proposed WSP to require that this occur and any necessary consequential amendments made to ensure that there is no net reduction in the protection of planned environmental water.

### **Issue 2: Flow targets and first flush/supplementary access provisions**

Various reviews in recent years have recommended better management of connectivity between northern Murray Darling Basin tributary rivers (including the Border Rivers, Namoi, Gwydir and Macquarie) and the downstream Barwon-Darling River. The Government’s response to the Natural Resource Commission review of the Barwon Darling WSP supported further work, and consultation being undertaken, to enhance flow connectivity between these rivers through improved water sharing plan provisions.

There are many instances where poor flow connectivity has led to poor water quality, ecosystem stress and fish kills in recent years, such as in the Lower Darling River in 2018-19. Flow connectivity is particularly important in protecting drought refuges, allowing fish to move and breed and improving water quality for ecosystem health and all water users. And I acknowledge the work you have personally done in this area.

I note that clause 73 of the Plan provides for the Barwon Darling flow targets to be amended. However, as currently worded, any amendment cannot “substantially alter” the total amount of water able to be extracted by supplementary access licence holders. I am concerned that this may limit future changes to these flow targets, effectively prioritising supplementary access in the Border Rivers over critical environmental and human needs in the Barwon Darling.

In my view, clause 73 should be amended to ensure that supplementary access in the Border Rivers does not jeopardise the implementation of improved flow targets in the Barwon Darling River, and that this must occur no later than 1 July 2023 to align with the remake of the Barwon Darling WSP. Additionally, I consider that a clause should be included in the proposed WSP to protect the first flush of water within the Border Rivers water source in order to improve connectivity during and following periods of extended drought.

## The impacts of these principles on licence-holders

In my opinion, these amendments to the Proposed WSP are fair for licence holders and are consistent with the statutory framework. The reasons for this are:

*First*, with climate change decreasing the total water available in the Murray-Darling Basin, there is necessarily going to be lower allocations of water for one or a number of users of that water over time. This unhappy reality must be confronted to ensure the experiences of the last drought for river communities are not repeated. In this respect, ss 5 and 9 of the *Water Management Act 2000* (the Act) set how the various demands on our water resources are to be prioritised, and I regard the above proposed amendments to the Proposed WSP as consistent with that prioritisation framework.

*Second*, uncertainties inhere in water allocations. In this respect:

1. section 87(2)(a1) of the Act provides that compensation is not payable to licence holders “following the expiry of the management plan”;
2. section 87AA(3) of the Act provides that compensation is not payable to licence holders under that section if “the reduction in water allocations is for the purpose of restoring water to the environment because of natural reductions in inflow to the water source, including but not limited to changes resulting from climate change, drought or bushfires.”

*Third*, because the NSW Government is on notice of the deficiencies in the analysis underpinning the Proposed WSP, it is appropriate to recognise those deficiencies in the WSP and recognise that the WSP will need to be updated in due course. If, as of today, the relevant analysis was complete, it would be incorporated in the Proposed WSP and would have an immediate impact on licence-holder allocations. On the proposed approach, licence holders will only be impacted once the analysis is completed.

## Path forward

I would be happy to give my concurrence, if amendments consistent with the above were included in the Proposed WSP. I understand that my Office has shared a version of the Proposed WSP which would satisfy these concerns.

I also acknowledge the need to resolve these issues quickly and recognise the efforts of our officials and offices to do so over recent weeks. I support this work continuing as quickly as possible and stand ready to provide my concurrence to the Proposed WSP as soon as these matters are resolved.



30 June 2021

**Matt Kean MP**  
Minister for Energy and Environment



**The Honourable Matt Kean MP**  
Minister for Energy and Environment

MD20/6793

The Hon Melinda Pavey MP  
Minister for Water, Property and Housing  
PO Box 5341  
SYDNEY NSW 2000

Dear Minister

Thank you for your letter seeking my formal concurrence, under section 45 of the *Water Management Act 2000*, to amend the *Water Sharing Plan for the Namoi and Peel Unregulated Rivers Water Sources 2012*.

I understand that the proposed amendments are required to correct an administrative error in this Plan. I am satisfied that the amendments do not change the original intent of this Plan, and that the changes are necessary so that appropriate licence and approval conditions for this Plan can be issued for water users in the Cockburn River Water Source.

Therefore, I provide my concurrence to the making of the *Water Sharing Plan for the Namoi and Peel Unregulated Rivers Water Sources Amendment Order 2020*.

I have asked Derek Rutherford, Director, Water for the Environment, Department of Planning, Industry and Environment, to be available to discuss the matter further if required. Mr Rutherford can be contacted on 9995 6030 or at [derek.rutherford@environment.nsw.gov.au](mailto:derek.rutherford@environment.nsw.gov.au).

Yours sincerely

  
**Matt Kean MP**  
Minister for Energy and Environment

14.10.20