



National Farmers' Federation

Submission to the Murray-Darling Basin Authority for the Proposed Basin Plan

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National Farmers' Federation

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Executive Summary

The management of the Murray-Darling Basin has been the subject of much debate over the last decade, with accusations of overuse, mismanagement and state parochialism. However, the reality is that during the recent one in three hundred-year drought the fact that water was supplied for towns, stock and domestic supply, permanent plantings and some critical industries is to be admired and respected. It did not come without costs to agriculture, communities and industry and it is notable that it was achieved without the Basin Plan in place. It was done with the cooperative effort nature that was a cornerstone of the previous arrangements for the management of the Murray-Darling Basin. Other countries want to replicate this feat.

It is of concern that the Water Act 2007 (C'ith) and the Basin Plan seek to set up a management regime to recover water for the environment, based on emotions generated during a drought that essentially occurs three times every one thousand years. Such a regime undoubtedly will have longer-term implications for the sector the National Farmers' Federation (NFF) represents – agriculture – and the Basin's communities.

The NFF does not support the 2750 GL reduction in consumptive take (or Sustainable Diversion Limit (SDL)). NFF also has concerns about the Basin Plan Statutory Instrument being drafted to include only water access entitlement purchases as contributing to achieving the SDL. This was not the premise of the Murray-Darling Basin Authority in "selling" the Proposed Basin Plan to the Basin's communities and farmers. The Statutory Instrument must be amended to reflect the policy intent of the Authority and the Australian Government.

While NFF also welcomes the undertakings that the Basin Plan will not change entitlement reliability, these undertakings are not strongly enough codified in the Statutory Instrument. NFF suggests that this be worded more strongly and it be extended to clearly prescribe the mechanisms for implementation of the SDL. The proposed 2015 review also causes the NFF some concern. As drafted, it cannot compel Parliament to accept any adjustment to the SDL. The NFF proposes that the Statutory Instrument includes and embeds an Implementation Plan to ensure this occurs. The implementation plan must specify the criteria for the 2015 Review.

Along with the new arrangements for water management in the Basin, the Australian Government has spent \$10 billion on the reform effort. Of this \$3.1 billion was set aside for water acquisition and \$5.8 billion for infrastructure. Make no mistake, only \$3.4 billion of the infrastructure will be spent on water recovery efforts in the Murray-Darling Basin. The remainder includes \$0.5 billion unallocated, \$330 million for non-Murray-Darling Basin water efficiency, \$450 million for water purchases and \$1.5 billion for other initiatives that do not recover water (such as Coorong environmental works, COAG water reforms and the Commonwealth Environmental Water Holders' water charges).

Recovery of 78 per cent of the SDL gap through purchases is untenable as this has significant flow on impacts to irrigation communities and particularly vulnerable communities. NFF seeks a commitment by the Australian Government to recover a greater volume of water from non-purchase options such as water recovered through infrastructure and efficiency investment, environmental works & measures, local community projects and river operations. This emphasis must be embedded within the Basin Plan and fundamentally change the recovery approach by the Australian Government.

Moreover, such an outcome would require additional funding to deliver an altered recovery program. Additional time to implement might also be considered; and is consistent with the Federal Budget contingent liability for the Basin Plan risk assignment provisions.

The NFF also calls on the Authority and the Australian Government to ensure that, if the SDL gap cannot be recovered through the measures described above, entitlement reliability will remain unaffected. This can be done by measuring reliability against the first generation water resource plans (commencing from 2002) adjusted for the climate variability. To do otherwise is disingenuous.

Finally, the NFF recommends that the Australian Government invest in new resources for research, development and extension (R,D&E) to offset the lost production due to water purchases. This would also offset the loss of R,D&E capacity that has occurred with the closure of a number of irrigation and water related research and development programs since 2007.

While the formal public consultation period will end shortly, the NFF seeks continued dialogue with the Authority through the following months as the Authority and Government work to finalise the Basin Plan and draft and finalise the Regulatory Impact Statement.

National Farmers' Federation

The National Farmers' Federation (NFF) is the peak national body representing farmers and, more broadly, agriculture across Australia. It is one of Australia's respected lobbying and advocacy organisations.

Since its inception in 1979, the NFF has earned a reputation as a leader in the identification, development and achievement of policy outcomes - championing matters affecting farmers and dedicated to the advancement of agriculture.

The NFF is dedicated to proactively generating greater understanding and awareness of farming's modern role, contribution and value to the entire community.

One of the keys to the NFF's success has been its commitment to presenting innovative and forward-looking solutions to the issues affecting agriculture, striving to meet current and emerging challenges, and advancing Australia's vital agricultural production base.

The NFF's membership comprises all Australia's major agricultural commodity groups. Operating under a federated structure, individual farmers join their respective state farm organisation and/or national commodity council. These organisations collectively form the NFF.

The NFF has implemented a re-structure of the organisation. Through an associate category, this has enabled a broader cross section of the agricultural sector to become members of the NFF, including the breadth and the length of the supply chain.

Each of the state farm organisations and commodity councils deal with state-based 'grass roots' issues or commodity specific issues while the NFF represents the agreed position of all at the national and international level.

1. Introduction

The National Farmers' Federation (NFF) welcomes the opportunity to make a formal submission on the Murray-Darling Basin Authority's (the Authority) Proposed Basin Plan. For NFF and its Members, getting the Basin Plan right is vital because it is a major public policy change with significant social and economic impacts. Moreover, the Basin Plan will have a major precedent in setting for water planning and management setting across the rest of the nation – even though the head of power is reliant on international environmental agreements rather than the National Water Initiative which seeks to balance social, economic and environment with transparent tradeoffs in decision making.

While this plan has been long awaited, it must be acknowledged that the protracted process leading up to this point has been extremely upsetting for the Basin's community because of the:

- Lack of any engagement leading up to the release of the Guide;
- Content of the Guide;
- Realisation by regional communities that they are to bear the brunt of any change; and
- Lack of significant movement between the Guide and the Draft Plan.

It ought to be acknowledged that the Chair of the Authority has done much to overcome this view. However, telling people about the process and seeking their views is not the same thing as engaging communities in its development from the start and truly considering their views on the trade offs. Had this occurred, undoubtedly the trepidation and scepticism of the Basin communities might have been avoided or at least lessened had the Authority approached this from the start with a view to truly balancing the needs of the environment and communities, not counting the cost to communities in favour of the environment

NFF also notes the limitations of the Water Act 2007 (C'lth) for a number of reasons – the focus on the environment due to its head of powers (external affairs) as opposed to a true balance between the needs of environment, social and economic needs. The Water Act does not consider the non-water requirements to resolve some of the environmental issues in the Basin (e.g. the management of weeds). The Water Act also has limited the way in which the Authority might have better engaged with communities in its development. Water planning takes several years and the Authority had an extremely tight timeframe. NFF outlined its preferred method of Basin Plan development in its submission to the Guide to the proposed Murray-Darling Basin Plan (Murray-Darling Basin Authority, 2010). That view remains unchanged. There remain many more instances where the Water Act has been less than optimal.

While noting the above, this submission will, primarily, focus on the statutory instrument and what NFF views as the major issues arising from that instrument. The submission will conclude with the major changes that NFF sees as most important in obtaining a better outcome for the Basin. These changes will be the responsibility of the Authority and the Government if the negative impacts are to be minimised.

2. NFF questions, Authority responses and NFF view

The NFF has previously lodged a number of technical and other questions on the Proposed Basin Plan with the Authority, and received responses. To clarify, these questions should be taken to form part of the NFF submission. To avoid doubt these are appended to this formal

submission on the Proposed Basin Plan, along with the NFF's response to the Authority's answers (see Attachment 1 on page 23).

3. Sustainable Diversion Limits

The **NFF does not support the SDL of 2750 GL** as outlined in the Proposed Basin Plan. The Proposed Basin Plan has not resolved minimising the social and economic impacts, does not clearly identify how the number was derived, does not consider other alternatives to achieving environmental outcomes without requiring water – and there are numerous examples, and does not consider whether or not the recovered water could be used efficiently and effectively.

NFF believes there has been insufficient evidence given to substantiate the volume of water to be recovered. For example, the Authority's ESLT report (Murray-Darling Basin Authority, 2011) describes the flow regimes required to meet the environmental objectives. However, in selecting the ESLT options, the Authority "*by integrating the available information, and through considered judgement, MDBA established a range of sensible ESLT options*" essentially undertook a coarse Basin averaging exercise using Authority end of system flows, Authority preliminary and incomplete hydrologic modelling and an extrapolation of the Wentworth Groups work (Murray-Darling Basin Authority, 2011, p. 68). The Authority then sought to justify this position.

What has not been disclosed is an assessment of the model runs that underpin either the above work or the Proposed Basin Plan. It is disingenuous to seek to make such major changes to the water use in the Basin and not provide this information. Stakeholders and communities understand model runs having been exposed to them previously during the development of water resource plans at catchment levels. Modelling helps to inform the trade-off decisions on water use and identifies the positive and negative impacts.

A major influence on the outcome of model runs is the assumptions that underpin the model, including assumptions about how irrigators might behave in relation to water availability, water use and water trade. The Authority has not disclosed these assumptions.

Recommendation 1 – That the Authority immediately release the model runs, and the assumptions, that underpin the decision making for the SDL contained in the Proposed Basin Plan.

It is obvious that the Sustainable Diversion Limits (SDL) are the most contentious part of the Proposed Basin Plan – primarily because these are seen as being the driver for imposing negative social and economic impacts on the Basin. While individual irrigators may remain unaffected, impacts on rural and regional communities are real.

There are many who believe that the SDL "number" is a politically expedient number, i.e. one that might survive a disallowance motion in either the House of Representatives or the Senate. It might also be said that the proposed SDL is also one designed to ensure that no stakeholder group will obtain the outcome they are advocating.

The NFF has calculated that water recovery including pre-2004 efforts (e.g. Cap implementation and a range of state based programs) for the environment, including planned and held environmental water, is of the order of 6000 GL – which is not an insignificant number. However, a major concern for agriculture is that these water recovery efforts are fully recognised – currently this is not the case, with only part of the post 2004 efforts acknowledged. In addition the NFF believes it is essential that any water held by environmental water managers is managed efficiently and that farmers and rural communities are provided with guarantees that any

inefficient management of water resulting in poor environmental outcomes does not lead to more calls for more water recovery.

While the Authority is proposing an overall surface water SDL of 2750 GL, between 2004 and 2009 an additional 959 GL was recovered. This means that the total proposed water recovery for the implementation of the Basin Plan is some 3709 GL – very close to the upper limit of the scenarios in the Guide to the Proposed Basin Plan (the Guide) and interestingly the position held by the Australian Greens and environmental NGOs. Public commentary that the proposed SDL of 2750 GL does not achieve their outcomes is mischievous.

The Authority proposes to recover around 34 per cent of the watercourse diversions. However, governments are unlikely to recover water from towns, industry, recreation, stock and domestic or basic landholder rights, or small volume but large numbers of unregulated water users. This leaves water recovery to be borne, solely by agriculture. When the SDL recovery is recalculated to account for the above, NFF calculates that for agriculture, the cut will be in the order of 38 per cent.

This is untenable and we call on the government to adjust the final Plan to minimise these impacts.

Regardless, consideration must be given to ways to manage any impacts. One reasonable, practical and achievable way is to ensure water recovery can occur in a number of ways, such as through a range of environmental works and measures, infrastructure efficiency investment, river operations, as well as delivering the required environmental outcomes using non-water means, such as managing pests and weeds.

At present, the statutory instrument is structured in such a way that the gap will only be closed when irrigator entitlements are transferred to environmental use. This clearly does not accord with public commentary by either the Australian Government or the Authority.

The SDL must be restructured in such a way that all water recovery efforts will contribute to closing the SDL gap.

Recommendation 2 – That the Authority and the Australian Government ensures that the final Basin Plan Statutory Instrument reflects the policy intent that all water recovery efforts will contribute to closing the SDL gap.

It is possible that this could be framed in terms of a formula such as:

$$\text{SDL} = \text{BDL} - (\text{volume of held environmental water} + \text{environmental works \& measures} + \text{infrastructure savings} + \text{local community projects}^1 + \text{river operations} + \text{strategic purchases})$$

Importantly, this concept includes that non-water measures might be used to deliver environmental outcomes and an improved integrated catchment management outcome as a whole for the Basin. It is vital that these matters be incorporated into the Basin Plan as a Regulation.

¹ For example, this might reflect the non-water environmental outcomes (e.g. weed and pest management, removal and or realigned of poorly located levee banks and roads) that is currently missing in the provisions of the Basin Plan and that is required to deliver a truly integrated catchment management approach.

Recommendation 3 – That the Authority ensures that the SDL recovery efforts include the capacity of non-water options as an offset where these meet environmental outcomes and this policy intent is reflected in the final Basin Plan Statutory Instrument.

The above may be achieved through the following suggested amendments:

Recommendation 4 – that the definition of “*recovery of environmental water*” is broadened to include all water recovery measures (strategic water purchases, water recovered through infrastructure and efficiency investment, environmental works & measures, local community projects and river operations) and the term “*recovery of environmental water*” is broadened to cover closing the SDL gap.

Recommendation 5 – that the final Basin Plan Statutory Instrument includes a definition for “*quantity of relevant environmental water*” under Clauses 6.05 and 6.06 that reflects the policy intention of the Authority and the Australian Government that water that contributes to meeting the SDL gap includes water recovered by strategic water purchases, water recovered through infrastructure and efficiency investment, environmental works & measures, local community projects and river operations.

For the sake of clarity, the following should be included:

Recommendation 6 – the insertion of a new clause between 6.05 and 6.06 that clarifies that the SDL gap for water recovered towards reductions under Clause 6.05 is closed by counting all water and non-water recovery efforts, including but not limited to strategic water purchases, water recovered through infrastructure and efficiency investment, environmental works & measures, local community projects and river operations.

There are a number of environmental issues affecting the Basin but not all require additional water volume to resolve. The major causes of degradation in the Basin include both flow and non-flow factors:

- Changes in river hydrology caused by regulation of flow and diversion of water;
- Blockage of floodplain flows caused by causeways, levee banks and structures;
- Disposal of stormwater, sewage and irrigation effluent into wetlands;
- Excessive grazing by stock, feral and native animals;
- Cropping on floodplains and lake beds;
- Introduced fish species and aquatic weeds;
- Rising saline groundwater beneath floodplains; and
- Urban and recreational developments (Murray-Darling Basin Commission, 2006).

Unless the above can be resolved, the implementation of the Basin Plan is doomed to fail, and there are justifiable concerns of the agricultural sector that there will continue to be increasing pressure in the future to take additional volumes of water from consumptive use.

Recommendation 7 – that the Authority and the Australian Government ensures that the remaining major causes of degradation of the Basin are appropriately managed and funded, via a return to integrated catchment management rather than current flow only

approach to managing the Basin’s environment, and that this results in a increase in the Sustainable Diversion Limit.

4. Entitlement Reliability

Given that the Authority is using the States’ water models, albeit modified, the Authority ought to be in a position to provide preliminary information on the impact of implementation of the Basin Plan on the reliability of water entitlements. The State models are designed to provide entitlement reliability and there is no excuse that this information has not been released to inform development of submissions on the Proposed Basin Plan.

If the Authority were not in a position to do this, the very minimum requirement would be for the States to be asked to provide this information to assist consultation. It is very difficult to understand the impacts of the Proposed Basin Plan on entitlements when this critical piece of information has been withheld or the work has not been undertaken.

Recommendation 8 – That the Authority immediately provides information on the impact to reliability of entitlements, including through state implementation.

NFF are concerned about how entitlement reliability will be monitored through Basin Plan implementation, including at a State level, to ascertain whether entitlement reliability has been impacted and that cannot be accounted for (e.g. state legislation or policy change). It should be noted that it is unclear whether the States will now use the Authority amended models or their own versions. The State models are an important parameter for determining whether reliability has changed from the first generation water resource plans commencing from 2002 (climate adjusted reliability). Clarity on how entitlement reliability will be monitored for change would be most useful.

Recommendation 9 – That the Authority releases information on what models will be used to monitor and assess changes to entitlement reliability for the purposes of Water Act 2007 (C’lth) sections 80-86.

As reliability of entitlement underpins property rights, NFF supports those provisions (i.e. Clauses 6.15 and 9.09) in the Proposed Basin Plan that indicate that the Basin Plan itself should not change entitlement reliability. However, the Authority must include in the final Basin Plan better codification of these provisions, including that if state implementation² changes entitlement reliability then the provisions of the Water Act, sections 80-86, are triggered requiring compensation by the Australian Government³.

A further concern for NFF relates to a situation in which the Australian Government does not or cannot close the SDL gap through water recovery from a range of mechanisms. Should this situation arise, the final Basin Plan must include provisions that entitlement reliability will remain unchanged.

Recommendation 10 – That the Authority more explicitly codifies that the final Basin Plan will not change entitlement reliability, including through state implementation of

² This excludes any changes arising from state legislation and policies – this being a risk assignment allocation of State Governments.

³ NFF accepts that such an assessment should exclude climate variability since the first generation of water plans (i.e. related to the severe drought and flood events) and any changes arising from changes to state legislation, regulations or policy.

the Basin Plan⁴ and should the SDL gap not be recovered then entitlement reliability will not be used to close the gap.

The manner in which environmental water is stored and delivered may also lead to impacts on entitlement reliability. NFF does not support any measures or mechanisms that aim to prioritise planned or held environmental water over other entitlements. Such endeavours or proposals will undoubtedly lead to a change in the characteristics of the planned or held environmental water. It is a long agreed high-level principle that perverse outcomes for third parties will not occur because of changes to the characteristics of water entitlements. As an example, proposals for shepherding water will change the nature and characteristics of entitlements and create a “super” high security type of entitlement – which is not available to other entitlement holders. Similarly, prioritising in-stream channel capacity for environmental water delivery in spring may have the effect of limiting that ability for irrigation water entitlement holders to take water in critical planting windows or watering times.

Proposals in the Guide to the Proposed Murray-Darling Basin Plan suggest prioritising water allocations to the environment first ahead of other entitlement holders, including town water supply. NFF does not support such measures and there is nothing explicitly in the Proposed Basin Plan that allays those concerns.

Recommendation 11 – That the final Basin Plan Statutory Instrument and any supporting State Water Resources Plans do not change the characteristics of entitlements or prioritise planned and held environmental water above other water entitlement holders for either allocation or river channel capacity or amend public dam storage rights, or amend river operations that will lead to third party impacts or negative consequences to entitlement reliability.

Any proposals to change these aspects of water management at the Basin or State level must be discussed and agreed with entitlement holders affected by such decisions, and must be shown to have no third party impacts, including to entitlement reliability.

5. 2015 Review

The provisions in the Basin Plan relating to the proposed 2015 review are of concern to the NFF. The Proposed Basin Plan does not compel the Government or the Parliament to accept any proposals to adjust the SDL contained in the Statutory Instrument.

NFF has previously suggested that the commencing SDL is lower to provide leverage to ensure that Parliament considers and adopts the adjusted SDL because of the 2015 review. NFF has been told that this position is politically unsaleable.

NFF suggests that embedding an implementation plan within the instrument, along with the criteria that would guide the review seems pragmatic.

Recommendation 12 That the Statutory Instrument be amended to more strongly regulated the parameters of the 2015 review and to include new provisions that embed the implementation plan with the instrument.

⁴ Ibid

6. Third Party Impacts

NFF is concerned that the wording in the Proposed Basin Plan relating to the possible impact on private landholders in implementing environmental watering regimes is insufficiently strong enough to provide protection. The NFF seeks to have these provisions⁵ amended to ensure that these risks are not just “considered” and set aside, but actively avoided. Where flooding of private land cannot be avoided, the Basin Plan should compel the Authority, Environmental Water Managers and governments to either pay compensation and/or seek to enter into a flood easement negotiation with the affected landholder(s).

Recommendation 13 – that the final Basin Plan Statutory Instrument is more strongly worded in terms of avoiding rather than just considering the risks to private land and that the Authority is compelled to seek suitable agreed arrangements with affected landholders.

7. Interception

In the NFF’s response to the Guide to the Proposed Basin Plan (Guide), the NFF noted that the Authority relied on the National Water Commission’s (NWC) Interception Report (Sinclair Knight Mertz, CSIRO and the Bureau of Rural Sciences, 2010). The Authority however, had failed to explain why there is a 924 GL overstatement in interception figures between the NWC report and the Guide and now the Proposed Basin Plan. Members of NFF noted that the assumptions used in the NWC report were incorrect.

In recent discussions with the Authority, it is apparent that the NWC report was not the basis for the interception figures in the Guide or the proposed Basin Plan. The Authority has relied on an earlier report (Sinclair Knight Mertz, 2007) from the CSIRO Murray-Darling Basin Sustainable Yields Project, which attempted to project the effect of future farm dam development to 2030. Runoff dams may include irrigation but are essentially all dams greater than 5 ML capacity (basic landholder dams are less than 5 ML capacity) and are usually located off watercourses.

The figures included in the proposed Basin Plan are 591GL basic landholder rights farm dams (sourced from the 2010 NWC report) and 1793.3GL “*is calculated using data on the volume of runoff dams given in SKM (2007) and the methodology described in the NWC (2010) report*”.

To clarify, NFF understands that the floodplain harvesting figures (included in the 2010 NWC Report) are explicitly included in the surface water models and therefore are included in the surface water SDLs.

NFF understands that there are some concerns with the runoff dam figures, and is an area identified by the Authority as requiring further work, including the conversion factor on dam storages may be overestimated – only one factor, i.e. 1.1, is used right across the Basin. The second issue is verifying the classification of the dam.

Recommendation 14 – That the Authority implements a project to ensure the veracity of the runoff and basic landholder rights dams figures included in the proposed Basin Plan as interception and includes any updates in the 2015 review.

⁵ For example, Clauses 5.06, 7.36,

The proposed Basin Plan includes a “flexibility” provision that enables state governments to increase interception but this requires a decrease in surface water diversions. It would appear that there is no “reverse” flexibility provision, i.e. reduce interception and increase surface water diversions, providing the total SDL is not exceeded. Importantly, should the above work result in a reduction to the interception figures for farm and run off dams, then there must be an upward adjustment of the surface water SDLs, providing that the total SDL for the catchment and Basin does not increase.

Recommendation 15 If the additional work on farm and runoff dams reduces the interception SDLs, then there must be an upward revision of the surface water SDLs to offset the impact on surface water users.

NFF suggests that the Authority undertakes the above work in conjunction with state governments and that basic landholder rights under state legislation are respected.

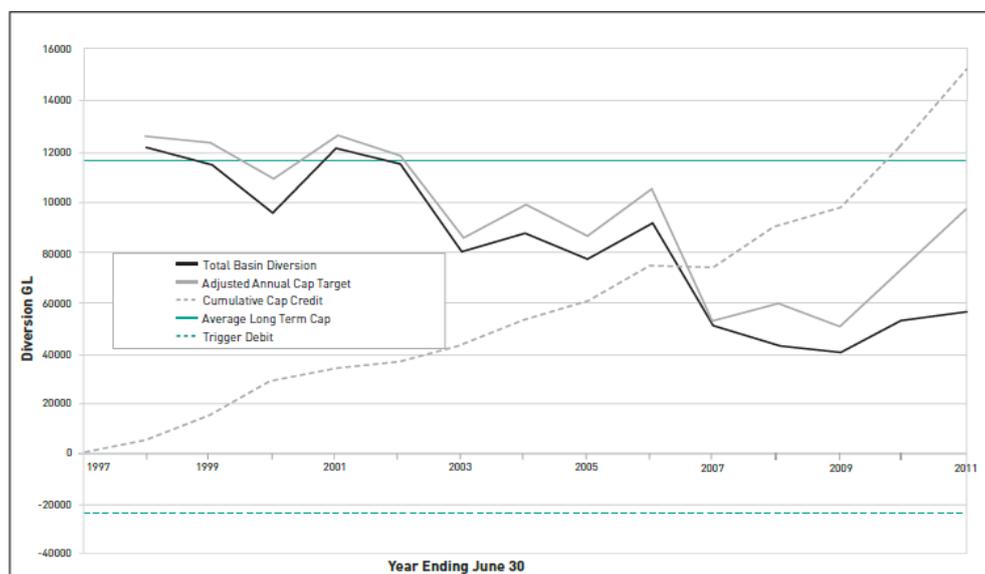
8. SDL Compliance

The Authority proposes to “zero” current cap management credits and debits at the commencement of the register of take on 30 June 2019 (Chapter 6, Part 4, clause 6.09(6), page 28). This means that the Murray-Darling Basin Cap credits and debits arrangements in place on 30 June 2019 will be ignored. The NFF rejects this for several reasons.

Foremost, there is a real likelihood that given that States will lose any existing cap management advantages, existing cap credits will be allocated and used to the effect of states delivering a water take close to the -20 per cent debit on 30 June 2019. This is a perverse outcome for this provision in the proposed Basin Plan.

At the time of this submission, the current accumulation of Murray-Darling Basin Cap credits and debits for the Basin as a whole is shown in Figure 1 below. This shows that in 2011, the total basin diversions were less than 6000 GL, significantly under the adjusted annual cap target of just less than 10000 GL, which was below the long-term cap of just under 12000 GL. All of these were substantially under the long-term cumulative cap credit.

Figure 1 Murray-Darling Basin Cap compliance (Murray-Darling Basin Authority, 2011, p. 58)



To show this information differently, the following table portrays the 2009-10 cumulative cap credits in the Cap register⁶.

Table 1 Murray-Darling Basin Cap Register – Cumulative Cap Credits (Murray-Darling Basin Authority, 2011, pp. 90-91)

System	Long Term Cap	Sch E Trigger	97-98	98-99	99-00	00-01	01-02	02-03	03-04	04-05	05-06	06-07	07-08	08-09	09-10
NSW															
Intersecting streams	N/A	N/A							N/A						
Border Rivers	234	-47	-36	-38	-89						N/A				
Gwydir	350	-70	71	35	86	-25	-63	134	115	108	191	127	110	157	170
Namoi/Peel	364	-73	27	20	15	-1	-31	-50	-11	52	110	74	96	153	222
Macquarie/Castlereagh/Bogan	492	-98	-57	139	113	167	147	8	57	121	284	153	296	335	336
Darling/Lower Darling	306	-61	-31	32	109	102	113	127	43	10	34	32	-4	12	-4
Lachlan	335	-67	-5	26	-5	-31	-41	-50	-17	7	46	59	108	127	163
Murrumbidgee	2358	-472	-29	16	163	137	461	784	893	685	944	1073	1374	1415	1170
Murray	1908	-382	-9	160	719	655	435	18	230	355	468	109	203	151	662
TOTAL NSW	6348	-1270	-68	391	1113	1003	1022	970	1309	1337	2077	1626	2184	2351	2719
Victoria															
Goulburn/Broken/Lodden	2032	-406	71	26	62	172	59	-12	14	104	103	83	171	130	446
Campaspe	122	-24	34	39	42	32	14	25	32	62	81	87	106	125	146
Wimmera	159	-32	-1	29	65	72	76	86	86	114	99	102	99	111	157
Mallee															
Murray/Kiewa/Ovens	1696	-339	111	44	99	145	62	217	332	410	547	553	711	772	1075
TOTAL VIC	4008	-802	215	139	267	421	211	316	463	689	831	824	1086	1137	1824
South Australia															
Adelaide & Assoc Country Areas			128	84	74	109	31	31	111	187	232	100	164	87	93
Lower Murray Swamps	94	-19	0	0	0	0	0	0	0	0	0	0	-6	-8	6
Country Towns	50	-10	15	28	42	54	56	56	61	65	67	67	67	67	67
All other	450	-90	28	64	137	180	224	269	341	340	370	407	480	616	762
TOTAL SA	594	-119	171	176	253	343	312	356	513	592	670	574	705	762	928
Queensland															
Condamine	729	-146							N/A						
Balonne															
Border Rivers/Macintyre	245	-49						N/A					0	27	80
Brook															
Moonie	33	-7							N/A						
Nebine	3	-1							N/A						
Warrego	39	-8							N/A						
Paroo	0	0							N/A						
TOTAL QLD	1049	-210						N/A					0	27	80
ACT	40	-4							N/A						
TOTAL BASIN	12040	-2408	318	706	1633	1767	1544	1642	2286	2617	3578	3024	3975	4250	5471

If the above cumulative cap credits is averaged across all years (i.e. 1997-98 to 2009-10), the average cap credit is 2524 GL. Importantly, the table also shows that it will take at least seven or eight years for the cap credits and debits to reach the average of 2524 GL⁷. Should the register be reset, then it could be assumed that it may take a similar time to reach the new average. The Authority has provided no justification for resetting the cap register.

⁶ The Water Audit Monitoring Report lags some time behind the review of cap implementation. The reports used are the latest available from the MDBA website.

⁷ Total for each year was averaged to obtain 2524 GL

Moreover, resetting the cap credits and debits to zero will also affect the long-term management of water at a valley level. It means that the long term averaging is restarted, state management of allocations has reduced flexibility, and it reduces water availability to irrigators in the initial years of the new SDL compliance regime. The latter is of particular concern as it reduces reliability and impacts on property rights of irrigators. This could invoke risk assignment for reductions to reliability of entitlements in the Basin Plan and the Water Act 2007.

Recommendation 16 – That the Authority ensures that the final Basin Plan Statutory Instrument rolls over existing cap credits and debits into the register of take to commence on 30 June 2019.

For clarity, the NFF suggests the following amendment to the Proposed Basin Plan:

Recommendation 17 – that Clause 6.09(6) is amended “When a register of take commences, the register of take for an SDL resource unit must record the closing cumulative cap credit or debit at 30 June 2019 as the opening cumulative balance of take”.

9. Water Quality and Salinity Management Plan

The NFF notes that the existing Basin Salinity Management Strategy (Murray-Darling Basin Authority, 2001) has operated successfully for over a decade and with the strong support of the Basin states.

The BSMS has four objectives (Murray-Darling Basin Authority, 2008):

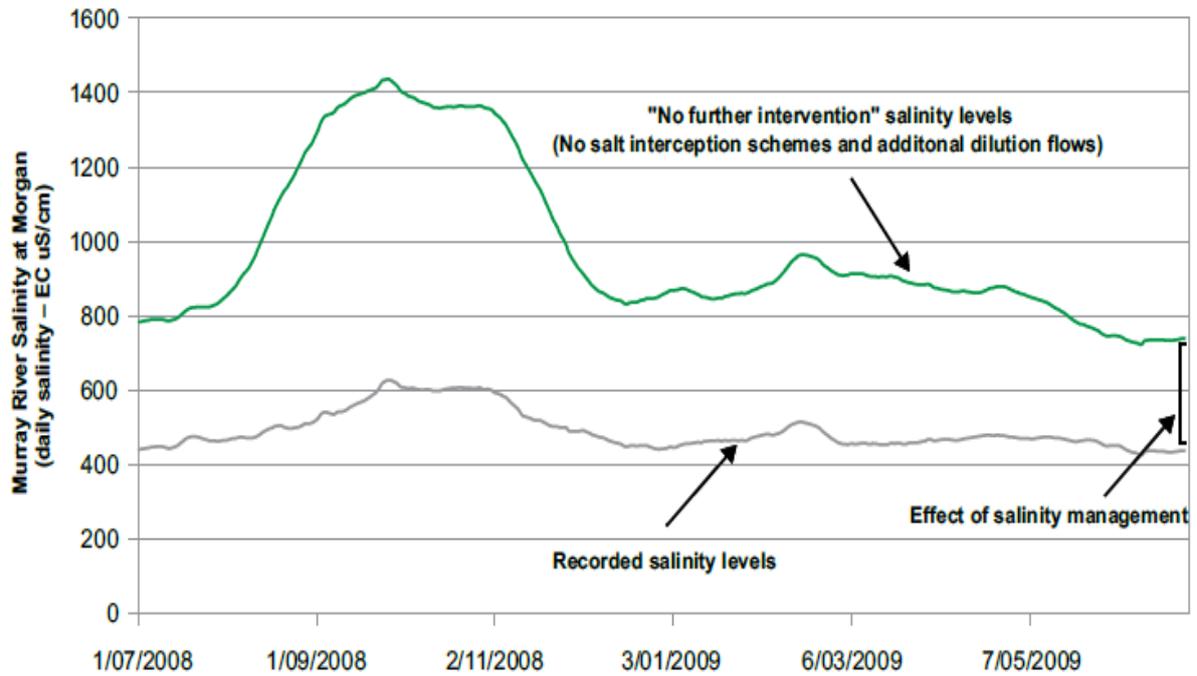
- Maintain the water quality of the shared water resources of the Murray and Darling Rivers for all beneficial uses – agricultural, environmental, urban, industrial and recreational;
- Control the rise in salt loads in all tributary rivers of the basin and, through that control, protect their water resources and aquatic ecosystems at agreed levels;
- Control land degradation and protect important terrestrial ecosystems, productive farm land, cultural heritage, and built infrastructure at agreed levels basin-wide; and
- Maximise net benefits from salinity control across the basin.

The BSMS focuses on a number of strategies including capacity development, value and asset identification, target setting, within valley tradeoffs, implementation of plans, farming system redesign, reforestation and vegetation management, salt interception works, and accountability.

The success of the BSMS (and its previous iterations) can be ascertained by the significant reduction of around 200 ECs between a “no further intervention” scenario and actual measured salinity at Morgan, as shown in

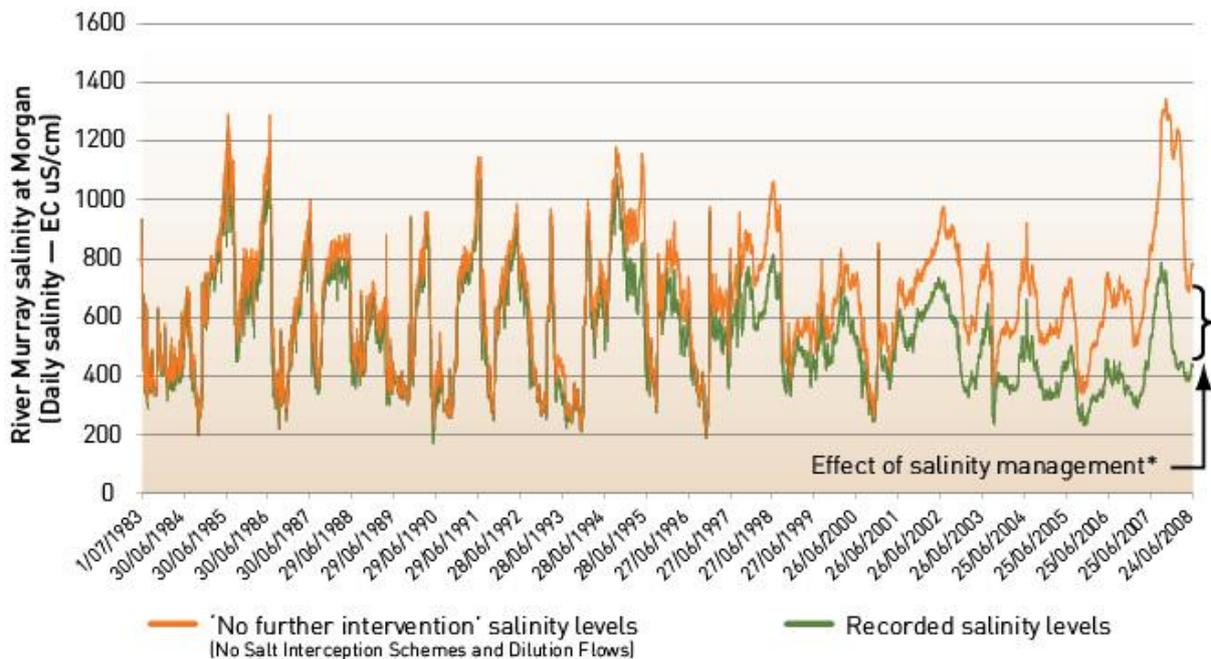
Figure 2 on the following page.

Figure 2 The effect of salinity management in the Murray-Darling Basin at Morgan, South Australia (daily salinity July 2008 to June 2009) (Murray-Darling Basin Authority, 2008, p. 5)



While the above figure shows the 2008-09 outcomes, Figure 3 below shows the long-term trend and the interventions that have enabled this outcome to be achieved, even through the drought.

Figure 3 The effect of salinity management in the Murray-Darling Basin — daily salinity levels, 1 July 1983 to 1 July 2008 (Murray-Darling Basin Authority, 2008)



In terms of other key indicators for water quality, Jennifer Marohasy analysed key water quality indicators (**Marohasy, 2003**) and showed that:

- Turbidity measured at Swan Hill and Morgan was relatively stable for the period 1978-2002 the exception being 1983 when drought breaking rains occurred;
- Phosphorous has been relatively stable since 1978 but shows more variability at Morgan than at Yarrawonga and Swan Hill, including a spike again in 1983/84; and
- Nitrate, while showing more variability than phosphorous, remains stable at Yarrawonga, Swan Hill and Morgan.

Given this has been a highly successful and well supported program, the NFF would question why there is the need to substantially change what has been a highly successful program.

Recommendation 18 That the Water Quality and Salinity provisions (Chapter 8) in Statutory Instrument are replaced by provisions that reflect Basin Salinity Management Strategy.

10. Water Trade Rules

The water trade rules (Chapter 11) are of some concern. NFF seeks resolution in two areas. The first of these relates to the inclusion of the Australian Competition and Consumer Commission (ACCC) Water Market Rules within the Statutory Instrument. This has needlessly caused significant confusion and concern. As the ACCC rules are existing rules and managed separately, and never intended to be included in the Basin Plan, NFF seeks that these are removed.

Recommendation 19 – That the final Basin Plan Statutory Instrument excludes clauses 11.27 – 11.35 in the Proposed Basin Plan relating to ACCC Water Market Rules for irrigation infrastructure operators.

Furthermore, irrigation infrastructure operators are currently obliged to provide similar information to several different Australian Government agencies, such as the Bureau of Meteorology (BOM), NWC, Department of Sustainability, Environment, Water, Population and Communities (SEWPC), the Authority and Australian Bureau of Statistics (ABS). This information is in addition to the requirements of State Governments. It is highly recommended that the Australian Government in conjunction with State Governments determine a one-stop shop for the lodgement of water data for reporting requirements, including the data required and the format in which it is to be lodged.

Recommendation 20 – That the Australian and State Governments determine a one stop shop for the collation of all water information from irrigation infrastructure operators.

11. Australian Government

Since the Australian Government has implemented the Water Act 2007 and the water recovery programs, the NFF has strongly advocated that there must be equal roll out of the purchase and infrastructure programs. To date, this is a major failing. There are several reasons for this, including the lengthy negotiation between the Australian Government and the States in relation

⁸ Turbidity measurement commenced at these sites in 1978 so earlier data is unavailable.

to agreed priority projects, the highly prescriptive Australian Government probity and procurement guidelines that reduced flexibility, the long time that infrastructure projects take to implement, and recent return to wet conditions across much of the Basin delaying implementation.

The result has been a purchase program that has expended around two thirds of the program funds, and infrastructure slowly rolling out. From an irrigator perspective, the initial implementation years saw only one option for farm level investment – purchase. It also alleviated financial distress caused from increased borrowings during the drought. NFF estimates that from now on, it will be increasingly difficult for the Australian Government to achieve its objectives as farmers opt to ride out any remaining drought debt with the return of production and cash flow. Moreover, this will mean that the purchase price for water will also increase in order to attract sellers. A concern of NFF is that the Australian Government will need to implement an exit strategy for the program in the shorter term and as acquisition program funds slowly dwindle. Such an approach is needed to ensure that the water market is not unduly affected by the withdrawal of the single biggest market participant.

Recommendation 21 That the Australian Government determines an exit strategy for the purchase program and ensures that the water market is informed well ahead of time of this strategy.

The NFF has continued to advocate for improved outcomes for delivering water recovery from infrastructure and other efficiencies. SEWPC has “pencilled” in 600 GL LTCE from water efficiency and infrastructure savings. This effectively means that 2150 GL or 78 per cent of the gap will be recovered from water purchases. Such an outcome is untenable for the social and economic well being of the Basin.

Contracted water to 31 January 2012 is 1329 GL LTCE (includes all recovery) which is 307 GL short of the local reduction SDL and is 48.3 per cent of the proposed total SDL reduction. Of this figure, 187.6 GL LTCE is infrastructure, 887.1 GL LTCE is purchases, with the remaining other recovery.

Recommendation 22 The NFF calls on the Australian Government to seek to recover significantly more than 600 GL LTCE from infrastructure and other efficiency measures.

Recommendation 23 If the above recommendation requires additional funding, the NFF recommends that this be provided from new budget measures, or alternatively is sourced from the SDL gap contingent liability of \$320 million per annum already included in the Federal Budget from 2014-15.

Undoubtedly, recovery from options other than purchased entitlement will deliver multiple benefits. Purchased water will only benefit the seller and the environment, effectively taking this water out of productive agricultural use, and at a time when the global environment for agriculture is positive and the future requires improved agricultural production to feed a world population of 9 billion. This loss in agricultural capacity needs to be offset by a research and development program aimed at improving the productive capacity of the remaining irrigation land and water. It will also aid in offsetting the reduced economic activity in the Basin.

However, agricultural research does take significant time to go from idea to implementation, e.g. for new grain varieties this process can take 10-15 years. Therefore, there will be some time delay prior to the beneficial effects being felt by the Basin’s community.

Recommendation 24 That the Australian Government implements a research and development program aimed at improving the productivity of Basin’s irrigation land and water to offset the purchase of water from agriculture.

12. Conclusion

While the premise of Basin Plan is largely supported by most sectors and indeed, many have sought certainty that the Basin Plan may deliver, the NFF supports a Basin Plan that balances social, economic and environmental objectives. The Draft Basin Plan does not meet this objective.

The NFF has made a number of recommended changes to the proposed Basin Plan that will improve the outcome for the Basin and those who live and work in it. The NFF has also made recommendations to the Australian Government to change its water recovery programs trajectories and to implement an R&D program to offset the impacts of water purchases.

The NFF welcomes further discussions with both the Authority and the Australian Government as the Basin Plan statutory instrument is finalised and presented to Parliament.

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Attachment 1 – NFF Basin Plan issues, Authority response and NFF comment on the Authority response

CH	PT	CL	NFF ISSUE	AUTHORITY RESPONSE	NFF COMMENT
General					
			Does the draft Basin Plan go beyond what is required in the Water Act 2007, by requiring unnecessary conformity between State water management arrangements?	No. The draft Basin Plan is consistent with the requirements of the <i>Water Act 2007</i> (Cth).	Noted. No doubt this may be tested at law subsequent to the Plan being made.
			Does Schedule 2 in the Water Act 2007 require full cost recovery from water entitlement access holders to cover costs for the mandated monitoring and evaluation? What are the risks from the Basin Plan for duplication and increased transaction costs – for state governments but ultimately to entitlement holders as part of their water charges?	<ul style="list-style-type: none"> Monitoring and evaluation in the Basin Plan sets obligations on states not on individual water entitlement access holders. The objectives of Schedule 2 of the Water Act are to promote the economically efficient and sustainable use water resources, water infrastructure assets and government resources devoted to the management of water resources; ensure sufficient revenue streams to allow efficient delivery of required services; facilitate the efficient functioning of water markets; give effect to principles of user-pays and to avoid perverse or unintended pricing outcomes. Costs will become clearer as more specific technical guidelines are developed. It is recognised that investment arrangements will need to be agreed between jurisdictions. The MDBA is working to ensure the implementation of the Basin Plan minimizes duplication and overlap with existing arrangements. 	While this response may be technically correct, ultimately the costs of the MDBA and States in management water will flow on to entitlement holders, including the Australian Government. Currently, the MDBA costs are passed on to water entitlement holders fully in NSW, partially in Victoria and Queensland and not passed on in South Australia (although new pricing arrangements are being established in SA so this may change).
			More generally, if there is sufficient codification of the review and subsequent adjustment to the SDLs, and there is sufficient codification that reliability of entitlement is enshrined and protected (how measured – perhaps against the existing water plan models), and if there is only voluntary acquisition of entitlement, what happens if the Government cannot meet the SDL gap? (Acknowledge that the AG will continue to acquire water over the longer term).	<ul style="list-style-type: none"> The Commonwealth Government has undertaken to bridge the gap. Under clause 6.05 of the Legislative Instrument the SDL for a water resource unit cannot be finally determined until the gap has been bridged. Therefore SDLs cannot be enforced until the gap has been bridged, and thus failure of the Commonwealth to acquire enough entitlement will not impact on reliability of entitlements. Refer discussion under 6.15. 	Noted, however, the SDLs do commence through state water plans on 1 July 2019 (see 9.13(2)).
			Can state implementation of the Basin Plan impact reliability (despite undertaking)? If so, how can this be prevented?	Yes. This is a matter of the State. See discussion under 6.15.	NFF remains concerned that there is an ability to attenuate property rights through reliability and seek to have the relevant provisions strengthened.
			In delivering environmental water, can it be more strongly codified that the MDBA (and	<ul style="list-style-type: none"> The MDBA along with all other environmental water managers will need to consider risks, including potential impacts on other parties, 	The provision does not provide any certainty to private

CH	PT	CL	NFF ISSUE	AUTHORITY RESPONSE	NFF COMMENT
			other holders of e-water entitlements) must avoid impacting on persons materially affected	and measures to minimise those risks when delivering environmental water (7.45).	landholders. NFF will seek stronger requirements to negotiate arrangements with private landholders rather than just “consider” the risk.
			If the 2015 review supports an adjustment upwards of the SDL, how can Parliament be compelled to pass this on (view that Parliament would pass a decrease but veto an increase). Need to understand what the Parliament’s powers are regarding future amendments to the Basin Plan regarding the SDL, i.e. can it veto amendments?	<ul style="list-style-type: none"> Similar to the Basin Plan itself, any amendment to the Plan would be in the form of a legislative instrument which could be disallowed by Parliament. Accordingly, it would not be possible to compel Parliament to accept amendments arising out of the 2015 review process. 	The NFF will seek stronger codification of the 2015 review and that the Basin Plan implementation plan is embedded in the Basin Plan.
			Is conveyance water treated as consumptive use or as part of environmental use.	<ul style="list-style-type: none"> Conveyance water is neither treated as a consumptive use nor considered as part of the environmental use. The Water Act (Section 86A(4)) defines conveyance water as the volume of water in the River Murray System required to deliver the volumes required to meet critical human water needs. The Basin Plan sets the volume of conveyance water to be an amount of 1596 GL per accounting period. This volume has been determined from observed losses within the River Murray System during years of low water availability and includes South Australia’s dilution flow of 696 GL plus river losses upstream from the South Australian border of 700 GL plus 150 GL of River Murray System storage losses. The Water Act defines consumptive use as the use of water for private benefit consumptive purposes including irrigation, industry, urban and stock and domestic use. Conveyance water is not considered as consumptive use as per the definition within the Water Act, however, water for critical human water needs is considered a consumptive use as per the definition within the Water Act. Only the consumptive use is considered part of the SDL (and not the conveyance water). The volume of water for critical human needs water is allocated from State shares from within the sustainable diversion limit, Conveyance water is also taken from state shares but does not form part of the sustainable diversion limit. This volume of water is then available to deliver the critical human water needs volumes during dry periods. More generally across the Basin only diversions for consumptive purposes are covered by the water use limited by the SDL. 	Noted.

CH	PT	CL	NFF ISSUE	AUTHORITY RESPONSE	NFF COMMENT
				Conveyance water is not limited by the SDL. Schedule 3 of the draft Basin plan describes the water covered under the Baseline Diversion Limit for each valley. The SDL provisions in Schedule 2 relate to these limits, less the amount required to be recovered.	
1	Introduction				
	3	Interpretation			
		1.07	Definitions Commercial plantation- could Lucerne be dragged into perennial woody plants? Is it prudent to suggest a clearer definition.	Suggestion noted, please include recommendations in formal submission.	Please ensure that the definition is amended.
		1.09	Construction of provisions imposing obligations on States <ul style="list-style-type: none"> What is the implication of this clause on Basin States and conferring discretion on the Basin State to do a thing? 	This section is intended to preserve the operation of the provisions in the event they are found to be invalid or unenforceable. That is, if there is a provision that imposes an obligation that is inconsistent with a constitutional doctrine, then that obligation will read down as imposing a discretion rather than the provision being completely invalidated.	Noted
2	Basin water resources and the context for their use				
	S1	Basin water resource and context for use			
			<ul style="list-style-type: none"> Update the two tables under 41 to reflect most recent GVIAP data, which has been released. 	The comments are noted and will be considered, along with other submissions, in any review or updating of Chapter 2/Schedule 1.	Noted
			<ul style="list-style-type: none"> In assessment ecological health, S1 has also failed to acknowledge the positives, e.g. recovery of river red gums since December 2010 floods, i.e. it is all a negative story. The poor condition in lower catchments also reflects little investment over time in hydrometric measuring stations. Therefore, cannot entirely claim the condition of lower catchments is entirely due to river regulation and extraction, i.e. less capacity to measure, monitor and understand The condition of the CLLMM is also a strong reflection of poor local land management over a long period of time, e.g. over allocation of groundwater between CCLLM and Adelaide resulting in the loss of stream base flows, the diversion of SW drainage from the Coorong to the sea (now being changed). There is a need to complete the picture, not just paint part 	The comments are noted and will be considered, along with other submissions, in any review or updating of Chapter 2/Schedule 1.	Noted

CH	PT	CL	NFF ISSUE	AUTHORITY RESPONSE	NFF COMMENT
			<p>of the picture.</p> <ul style="list-style-type: none"> The Sustainable River Audit (SRA) notes that the poor rating in most catchments was overwhelmingly due to alien fish species in upper catchments. Additional flows are not going to solve this issue, particularly carp. Moreover, the SRA sampling was undertaken in the worst drought in 300 years. Blue green algal blooms, while driven by low flows, are naturally occurring events in drought purely because of the low flows. Increased water in the system to resolve this will only “flush” the issue further downstream and over long river lengths. The watercourse diversion figures (p.127) is a coarse figure. It would be useful to have this split into the various diversion categories, e.g. town water supply, basic landholder rights (stock & domestic), interception, irrigation, recreation, industry etc. 		
4	The identification and management of risks to Basin water resources				
2	<i>Risks and strategies to address those risks</i>				
		4.02	<p>Risks to the condition, or continued availability, of Basin water resources and consequential risks</p> <ul style="list-style-type: none"> Vague description of the risks which may arise, open to interpretation. (2)(b) Whose water is required to maintain social, cultural, indigenous and public benefit values? How is ‘insufficient’ water for the environment deemed? If there is insufficient, even after the accumulation of 2750GL deemed to be the volume required, surely the responsibility for managing this insufficiency lies with Commonwealth use of CEWH water rather than a directive to Basin States? 	<p>This refers to the residential risk after the Basin Plan is implemented.</p> <p>Assessment of ‘insufficient’ water would be a matter for the Authority.</p> <p>Addressing this issue would be a matter for an amendment to the Basin Plan.</p>	Noted
			Risks to the condition, or continued		Comments noted

CH	PT	CL	NFF ISSUE	AUTHORITY RESPONSE	NFF COMMENT
			<p>availability, of Basin water resources and consequential risks</p> <ul style="list-style-type: none"> • Draft Basin Plan Chapter 4, Part 2, 4.02 (1)(a) identifies ‘insufficient water available for the environment’ as a risk to the continued availability of water. Part 2, 4.02 (2)(a) goes on to say that a consequence of the above risk materialising would be insufficient water being available for consumptive and other economic uses in the Basin. Part 2, 4.03 then goes on to require strategies to be prepared to manage or address the risk. • The consequential nature of these clauses seems illogical. The Basin Plan is predicated on the idea that providing sufficient water to meet current consumption and economic uses means insufficient water is available for the environment. Logically, therefore, providing ‘sufficient’ water for the environment will lead to insufficient water being available for current consumptive and other economic uses, based on current development levels across the Basin. • So legally, what is the priority? If the risk in 4.02 (1)(a) materialises, then are the States legally obliged to manage or address the risk by providing more water for the environment? • Conversely, if insufficient water for environment also means insufficient water for consumption and economic uses, are the States obliged to address the consequence instead? • And what is the legal position if providing ‘sufficient’ water for the environment leads to insufficient water for consumptive and economic uses? Is there legal redress in this situation? 	<p>This risk is the residential risk after the Basin Plan is implemented.</p> <p>No; Basin Plan would need amendment.</p> <p>No; any work would inform Basin Plan amendment.</p> <p>This is not the purpose of this chapter.</p> <p>It deals with residual risks after the Basin Plan is fully effective and informs amendment process.</p>	

CH	PT	CL	NFF ISSUE	AUTHORITY RESPONSE	NFF COMMENT
			<ul style="list-style-type: none"> What would be the legal benchmark to determine ‘insufficient’ water for consumptive and economic uses – is it the current level of development and therefore use when the Basin Plan is approved by the minister in late 2012? Or when the SDLs come into effect in 2019? 		
		4.03(3)(d)	<p>Strategies to manage, or address, identified risks</p> <ul style="list-style-type: none"> Discusses the strategy of managing ‘flows’. What flows are being specifically referred to, is this relevant to the management of environmental water or all water in the Basin- including irrigation allocation. What implications does this have for those preparing the Water Resource plans and involved in the actual management of the river? 	The strategies listed in this section are those identified as assisting in the management of relevant risks. No implications for Water Resource Planning preparation.	Noted
		4.04	<p>Authority may publish guidelines</p> <ul style="list-style-type: none"> What guidelines are currently being proposed (a number are referred to in the PBP)? What is the process for the development of guidelines? Will the MDBA be consulting? 	No guidelines are currently planned under 4.04. This clause sets out a requirement if guidelines are developed in this area in the future.	Noted
5	Management objectives and outcomes to be achieved by the Basin Plan				
			<ul style="list-style-type: none"> Broadly, the management objectives do not provide a clear indication of the specific outcomes desired and leave much open to interpretation. How much weight do these broad objectives have in a legal sense when there are more detailed chapters on the watering plan, salinity and water quality etc also in the document? 	<ul style="list-style-type: none"> The objectives and outcomes in this chapter are intentionally high level. Objectives and outcomes in chapters 7, 8, 9, and 12 include a greater level of detail. To increase clarity on this matter, notes are present in relevant sections of chapter 5 directing readers the subsidiary objectives in chapters 7, 8, 9, and 12. The Basin Plan when made will be a legislative instrument and as such the interpretation provisions in the <i>Legislative Instruments Act 2003</i> (Cth) will apply. Section 13(1)(a) of the <i>Legislative Instruments Act 2003</i> states that the principles in the <i>Acts Interpretation Act 1901</i> (Cth) apply to the interpretation of legislative instruments. Section 15AA of the <i>Acts Interpretation Act 1901</i> provides for the use of the purpose or object of provisions in interpretation under section 15AA. 	Noted
		5.02(1)	<p>Management objectives and outcomes for the for the Basin as a whole</p> <ul style="list-style-type: none"> Draft Basin Plan Chapter 5, 5.02 (1) says 	<ul style="list-style-type: none"> Your views on the Commonwealth water purchase program are 	See NFF comments earlier on cost implications for entitlement holders.

CH	PT	CL	NFF ISSUE	AUTHORITY RESPONSE	NFF COMMENT
			<p>the Plan’s management objective is a healthy working Basin, including a healthy working environment, strong communities and a productive economy, through the integrated and cost-effective management of Basin Resources.</p> <ul style="list-style-type: none"> • So, legally, could it be argued that the Government’s buyback approach is inconsistent with the integrated and cost-effective management of Basin Resources, because it undermines viability of integrated irrigation districts and the affordability and availability of water for high-value uses? • Similarly, are the monitoring and evaluation requirements mandated in the most cost-effective approach? 	<p>noted. The MDBA will pass them on to SEWPAC for consideration. You may also wish to include your views in any formal submissions on the draft Basin Plan.</p> <ul style="list-style-type: none"> • While the MDBA believes the requirements in Chapter 12 are cost-effective, these will be refined following comment received during the exhibition period. In addition, the Chapter provides mechanisms for flexibility on the detail to ensure the most cost-effective arrangements, such as the ability for MDBA to enter agreements with Basin States and Commonwealth agencies. 	
			<p>Management objective and outcomes for the Basin Plan as a whole</p> <ul style="list-style-type: none"> • With a management objective for the whole Basin of strong communities and a healthy economy, how can the SDL reduction of 2750GL ensure that these objectives are met? 	<ul style="list-style-type: none"> • The SDL has been set to ensure the long term health and viability of basin water resources and hence communities that rely upon a healthy river system. 	Noted
		5.02(2)(c)	<ul style="list-style-type: none"> • “Improves water security”....how? (see 5.05 1.b.) 	<ul style="list-style-type: none"> • The SDLs in Chapter 6 provide legal certainty about the share of water that is available for consumptive use (including groundwater and interception). • By requiring the southern Basin States to set aside water for critical human water needs and a reserve for conveyance water we will improve security to urban and domestic water users, especially in times of extreme low water availability. • Water security for all uses will be improved through the establishment of a planning framework across all groundwater and surface water uses for the entire Basin. The Basin Plan will result in water resource plans covering all Basin water resources which will be accredited for 10 year periods. 	<p>Existing arrangements in all states prioritises water for urban and domestic water users in all years, not just low water availability years. The Basin Plan is unlikely to change this hierarchy of access.</p> <p>Water plans currently cover most of the Basin’s surface and groundwater systems – the Basin Plan will not in itself aid planning – it changes the existing framework.</p> <p>NFF remain perplexed as to how the Basin Plan will improve the</p>

CH	PT	CL	NFF ISSUE	AUTHORITY RESPONSE	NFF COMMENT
					security for all users against business as usual (i.e. arrangements in place now). For example, in NSW 95% of the water extracted is covered by water plans, 90% in Queensland and 87% in South Australia (these figures are for the entire state not just the Basin – see NWI 2011 Biennial Assessment, p. 34-35)
			<ul style="list-style-type: none"> What about “users” (who have statutory rights)? 	<ul style="list-style-type: none"> Schedule 1 of the draft Basin Plan sets out the users of Basin water resources and the uses to which the Basin water resources are put. The uses include agricultural use, industry use, ecosystem use, community use, recreation and tourism use and indigenous use. Not all users of Basin water resources have statutory rights in relation to water (eg many users of water for tourism and recreational purposes). 	Agree, but property rights are held by water entitlement holders which underpin financial borrowings.
			<ul style="list-style-type: none"> Is it legally relevant that the proposed Sustainable Diversion Limit, if achieved primarily through continued general buyback tenders as favoured by the Federal Government, will undermine water security for irrigation by reducing the total volume of water available for irrigation, trade and carryover by up to 30%? Scarcity and therefore insecurity of adequate supply would be acute during drought years with low allocations. 	<ul style="list-style-type: none"> Your views on the Commonwealth water purchase program are noted. The MDBA will pass them on to SEWPAC for consideration. You may also wish to include your views in any formal submissions on the draft Basin Plan. 	Please take this as part of the NFF submission.
		5.03	<p>Management objectives and outcome in relation to environmental outcomes</p> <ul style="list-style-type: none"> (1) (a) What legal emphasis does “protect and restore” have? (2) Suggestion for ecosystems to be referred to as ‘resilient ecosystems’ rather than ‘healthy’ ecosystems. 	<ul style="list-style-type: none"> In the context of the Basin Plan, ‘protect and restore’ refers to retaining or improving the ecological character and ecosystem functions of a site, such as connections along rivers and between rivers and wetlands, end-of-system water quality and flow, habitat diversity and food webs. Your comment on ecosystems is noted. You may wish to include your suggestion in a formal submission. 	Please take this as part of the NFF submission.
			<ul style="list-style-type: none"> Australia’s obligation for RAMSAR wetlands is to maintain the listing condition. Yet it would appear that the 	<ul style="list-style-type: none"> The Murray-Darling Basin Authority will ensure its activities are undertaken in accordance with the RAMSAR Convention. It will endeavour to facilitate improved management of RAMSAR sites and 	Noted.

CH	PT	CL	NFF ISSUE	AUTHORITY RESPONSE	NFF COMMENT
			PBP is proposing to improve? Is this correct and if so why?	maintain their ecological character, through the implementation of the proposed Basin Plan.	
		5.05	<p>Management objective and outcomes in relation to long-term average sustainable diversion limits</p> <ul style="list-style-type: none"> (1)(b) How will the management objective provide greater certainty for all users? For consumptive water users, improved certainty will not be clearly provided. The total number/volume of water entitlements will merely be held by a difference user (the CEWH)- as such, certainty around entitlement or allocation should not materially change. (c) In proving time for communities to adjust to change- does this influence the actions of the CEWH and the acquisition of irrigator entitlement through either direct buyback or infrastructure investment? (2)(d) In what manner can Basin plan management occur which can ensure entitlement holder and communities are better adapted to a future with less water- where can the support in the document be found? Does this place a requirement on the Commonwealth to provide specific assistance? 	<p>maintain their ecological character, through the implementation of the proposed Basin Plan.</p> <ul style="list-style-type: none"> (1)(b) Greater certainty for all water users will also be provided by the comprehensive planning framework covering the whole of the Basin described in the response to your question about 5.02(2)(c). (1)(c) The Authority is proposing that SDLs in the Basin Plan should not be enforced until 2019. The 2019 commencement date will give communities time to adjust to the new arrangements; and for the Commonwealth to meet its commitment to bridge the gap through purchase of entitlements and investment in infrastructure at a steady and measured pace. While the Basin Plan itself does not specify the method and rate of water recovery, the Australian Government has committed to this approach. The purpose of the Basin Plan is to provide for the integrated management of basin water resources. Government policies and programs to support communities in the implementation of the Basin Plan and broader water reform initiatives in the Murray-Darling Basin sit outside the scope of the Basin Plan. The Department of SEWPac and Department of Regional Australia should be contacted for information on these policies and programs. There is discussion on the options for managing the transition in chapter 7 of the report <i>Socioeconomic analysis and the draft Basin Plan- Part A</i>. 	Noted – see earlier comments and the submission proper.
		5.05(2)(d)	<ul style="list-style-type: none"> Says ‘communities better adapted to reduced water availability’ will be a management outcome from water recovery measures. Is there a legal issue if the Government’s buyback approach makes it harder, rather than easier, for communities to adapt? For example, targeting high reliability entitlements disproportionately undermines the viability of high-value 	<ul style="list-style-type: none"> Your views on the Commonwealth water purchase program are noted. The MDBA will pass them on to SEWPAC for consideration. You may also wish to include your views in any formal submissions on the draft Basin Plan. 	Noted

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			irrigation industries and disproportionately reduces the total volume of water available for irrigation, trade and carryover in drought years with low allocations.		
		5.06	<p>Management objectives and outcomes in relation to the trading of tradeable water rights</p> <ul style="list-style-type: none"> There appears to be confusion about the role of MDBA in water trading and whether this conflicts with the roles of SEWPC, BOM and others. For example, why is the MDBA proposing to minimise the transaction cost of trades through good information, compatible registers, regulatory and other arrangements. Suggest that this is not the MDBA's function but BOM, SEWPC and State agencies. 	<ul style="list-style-type: none"> Transparent, publicly available information is an important contributor to achieving an efficient and effective market. The MDBA will be working with state and Commonwealth agencies on the collection, presentation and dissemination of information required under the water trading rules in order to minimise duplication and overlap between the different functions of government agencies. 	Noted
6	Water that can be taken				
	2	<i>Long-term average sustainable diversion limits</i>			
		6.04-6.05	<p>Set out the Sustainable Diversion Limits, as detailed in Schedule 2 of the draft Plan where water recovery is specified in gegalitres</p> <ul style="list-style-type: none"> Further, 6.05 (4)(b) expressly says the water must be 'held' water or water available under an access right converted into planned environmental water. Does this mean legally that the States must reduce diversions by the set volumes of water by 2019, regardless of whether environmental outcomes equivalent to all or some of the water being applied, can be achieved instead through other measures such as environmental works, improved river operations, or improved catchment management and invasive species control? Can this section be rewritten to allow flexibility in the water recovery volumes if the same environmental outcomes can be achieved in other ways? 	<p>SDLs do take effect from 1 July 2019. However, if environmental outcomes can be achieved through other measures such as environmental works, improved river operations, or any other matter, adjustment to the SDL can occur under clauses 6.06, 6.07 and an associated amendment to the Basin Plan.</p> <p>Given that this process can accommodate changes to SDLs as a result of any type of activity we believe that this provides flexibility while remaining within the requirements of the Act.</p>	These comments do not provide any surety that these other water recovery measures will be counted towards the SDL. The NFF has made specific comments about amendments to the statutory instrument that may aid clarification and ensure delivery of the policy outcomes espoused by both the Australian Government and the Authority.

CH	PT	CL	NFF ISSUE	AUTHORITY RESPONSE	NFF COMMENT
		6.05	<p>SDL resource unit shared reduction amount</p> <ul style="list-style-type: none"> Shared reduction purely listed as a volume which needs to be acquired, no management requirements or outcomes are articulated. Why have some catchments in the North been excluded from contribution to the Northern Basin zone shared reduction volume? What if there is the capacity for contribution/irrigator led proposal? 	<p>The environmental watering plan described in Chapter 7 includes overall environmental objectives for water dependent ecosystems and arrangements to coordinate environmental water use across the Basin, aiming to maximise the benefits/efficiency of environmental water. The Commonwealth Environmental Water Holder is responsible for managing the Australian Government's water holdings and must manage this water in line with the objectives and framework of the environmental watering plan.</p> <p>The Gwydir, Paroo, Warrego and Nebine SDL resource units have been excluded from contributions to the northern Basin shared reduction volume because of their low hydrologic connectivity. A future proposal that would result in a worthwhile contribution could be dealt with through clauses 6.06, 6.07 and an associated amendment to the Basin Plan.</p>	<p>The NFF reiterates that the response reflects water only outcomes not the best outcomes targeted to relieve the identified environmental issue. This may be water only, water in concert with other non-flow measures or non-flow measures alone.</p> <p>Comments noted.</p>
		6.05(4)	<ul style="list-style-type: none"> This would appear to codify that contributions to the shared volume occur only after the local catchment reduction is exceeded (or met). Does this assist or hinder us? This would appear to support that if there is an upfront lower starting point, that might justifiably be the local SDL reduction volume. 	<p>Yes. Contributions to the shared reduction volume can only occur after the local reduction amount is exceeded. However this only relates to the recovery of water. The environmental watering plan will coordinate the use of environmental water (including the water recovered to date) and establish priorities between local catchment and downstream environmental watering.</p>	<p>Noted</p>
		6.06	<p>Authority may express its view in relation to possible adjustments to SDL's</p> <ul style="list-style-type: none"> What legal standing does the Authority have to see its view regarding the reduction in the SDL's actually implemented. What is the purpose of the Authority expressing its views if the findings cannot be incorporated into the Basin Plan? 	<p>The legal standing of the Authority's views in relation to amending SDLs in the Basin Plan is established through the Authority's roles and responsibilities set out in the Act. The purpose of this clause is to ensure proposals to adjust SDLs are dealt with in an open and transparent way.</p>	<p>See the NFF submission.</p>
			<ul style="list-style-type: none"> Not codified enough, i.e. "the Authority may express its view" as against "the Authority must ...". Although this is rather bizarre wording. 	<p>The Authority's view is that the wording is appropriate.</p>	<p>See the NFF submission.</p>
		6.07	<p>Review of SDLs in 2015</p> <ul style="list-style-type: none"> Suggestion for the removal of 6.07 Reviews of SDLs in 2015. There will not be sufficient certainty provided to irrigators with a review of the Basin Plan 	<p>The 2015 Review of the SDL is considered a significant milestone in progressing toward the implementation of the SDL, particularly with respect to potential adjustment to the SDL resulting from activities consistent with 6.06.</p>	<p>See the NFF submission.</p>

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			coming in three short years after the legislation is intended to be cleared in parliament. An alternative is for an audit of environmental works and measures achieved to be carried out and an assessment of the accreditation of offsets.	Current wording of 6.07 provides the Authority sufficient flexibility to deal with projects that may present SDL offsets while ensuring the Authority's roles and responsibilities are performed consistent with the Act.	
			<ul style="list-style-type: none"> Can the 2015 MDBA review be more strongly codified to ensure that the review is undertaken and must lead to SDL adjustment under 6.06, e.g. at 6.07(3) perhaps the addition of (c) Should the Authority determine that the SDL are to be adjusted, the Authority must prepare an amendment to the Basin Plan by XXX? This cannot be left to the "note" where it states that the "Authority may prepare and amendment". 		See the NFF submission.
4	<i>Method for determining compliance with the long-term annual diversion limit</i>				
		6.09(6)	Register of take <ul style="list-style-type: none"> Reject the zeroing of the credits and debits balance from cap management. Will lead to perverse outcomes (States might increase take between now and 2019 to ensure this is zero in 2019). Has third party impacts. Will dis-benefit states that have used less water than allowed. Will also disadvantage farmers recovering from drought? Any MDB cap credits & debits must be rolled into the new register from 2019. 	<p>There is a fundamental difference between the Cap and SDLs. For example, the Cap was introduced to limit further growth in diversions whereas SDLs are required to be set at a level that is environmentally sustainable. Because of this difference the Authority's view is that it is not appropriate to roll over Cap balances when SDLs come into effect in 2019.</p> <p>Regarding the statement that zeroing of credits might lead to States increasing take to ensure Cap credits are zero in 2019, the Authority believes it is unlikely that States would be able to significantly increase take and reduce credits because of the constraints of their existing water plans and water management law.</p>	See the NFF submission.
		6.11(1)	Calculation of annual permitted take and annual actual take <ul style="list-style-type: none"> Will permitted take be climatically adjusted? 	The quantity of water permitted to be taken in an SDL resource unit must be determined consistently with the method used to determine the long-term annual diversion limit. The method is likely to include adjustment for climatic conditions for the majority of permitted surface water take.	Noted
		6.12(4)	Record the difference between annual actual take and annual permitted take <ul style="list-style-type: none"> Does this mean that under use from one year is added to the subsequent year's available water or permitted take? 	Compliance is determined by reconciling actual and permitted take within a given water accounting period to form a cumulative balance and then adjusting that balance to account for the buying and selling of environmental water. The adjusted balance is reconciled against the SDL for the resource unit. If there is a cumulative debit (adjusted to take into	Noted

CH	PT	CL	NFF ISSUE	AUTHORITY RESPONSE	NFF COMMENT
				<p>account any buying and selling of environmental water) equal to or greater than 20% of the SDL, and the Basin state does not have a reasonable excuse for this, the SDL resource unit is non-compliant.</p> <p>Under use as reflected by an accumulated credit in the above arrangements does not mean that this amount will be directly added to available water of permitted take in the following year. Available water and permitted take are determined by the accredited water resource plan. However accumulated credits can offset a year when actual take is higher than permitted take.</p>	
5		<i>Allocation of risks in relation to reductions in water availability</i>			
		6.14	<p>Risks arising from reductions in diversion limits</p> <ul style="list-style-type: none"> For the purposes of risk assignment, if the MDBA is working from a different set of numbers to those in interim or transitional water plans (i.e. BDL>SDL Vs water plan), what is the effect on entitlement holders? Free hit? 	The Basin Plan BDLs are based on existing state water plans. Therefore there are no hidden impacts on entitlement holders.	Noted. However, with no model runs released to provide clarity and transparency, this remains of concern.
		6.15	<p>Risks arising from other changes to the Basin Plan</p> <ul style="list-style-type: none"> while this clause indicates that nothing in the plan requires a change to the reliability of entitlement, what would occur if the reduction listed in the Basin Plan are not acquired before 2019- would there be implications on the State government (and in effect water users) as the developers of the water resource plans if the SDL reduction has not been met by 2019? 	The Commonwealth Government has undertaken to bridge the gap	See previous comments.
			<ul style="list-style-type: none"> The undertaking that the BP will not change reliability must be more strongly codified. 	The clause reflects the policy that the Basin Plan must identify changes to reliability referred to by Subdivision B of Division 4 of Part 2 of the Act. The legislative Instrument has been carefully drafted to ensure this outcome. The Authority's view is that the current wording is clear.	See the NFF submission.
			<ul style="list-style-type: none"> What happens if the states, in implementing the BP, affects reliability? How can this be measured, particularly if the MDBA is using different models to those which determined the existing water resource plans? 	If a state were to make a water resource plan which affected reliability of entitlements, in a way not required by the Basin Plan, that would be a matter for the particular state. Measurement of the change would presumably be done by comparing the status quo with results of a model with the new rules.	See the NFF submission.

CH	PT	CL	NFF ISSUE	AUTHORITY RESPONSE	NFF COMMENT
	S2		Matters relating to surface water SDL resources units <ul style="list-style-type: none"> <i>The limit is the BDL minus 18GL per year (local reduction amount) minus the SDL resource unit shared reduction amount.</i> When will a reduction target actually be met when the target is theoretically unknown (as the shared reduction amount has not been apportioned?) Suggest that “minus the SDL resource unit shared reduction amount” be removed from the schedule. This statement is too open-ended and unclear as the actual volumes of water which is required to be recovered. Should these listed reductions not be met by 2019 when the new SDL is introduced, what are the implications for the State government? Despite the clause stating that the reliability of entitlement will not alter, would this force Basin States to either acquire water directly/place restrictions on allocation/alter the reliability of the system? 	<p>The actual total volume which is required to be recovered is clear. It is a reduction of 2750 GL/yr from the baseline diversion limits. This includes two shared reduction amounts. Once each shared reduction amount has been recovered, it will be clear how the amount is distributed across SDL resource units.</p>	Noted
7			Environmental watering plan Draft Basin Plan Chapter 7 and Schedule 7 <ul style="list-style-type: none"> Schedule 7 sets out intermediate and longer term targets to measure progress towards the Plan’s environmental objectives. The intermediate target requires no further environmental loss or degradation up to 30 June 2019. The longer term target requires improvement in various indicators, such as connectivity, the Murray mouth opening regime and water-dependent plant, animal and bird species. The legal question is: are the targets legally binding and if so, what is the benchmark against which these targets will be measured? For example, is it the Basin’s 	<p>Targets are not mandatory (please see section 7.07). A baseline will be determined as part of guidelines to be developed for the BP Monitoring & Evaluation Program (Ch.12) and will take practical considerations into account (eg: data availability). MDBA will consult on development of Guidelines (which may identify baselines) before publish them.</p> <p>Section 7.08(c) requires that the Authority must have regard to climatic conditions when assessing the progress towards objectives in Part 2.</p>	Noted

CH	PT	CL	NFF ISSUE	AUTHORITY RESPONSE	NFF COMMENT
			<p>environmental condition as of the Plan’s approval in, say, late 2012? Is it the Basin environmental condition during the last 10 years of drought?</p> <ul style="list-style-type: none"> • If the plan sets legally binding targets, are the MDBA and the Government obliged legally to identify the benchmark against which compliance will be measured? • What is the legal position if the Basin returns to drought between 2012 and 2019, and environmental health unavoidably declines from its current excellent condition after 18 months of wet conditions? • If the objectives or targets set out in chapter 7 and Schedule 7 are not met, who is legally responsible for actions to meet the targets? • If meeting the targets requires more water to be recovered than the 2750GL mandated in Chapter 6, but the States and Commonwealth cannot change the SDLs accordingly, is there a legal liability for non-compliance with the environmental targets? 	<p>The objectives in Chapter 7 are for the water dependant ecosystems of the whole Basin and are general rather than specific. They guide environmental watering and are a basis for reviewing Environmental Watering Plan (EWP) every five years. They do not seek to create a compliance test for any specified party. Therefore MDBA will seek to work co-operatively with all parties to ensure that/their objectives are met.</p> <p>Section 7.07 (b) states that if a target is not achieved, this does not mean in itself that a person has acted inconsistently with EWP.</p> <p>The degree to which targets are achieved will be relevant consideration when the Environmental Watering Plan is reviewed (five yearly).</p>	
			<ul style="list-style-type: none"> • In ensuring that international agreements have been met, is there a liability transferred to the State government as a component of the development of their water resource plans? • Opening of the Murray Mouth (7.05 (3)(d)) must be at frequencies to ensure that there is sufficient tidal exchange to maintain the Coorong’s water quality. Will this be influenced by political calls for the mouth of the Murray to be open nine years out of 10? • A number of objectives with Chapter 7 are rather subjective, does this make the achievements against the Basin Plan 	<p>The Environmental Watering Plan does not specify that international agreements be met and therefore a liability will not be transferred onto state governments.</p> <p>The tidal exchange to maintain the Coorong’s water quality will be influenced by scientific knowledge and data.</p> <p>As the Basin Plan is a disallowable instrument, it can be disallowed by either house of the Commonwealth Parliament.s.</p> <p>If the term ‘challenge’ refers to legal challenge, NFF should obtain independent legal advice.</p>	Noted

CH	PT	CL	NFF ISSUE	AUTHORITY RESPONSE	NFF COMMENT
			objectives easier or more difficult to challenge?		
	2	Overall environmental objectives for water-dependent ecosystems			
		7.04(2)(c)	<p>Protection and restoration of water dependent ecosystems</p> <ul style="list-style-type: none"> What does “support episodically high ecological productivity and its ecological dispersal” mean? 	This refers to ecosystems which may be dormant for considerable periods but which, when wetted, have very large/huge productivity which is important in a wider context.	Noted
			<ul style="list-style-type: none"> What is the requirement regarding water quality, i.e. are the targets and or objectives aspirational or mandatory? Is the MDBA able to provide a comparison over recent years to whether these can be met if mandatory? How is the monitoring to be done, i.e. any given measurement might trigger action under the BP (e.g. CHWN Tier 3 provisions). Is it reasonable, given that there are many causes of water quality and salinity and not all is related to water volume, timing? 	<p>Please refer to answers on objectives and targets in Chapter 7 which are set out above.</p> <p>Monitoring methods will be determined as part of guidelines to be developed for the BP Monitoring & Evaluation Program (Ch.12), referred to above.</p>	Noted
		7.06(5)	<p>Ensuring water dependent ecosystems are resilient to risks and threats</p> <ul style="list-style-type: none"> How will the MDBA mitigate impacts from poor management of environmental water application? This must not be used to affect consumptive use, e.g. black water events to avoid degraded water quality. 	The principles and methods in Parts 5, 6 and 7 of Chapter 7 address this.	Noted
		7.06(6)	<ul style="list-style-type: none"> How will the MDBA minimise habitat fragmentation? Does this refer to aquatic, terrestrial or both? 	<p>Basin States and MDBA will work to produce Water Resource Plans (WRPs), Long Term Watering Plans (LTPs) and Basin annual priorities. This planning framework will work towards achieving all the objectives of the EWP, including minimising fragmentation of water-dependent habitat (i.e. aquatic habitat).</p> <p>Environmental water managers, including the MDBA, will help to minimise habitat fragmentation through the application of environmental water. All objectives in the EWP relate to water dependent ecosystems, consistent with the requirements of the Water Act. Please refer to Section 7.27 (b).</p>	Noted

CH	PT	CL	NFF ISSUE	AUTHORITY RESPONSE	NFF COMMENT
	3	Targets by which to measure progress towards objectives			
		7.07(1)	<p>Targets by which to measure progress</p> <ul style="list-style-type: none"> The reference to Schedule 7 appears before Schedule 5 in the chapter. Should the two be change around? See comments in S7 re targets. Do the objectives (7.03-7.06) trump the targets set out in S7? 	<p>Noted, thank you. We will advise the drafters.</p> <p>Please see answers above regarding objectives and targets.</p>	Noted
	4	Environmental management framework			
			<ul style="list-style-type: none"> What happens if the State water plans deliver the same outcomes using less water. Can the SDL be adjusted upwards? 	<p>There will be a review of the SDLs in 2015 that will allow for an evaluation of the current proposed SDL's. Any change to the SDL would require a change to the Legislative Instrument.</p>	Noted
		7.13	<p>Identification of e-water requirements</p> <ul style="list-style-type: none"> Says long term environmental watering plans must identify 'priority' environmental assets, and their watering requirements. A 'priority' asset is one that can be managed with environmental water (Part 5, 7.27 (b)). But the targets in Schedule 7 apply to both 'assets' and 'priority assets', so is this a legal requirement to meet the targets for assets, even if they are not covered by an environmental watering plan that identifies their watering needs? 	<p>Schedule 7 refers only to 'priority environmental assets'.</p> <p>Please refer to the answers above re Objectives and Targets.</p>	Noted
		7.25	<p>Authority must prepare Basin annual environmental watering priorities</p> <ul style="list-style-type: none"> What are the <i>Basin annual environmental watering priorities</i>? Authority modelling to develop the SDL should logically be used as a basis to inform these priorities. 	<p>Basin annual environmental watering priorities are priorities the Authority will publish, (please refer to Section 7.25) that set out, at a Basin Scale, the priorities for environmental watering on an annual (or more frequent basis, as required). These priorities will be informed by a range of information, including the work undertaken to identify the environmental sustainable level of take (ESLT).</p>	Noted
			<ul style="list-style-type: none"> There is no date by when the MDBA annual watering priorities are to be set. States are required by 31 May but this leaves little time for MDBA. Will require significant consultation? Is the MDBA likely to run into any timing issues? Is it NFF's problem? 	<p>Thank you. We will give this further consideration. We are currently working with States to fine tune issues relating to timing.</p>	Noted
	5	Methods for identifying environmental assets and ecosystem functions and their environmental water requirement			

CH	PT	CL	NFF ISSUE	AUTHORITY RESPONSE	NFF COMMENT
		7.26	<p>Environmental assets and ecosystem functions database</p> <ul style="list-style-type: none"> States the MDBA must establish and maintain a database identifying information about environmental assets and functions requiring watering. However, such a database will depend on the priority assets and functions identified in the Environmental Watering Plans yet to be prepared by the States. If the priority assets and functions have not yet been identified, then how will the MDBA measure compliance with the objectives and targets in Chapter 7 and Schedule 7? Does this mean that the Environmental Watering Plans will set the benchmarks against which progress will be measured? 	<p>Priority assets and functions are to be identified via State LTP that must be prepared by states and which must be provided to the Authority no later than 2 yrs after BP commencement (unless otherwise agreed). Reflecting this, reporting requirements for these matters under the BP Monitoring & Evaluation Program will commence in 2015 (Item 10 & 11, Schedule 10).</p>	Noted
		7.27-7.28	<p>Method for identifying e-asset/functions watering requirements</p> <ul style="list-style-type: none"> Along with Schedule 5 and 6 set out the criteria determining an environmental asset that requires watering. In turn, the State environmental watering plans will determine how much and how often the asset needs water to meet the targets in Schedule 7. But if we still don't have a database identifying firstly the assets (including the number, location and extent of each asset) and environmental watering plans secondly identifying the water each assets requires to meet the targets, then on what basis were the SDLs calculated? Is there a legal inconsistency in mandating a level of water recovery (2750GL), but then mandating environmental targets for as-yet unidentified assets with as-yet undefined water needs? 	<p>The SDL's have been calculated by determining the ESLT. The following documents describe how the ESLT was determined:</p> <ul style="list-style-type: none"> Proposed ESLT for surface water of the Murray-Darling Basin Method and Outcomes report link: http://download.mdba.gov.au/proposed/ESLT_MDBA_report.pdf 'Hydrological modelling' fact sheet link: http://download.mdba.gov.au/proposed/FS_HydMod.pdf 'Proposed ESLT for surface water of the Murray-Darling Basin' link: http://download.mdba.gov.au/proposed/FS_ESLT.pdf <p>The SDL review and EWP reviews will be opportunities to reassess the ESLT. However, any change to the SDL will require a change in the legislative instrument and this would also be a disallowable instrument (please see answer above also).</p> <p>The Authority is confident that the draft Basin Plan complies with the requirements of the Water Act and is internally consistent. The NFF should consider obtaining own independent legal advice regarding any questions of legal inconsistency.</p>	Noted

CH	PT	CL	NFF ISSUE	AUTHORITY RESPONSE	NFF COMMENT
			<ul style="list-style-type: none"> What if, having satisfied 7.27 and 7.28, it is found that the mandated 2750GL of extra mandated through the SDL is not enough to meet the mandated environmental targets for the priority assets? Does that mean legally that the 2750GL and SDLs must be revised to be consistent with the requirements identified in the watering plans under 7.27 and 7.28? The criteria in Schedule 5 is also so wide that every small wetland and every remnant vegetation patch will qualify as an asset in need of watering (indeed, possibly a 'priority' asset, as per point 10 above!). 	<p>Although the objectives relate to the water- dependent ecosystems of (the whole) Basin, it will not be possible to protect and restore all Basin's water-dependent ecosystems and it is recognised that not every site in the Basin can be actively watered. This is consistent with the Water Act.</p> <p>The Water Act requires a method for identifying assets that will require environmental watering. This implies that not every asset can be watered, even with a significant increase in environmental water.</p> <p>The term priority asset was included on the basis that not all sites that are identified by applying the criteria in schedule 5 and 6 could or should be watered. Deciding which asset is to be considered a priority is a matter for each Basin state in preparing LTPs (in partnership with other environmental water holders) when applying the method. It will also be considered by the MDBA when determining the Basin annual environmental watering priorities.</p>	
		7.27(b)	<ul style="list-style-type: none"> How many assets are likely to be not an identified "priority asset" and therefore, unlikely to receive water? Which ones are likely to be priority? Are they identified already? Or does the list change annually? 	This will be determined through the process of states developing LTPs. LTPs can be amended if new information becomes available but are distinct from an annual process.	Noted
		7.28(b)	<ul style="list-style-type: none"> Ditto for ecosystem functions? 	Please see immediately above.	Noted
			<ul style="list-style-type: none"> What happened to the productive base – is this only a groundwater issue? 	Productive Base is relevant to both surface water and ground water. Meeting the ecosystem functions objectives will provide for the productive base. Appendix A page 192 of the ESLT report explains about the consideration of productive base and key environmental outcomes. This can be found at the following link. http://download.mdba.gov.au/proposed/ESLT_MDBA_report.pdf	Noted
		7.29	<p>Determination of the e-watering requirements of environmental assets and ecosystem functions</p> <ul style="list-style-type: none"> In determining the water requirements of assets & functions, there is no reference to the SDL. Good or bad? Need for feedback loop to adjust SDLs, particularly if outcomes can be delivered using less water. 	The ESLT work that underpins the SDL will be part of the database referred to in Part 5 and thus a feedback loop is created. However, we note that this could be made clearer and will instruct legal drafters accordingly.	Noted

CH	PT	CL	NFF ISSUE	AUTHORITY RESPONSE	NFF COMMENT
	6	<i>Principles and methods to determine the priorities for applying environmental water</i>			
			<ul style="list-style-type: none"> To whom do these principles apply? (also relevant to Part (7) – MDBA, States, CEWH, SEWPC, any holders of environmental water? 	All parties identified by Sections 34 and 35 of the Water Act. These are: the Authority and other agencies of the Commonwealth (s34) and the Basin Officials Committee, an agency of a Basin State, an operating authority, an infrastructure operator or the holder of a water access right (s35).	Noted
		7.33(b)(ii)	<p>Principle 3 – Flexibility and responsiveness</p> <ul style="list-style-type: none"> Is it good enough that the MDBA only “has regard to...persons materially affected by the management of environmental water”? 	Yes, the MDBA should take into consideration the views of persons materially affected by the management of environmental water. The MDBA is also of the view that it should be responsible for determining basin annual watering priorities consistent with its functions under the Water Act.	See the NFF submission.
		7.35(b)	<p>Principle 5- Likely effectiveness and related matters</p> <ul style="list-style-type: none"> What are the limitations on the effectiveness and cost effectiveness of the application of environmental water? 	In Section 7.35 the word ‘limitations’ applies only to the effectiveness of environmental watering and refers to the likely improvement that environmental water will induce, noting that often environmental water will not be sufficient by itself to achieve a desired outcome.	Noted
		7.35(c)	<p>Principle 5- Likely effectiveness and related matters</p> <ul style="list-style-type: none"> A number of concerns arise from the inclusion of this clause suggesting that an environmental water plan should take advantage of non-environmental water flows and releases from storage for consumptive use. Should this be allowed to occur, what will be the implications for consumptive water users. Does this principle place a requirement on which users will take precedence for the use of these flows? How does a resource availability scenario have an impact on the determination of watering priorities when the environmental watering plan? (Noting that an environmental watering plan can be consistently reviewed) How long a duration is expected to be achieved from an environmental watering plan- ie despite reviews which may occur, how long is the 	<p>This principle is consistent with existing practices, for example, the Victorian Northern River Sustainable Water Use Strategy identifies the use of consumptive water en route as an innovative way to achieve environmental benefits. Similarly, combining consumptive and environmental water can achieve additional benefits.</p> <p>The principle does not create any precedent.</p> <p>Resource availability is an assessment of how much environmental water is likely to be available, relative to antecedent conditions.</p> <p>Section 7.11 sets out how often LTPs must be updated. The Environmental Watering Plan must be reviewed every 5 years.</p>	Noted

CH	PT	CL	NFF ISSUE	AUTHORITY RESPONSE	NFF COMMENT
			watering plan anticipated to be used for initially?		
		7.36(a)	<p>Principle 6 – Risks and related matters</p> <ul style="list-style-type: none"> • MDBA again only having regarding to...flooding private land, delivery impediments etc and measures to minimise the risk. 	The risk of flooding private land must be taken into consideration by the MDBA when implementing the environmental watering plan. Please refer also to Note 1 in 7.03 which states, <i>the fact that water storages and properties (including floodplains) are under the control of various persons will restrict the capacity to actively manage all water-dependent ecosystems.</i>	See the NFF submission. NFF notes that the “notes” are not part of the legal instrument but inform interpretation.
		7.36(c)	<ul style="list-style-type: none"> • Is the concern about water in the river for environment being extracted perceived or real. Entitlements have conditions and are capped on how much water can be taken and sometimes when (flow rates etc). So why is this a concern. If it’s about theft, then what are the management mechanisms to prevent theft? Where is the COAG framework on this? 	The capacity to deliver environmental water to a particular priority environmental asset or priority ecosystem function may be limited by existing legislative or administrative arrangements.	Noted. The same applies to all entitlement holders and may not be just applicable to the environment.
	7	<i>Principles to be applied in environmental watering</i>			
		7.44	<ul style="list-style-type: none"> • Principle 3- Maximising environmental benefits • Focus once again on enhancing existing flow events and coordinating environmental watering with flows regulated for consumptive use. Obvious difficulties exist in this coordination where water orders are only placed by irrigators in the days before delivery is required. • Who is responsible for conveyance water, who is able to take their entitlement first? • What happens if there are losses suffered throughout the water delivery? • What responsibilities do this place on the resource manager to ensure delivery of all entitlements? 	We agree that there will be limitations in co-ordinating flows and these vary across the Basin. However, efficiencies are possible, particularly in the management of bulk flows. That is why this is a principle, rather than a mandated outcome. As a principle it does not override existing water management rules. (Please see also the reference to the rules review, below)	Noted
		7.44(b)(ii) and (c)	<ul style="list-style-type: none"> • How will the MDBA account for the additional losses incurred in delivering water off river? Will this be borne by consumptive use or from e-water entitlements? In the Murray, the provisions for conveyance water would appear not to 	Environmental watering entitlements will be treated the same as all other water entitlements.	Noted.

CH	PT	CL	NFF ISSUE	AUTHORITY RESPONSE	NFF COMMENT
			include additional volumes for environmental water delivery? How is this to be accounted for?		
		7.45	<p>Principle 4 – risks</p> <ul style="list-style-type: none"> In assessing the risks of delivery of environmental water, what is the impact of the extraction of environmental water for other uses. There is a need to protect existing arrangements where environmental water is re-used for consumptive use, particularly if this does not have the effect of offsetting the SDL requirement. The one example is Barmah Millewa forest outflows. 	<p>The risks will depend on the scenario and conditions. The impacts will need to be assessed according to the principles set down in Chapter 7.</p> <p>We anticipate this would be considered in the ‘rules review’ agreed to by State and Commonwealth Ministers.</p>	Noted. Any changes to rules must not result in third party impacts, including to entitlement reliability.
		7.45(b)	<ul style="list-style-type: none"> What is mean by the “inadequate accounting of water flows”? Is this an issue? 	Accounting has evolved to service the needs of consumptive users. Accordingly it does not always apply effectively to environmental watering. This also relates to the previous question and response.	The use of water by the environment remains another “consumptive use”. There may be some challenges, however, any changes must comply with the principle to avoid third party impacts.
		7.51	<p>Principle 10- Other management and operational practices</p> <ul style="list-style-type: none"> What requirements does this clause place on the state/MDBA- does it place a legal requirement for a review to occur? 	No, this is a principle only. Any change would need to be undertaken as part of water resource planning or the rules review.	Noted. See above comments.
			<ul style="list-style-type: none"> Does this refer to the review of river operations? Or is this something additional? If this is part of the 2015 review then this should be removed from the Basin Plan provisions. 	See above	See above comments.
	8	<i>Planning for the recovery of additional environmental water</i>			
		7.53	<p>Planning for the recovery of additional environmental water</p> <ul style="list-style-type: none"> Is this merely referring to the total volume of water which has already been flagged for recovery to meet the SDL, or is this in fact additional water. What is the legal interpretation of the clause? 	<p>Recovery of environmental water means the acquisition of a water access right for the purpose of achieving an environmental outcome.</p> <p>The term relates to one of the purposes of the Environmental Watering Plan set out in Section 28 of the Water Act.</p> <p>The clause relates principally to ensuring that held environmental water is held in the most appropriate form, security and location. Any change to the SDL would require a change to the Legislative Instrument.</p>	Noted

CH	PT	CL	NFF ISSUE	AUTHORITY RESPONSE	NFF COMMENT
			<p>Planning for the recovery of additional environmental water</p> <ul style="list-style-type: none"> • This provides for additional environmental water recovery with recommendations to include priority areas, types of water and reasons (including modelling). • Could this be used to justify and increase to the SDL (i.e. further reductions) especially if the long term trends on environmental health remains in decline? • Could this be used by environmental NGOs to justify acquiring further water for the environment if consistent with s.7.53? Should this be rejected if consistent with market principles, i.e. willing sellers? 	<p>No. Any change to the SDL would require a change to the Legislative Instrument.</p> <p>Given the purpose this appears unlikely. The actions NGO's might take in the water market are unrelated.</p>	Noted
	S7	Targets to measure progress towards objectives			
			<ul style="list-style-type: none"> • The immediate targets up to 2019- what is the baseline year from which there will be “no loss of or degradation in”? • Similarly for the longer term targets from 2019 – assumption that these longer term targets are from 2019 and the introduction of the reduced SDL as a baseline? • 7.07 indicates that the targets have been developed to measure progress towards achieving the objectives of chapter 7, however if they are not met it doesn't mean that a person has acted inconsistently with the environmental watering plan. Does this essentially make these targets aspirational? 	<p>The Baseline will be determined as part of guidelines to be developed for the BP Monitoring & Evaluation Program (Ch.12) and will need to take practical considerations into account (eg: data availability). See previous answers on targets and baseline.</p>	Noted
			<ul style="list-style-type: none"> • The intermediate targets (to 2019) require no change to current. However, although currently the environment is responding to recent flood events, do we know enough about the lag legacy effects of past management to ensure there will be no change. Suggest not. • It is the wrong paradigm to talk about system recovery or deterioration over any 	<p>In part these targets do take into consideration the lag effect, phase in of the SDL, etc. Notwithstanding this, we think this is an appropriate target.</p> <p>The Commonwealth Government has committed to bridging the gap via</p>	Noted

CH	PT	CL	NFF ISSUE	AUTHORITY RESPONSE	NFF COMMENT
			<p>5-10 years. Should be more about the long term risk profile (given resilience to drought/flood). The recent improvement may be regardless of the longer term trend.</p> <ul style="list-style-type: none"> • The concern for NFF is, if conditions deteriorate (e.g. because its dry or drier or drought) what will the MDBA do before 2019 to increase flows, i.e. will they intervene or do they have the capacity to intervene? • Will there be adjustment to the SDL? • The schedule 7 targets are largely driven by the lowest common denominator. Is this relevant? 	<p>buyback and efficiencies and SDL's will have effect from 2019. Any change to the SDL would require a change to the legislative instrument (please see also answers above referring to Parliament's role in such changes.)</p> <p>We are not sure what is being asked here in relation to the lowest common denominator.</p>	
8	Water quality and salinity management plan		<p>Does the draft Basin Plan go beyond what is required by the Water Act 2007 by setting new standards for water quality and salinity across the Basin?</p> <p>The Water Act 2007 Part 2, Division 1, Section 25 requires a water quality and salinity management plan, including objectives and targets.</p> <p>The Basin's current salinity target is set out in the Basin Salinity Management Strategy 2001-2015. The target is to keep salinity at Morgan in South Australia at less than 800EC for 95% of the time over 15 years.</p> <p>The draft Basin Plan is consistent with this strategy in setting a target of 500mg/L salt at Morgan 95% of the time (Chapter 8, Part 4, Division 6, 8.18). All Basin States have agreed that meeting this target is cost-effective, achievable and practical.</p> <p>The draft Plan, however, goes much further by effectively setting new and additional standards to apply across the Basin for raw water for human consumption, irrigation water and recreational water. It also introduces three new salinity monitoring points with targets,</p>	<p>Section 25 of the Water Act requires that water quality and salinity targets be set. Section 25 also requires the Authority and the Minister to have regard for the National Water Quality Management Strategy (NWQMS) when setting water quality and salinity objectives and targets, and the Authority has done so. The Authority has also recognised the salinity targets adopted under Schedule B to the Murray-Darling Basin Agreement.</p> <p>The NWQMS provides guidance on procedures for determining water quality target values, on the environmental values (beneficial uses) of water, and through a set of factsheets provides guideline values for a very wide range of water quality characteristics.</p> <p>The Basin Plan establishes certain obligations regarding water quality and salinity targets.</p> <p>Firstly, operational decisions must have regard for certain target values (salinity operating targets, dissolved oxygen and the targets for recreational water quality). These targets will assist river operators and decision makers when planning water management within year or season, and for implementing actions to meet the target values, and by users to test the suitability of water for a specific use. However, failure to meet a target does not mean a person has acted inconsistently with the Basin</p>	See the NFF submission.

CH	PT	CL	NFF ISSUE	AUTHORITY RESPONSE	NFF COMMENT
			<p>downstream from Morgan.</p> <p>The Basin Plan’s raw water for human consumption target (Division 3, 8.13) is set at 500mg/L total dissolved solids (salinity), to achieve a ‘palatability’ (taste) rating of ‘good’. This compares with the Australian Drinking Water Standard 2011, which allows up to 600mg/L.</p> <p>Similarly, the draft Basin Plan is more stringent in requiring its target to apply to raw water, whereas the drinking water standard applies to <i>treated</i> water.</p> <p>The irrigation water quality target in the draft Plan for the northern Basin is set at 670mg/L; which is inconsistent with the raw water for human consumption target above. The irrigation quality target for the southern Basin is set at the same as for raw water human consumption.</p> <p>The problem is that some naturally salty catchments, such as the Loddon, will never be able to comply with Basin Plan’s standards. Similarly, the Basin Plan sets standards for three new monitoring points below Morgan without agreement with the States on whether the standards at these locations are practical, cost-effective and achievable.</p> <p>The Basin Plan’s salinity and water quality targets, along with the Sustainable Diversion Limits, are the only easily measurable, hard and fast targets in the Basin Plan – legally, could they become the proxy benchmarks against which progress towards environmental targets (schedule 7, see below) is measured?</p> <p>What is the legal remedy if these new and more stringent targets are not met? Whose water would be called on, if dilution is considered the appropriate remedy? Would it be from the environmental reserve or from the consumptive pool?</p> <p>And finally, is setting new standards of this</p>	<p>Plan, and the targets place no legal obligations for provision of dilution flow. With respect to salinity, modelling of post Basin Plan scenarios indicates the proposed salinity operating targets on the Murray will be achieved, while the target value on the Darling can be achieved in 90% of years rather than the proposed 95% of years. This value will be further reviewed. The additional salinity target location proposed at Murray Bridge is in line with recommendations from the Authority’s independent Salinity Auditor.</p> <p>Secondly, section 22(3)(f) of the Water Act establishes that water resource plans prepared by the states must include requirements in relation to water quality and salinity objectives. The Basin Plan implements this requirement through water quality management plans, as a component of the water resource plans. States in developing their Water Resource Plans may utilise locally derived water quality targets, and may use existing instruments and programs to meet this requirement.</p> <p>The Authority has met the requirements of the Water Act and has proposed standards that are either already recognised by the states through the NWQMS (and its underlying strategies), or in the case of salinity, are achievable (noting the lower Darling discussion above), and has not set new standards.</p> <p>The Australian Drinking Water Guideline value for a palatability rating of ‘good’ was revised by the National Health and Medical Research Council from 500mg/L to 600mg/L after the draft Basin Plan was finalised and this point of difference is noted.</p> <p>Irrigation salinity targets were set independently of drinking water considerations and were developed in consultation with the States, and in consideration of the crop types and soil conditions. The targets apply at irrigation district water supply offtake points. Catchments with elevated salinity are not utilised for irrigation district water supply.</p>	

CH	PT	CL	NFF ISSUE	AUTHORITY RESPONSE	NFF COMMENT
			nature across the entire Basin, without first determining if they are cost-effective, achievable and practical, legally inconsistent with the Water Act's requirement for integrated and cost-effective management of Basin Resources?		
			<ul style="list-style-type: none"> Water quality objectives need to be consistent for all uses, as essentially we are taking about the same product of water. 	NWQMS recognises a range of environmental values (beneficial uses) for water, with differing water quality targets. A common objective of 'fit for use' applies.	See the NFF submission.
	2	<i>Key causes of water quality degradation in the MDB</i>			
		8.01	Simplified outline <ul style="list-style-type: none"> Note states that the WQSMP must "have regard to" National Water Quality Management Strategy. What is the NFF position on this document, is it relevant, what was its intended purpose, is there a need to review it, what input did agriculture have in its formation? 		See the NFF submission.
	3	<i>Water quality objectives</i>			
			<ul style="list-style-type: none"> Are the targets a snapshot in time or are the targets measured in trends/over what periods? 	Targets may be the prevailing water quality (for example, dissolved oxygen) or an annual average (nutrients) or modelled over a particular climatic sequence (Schedule B salinity targets).	See the NFF submission.
		8.05(c)	Objectives for raw water treatment for human consumption <ul style="list-style-type: none"> Places greater weight on the quality of water than merely palatability. What parameters does this clause actually place on the quality of water for consumption? 	Drinking water may have both aesthetic related quality targets (such as salinity, taste, and colour) or health related (such as pesticide level, or toxin). Raw water quality targets apply to the water quality management plans that the states prepare. These plans would include actions to mitigate the risk of drinking water targets being exceeded should this be a specific risk in the relevant catchment.	See the NFF submission.
		8.06	Objectives for irrigation water <ul style="list-style-type: none"> "Does not result in crop loss or degradation" is extremely subjective with different crops and soil types having differing tolerances. 	The targets apply in a 'best management practice' context. With increasing salinity, increased care is required in selecting crop and management alternatives if full yield potential is to be achieved. At higher salinity levels, there are likely to be soil and cropping problems or decreased yields.	See the NFF submission.
	4	<i>Water quality targets</i>			
		8.11	Certain target values to inform operational decisions <ul style="list-style-type: none"> Basin Officials Committee must have regard to the targets in the Agreement relating to the management of water flows. What takes precedence, the Agreement or 	Clause 48 of the Agreement – water quality objectives formulated under the Agreement cease to have effect after the Basin Plan first takes effect.	See the NFF submission.

CH	PT	CL	NFF ISSUE	AUTHORITY RESPONSE	NFF COMMENT
			the Basin Plan?		
9	Water resource plan requirements				
			<ul style="list-style-type: none"> The use of the “annual” versus the “average” is very confusing. Even after reading the Water Act 2007, while it does provide for “annual”, not really sure I understand it. Is it relevant to use “annual” if there is no temporary diversion provisions? Creates unnecessary confusion. 	<p>Section 22(1) of the Water Act specifies the matters that must be included in the Basin Plan. Items 6 and 7 are relevant to this comment. Put another way it refers to the average water use on an annual basis (ie it is GL/y not GL/d or total GL)</p> <p>It is necessary to provide for ‘annual’ to ensure that it include the temporary diversion provision, even though the latter is zero.</p>	Noted
2	Identification of water resource plan area and other matters				
		9.09(1)	Change in reliability <ul style="list-style-type: none"> Change in reliability must be strengthened to guarantee that there will be no change, i.e. codify much more strongly. Moreover, state implementation via water plans must guarantee no change to reliability. 	The Basin Plan is not requiring a change in reliability, but is not intended to prevent States making changes through their own water planning and management arrangements that may impact reliability.	See the NFF submission.
		9.09(2)	<ul style="list-style-type: none"> How can this be implemented in practice? 	This provision will be implemented by careful development and assessment of water resource plans.	Noted
3	Incorporation, and application, of the long-term annual diversion limit				
		9.11(1)	Identification of planned e-water and register of held environmental water <ul style="list-style-type: none"> On what basis is the planned environmental water estimated, e.g. long term average, long term annual (are these any different)? The register must identify all long-term average/annual volumes of planned water. 	This clause is flexible and is to be implemented according to the best available information – as such the planned environmental water may be identified by title and characteristic where it is not possible to estimate the volume. It is recognised that in some cases it will be very difficult to estimate the volume of planned environmental water.	Noted
		9.11(2)	<ul style="list-style-type: none"> The register must include all planned and entitled environmental water and their long-term average/annual volumes. 	It is currently proposed that only held environmental water must be included in the register. The suggestion of expanding this to include planned environmental water is noted.	Noted. NFF highly recommends that planned water is included, and that all environmental water can be “converted” to a common volume, i.e. LTCE.
		9.12-9.19	Take for consumptive use <ul style="list-style-type: none"> Take for consumptive use. Section needs to be re-written. If referring to TDP, then state this. If referring to SDL, state that rather than the “annual” etc. 	<p>The reference to ‘annual’ is these provisions include both the SDL and the temporary diversion provision (SEE s 22(1) items 6 & 7)</p> <p>The MDBA is considering possible editing of these provisions to clarify understanding without changing the intention. In addition, it is intended that guidelines will be prepared to explain these and other provisions.</p>	Noted
		9.13(3)	Maximum long-term annual average quantity of water that can be taken <ul style="list-style-type: none"> How can the plan demonstrate that take 	The plan will be required to demonstrate this using an objective method, most likely to be a model which includes assumptions of year to year behaviour of water users.	Noted

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			will not exceed the SDL. Will this place restriction on the volume of water, which can be allocated to consumptive use if inflows are excessive?	For surface water, this is required to model the historic period, 1895 to 2009 (see definitions section of the draft Basin Plan).	
			<ul style="list-style-type: none"> Over what timeframe? For example, XX% over the time. 	Clause 9.13 is not intended to remove flexibility to manage overs and unders.	
		9.13	<p>Maximum long term annual average quantity of water that can be taken</p> <ul style="list-style-type: none"> Why is there a “maximum” long-term annual average quantity of water if managing SDL compliance through a system of credits and debits. Does this remove flexibility to manage overs and unders, and ultimately lead to less overall long-term use? 	Clause 9.16 relates to annual allocations (ie where actual access to water is established for any given year).	
		9.16	<p>Annual allocations must be determined</p> <ul style="list-style-type: none"> As water allocations must be determined consistently with the estimated volumes in 9.13, it seems like there is a clear restriction on the capacity for the upper limit of allocation. 	Clause 9.13 provides for the annual expression of the long-term average limit (SDL) using an objective method (such as modelling). Clause 9.16 specifies that the annual allocation must be made using a consistent method (ie they have to be related but not necessarily the same) such that the SDL is not exceeded. The intention to ensure that the resource is managed within the SDL. In many cases by 2019 this will be a lower limit than currently exists but this is not intended to reduce State’s flexibility to manage annual allocations taking account of water user behaviour and other factors.	Noted
		9.16(2)	<p>Annual allocations must be determined</p> <ul style="list-style-type: none"> Does this provision reduce the states flexibility to priorities water according to its priorities (e.g. water to alleviate frost in citrus in winter Vs. e-flows Vs. town water supply Vs. reserves)? 	This provision is not intended to change the present system for determining allocations.	Noted
		9.19(5)	<p>Effects and potential effects on water resources</p> <ul style="list-style-type: none"> Could this be used to bind coal seam gas operations in the MDB regardless of Water Act not covering the GAB? 	Only in so far as water use by those activities have impact on Basin water resources.	Noted
		9.20(2)(a)	<p>Determination of actual take</p> <ul style="list-style-type: none"> Held environmental water sold into the consumptive use will affect entitlement holders who do not participate as their allocations will be held be to comply with 	This clause needs to be read in conjunction with Clause 9.17(2), which aims to ensure that the disposal and acquisition of held environmental water is accounted for in a way that does not alter the determinations made in accordance with 9.14 and 9.15 (ie the quantity of water allocated for consumptive use). Rules made under 9.17 will need to be consistent	Noted

CH	PT	CL	NFF ISSUE	AUTHORITY RESPONSE	NFF COMMENT
			the Basin Plan, i.e. reliability reduced overall. This is an individual gain but third party impacts. Can irrigators' claim compensation for the change to reliability that may arise?	with 9.20. 6.13(1)(a) is also relevant.	
	4	<i>Sustainable use and management</i>			
		9.22	Priority assets & functions – surface water <ul style="list-style-type: none"> • Could these provisions re surface water be used perversely, e.g. to allocate all winter/spring flows to environmental assets & functions at the expense of consumptive use? 	These provisions recognise that sustainable use and management of water resources depends on a range of factors – not just the total volume diverted. The intention is to ensure that appropriate consideration is given to the range factors and is related to the assessment of risks undertaken in accordance with Part 9 of Chapter 9. In addition, it is not intended that the Basin Plan requires a change in reliability.	Noted
		9.23	<ul style="list-style-type: none"> • Could these provisions re groundwater water be used perversely, e.g. to allocate all winter/spring flows to environmental assets & functions at the expense of consumptive use? 	As above.	Noted
		9.24	Groundwater and surface water connection <ul style="list-style-type: none"> • Could these provisions re surface water groundwater connectivity be used perversely, e.g. to allocate all winter/spring flows to environmental assets & functions at the expense of consumptive use? 	As above.	Noted
		9.25(1)(a) - (b)	Productive base of groundwater <ul style="list-style-type: none"> • Would drilling and re-boring agricultural bores come under these arrangements? If so, this would create some issues. Sounds like someone thinks the Windsor/Waters EPBC bills were a good idea! 	The intention of these provisions is that any activity that poses a risk to the matters listed should be considered and if the risk is sufficient, the water resource plan may need to include rules relating to ensure adequate construction standards and appropriate local management rules. The rules applied in any particular water resource plan would be commensurate with the risks to the particular resources being managed. It is not clear what issues arise from these provisions that are of concern.	Noted
		9.25(2)	<ul style="list-style-type: none"> • Same comment as for 9.22-9.24 	See response for 9.22-9.24	Noted
		9.26(1)	Environmental outcomes for groundwater <ul style="list-style-type: none"> • Focussed on unacceptable levels of salinity and contaminants. How can this be managed when many groundwater systems are saline to varying degrees. 	The intention of these provisions is to provide for rules to be included, if necessary in the particular circumstances, to avoid an unacceptable increase in the level of salinity or contaminants.	Noted
		9.26(2)	<ul style="list-style-type: none"> • Same issues as 9.22 but additional requirements. This is a major issue for agriculture, where sometimes saline water is shandied with fresh surface water to 	The concern expressed is unclear and the provision is not intended to stop the practices mentioned, rather it is intended to avoid an unacceptable increase in the level of salinity or contaminants.	Noted.

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			irrigate, or if farmers use the saline groundwater sparingly, e.g. as a drought reserve.		
	5	<i>Interception activities</i>			
		9.28(1)	<p>Listing classes of interception activity</p> <ul style="list-style-type: none"> The definition of significant impact is a wider issue than MDBP. However, MDBP proposes activity or cumulatively. Can mitigating factors be considered, e.g. policy trade off between water impact and salinity benefit? Might this be included as an item under 9.28(4)? 	It is anticipated that actions put in place to mitigate the impact or projected growth of the class of activity can be considered when determining whether a particular class of activity will have a significant impact. However, it is important to note that the requirements are to list and monitor the identified activities. Mitigating actions of the kind mentioned here may be put in place to manage an unanticipated increase in activity or impact.	Noted
	6	<i>Planning for environmental watering</i>			
		9.33	<p>No net reduction in the protection of planned environmental water</p> <ul style="list-style-type: none"> Protection of existing planned e-water. This is quite vague. Planned water will be affected, e.g. by climate change but other entitlement holders should not be affected by this. How will planned water be adjusted? Is this only to do with the rules itself rather than the average yield? Neither does the clause provide for how this might be remediated? Possibly a good thing. 	The intention of the clause is to ensure that there is no overall reduction in the level of protection currently provided under State existing state laws. The provision is broadly written to allow for the range of circumstances across of the Basin whereby planned environmental water is currently protected and managed. Reflects s21(5) of the Act.	Noted
	7	<i>Water quality objectives</i>			
		9.36(3)	<p>WQM Plan to identify water quality target values</p> <ul style="list-style-type: none"> Despite objectives in Ch8 and targets in Sch 7, if the water quality actual value is less than the target value – how can this be assessed if the actual value is about averages? Last reading, last year average, historical average? Should this be left as flexibility for the States to manage? 	The clause includes reference to objectively determined value of the water quality characteristic. This is intended to provide a flexible approach to accommodate a range of assessment approaches.	Noted. See earlier comments in relation to Chapter 8
		9.37(3)	<p>WQM Plan to identify measures</p> <ul style="list-style-type: none"> WQMP measures to achieve water quality objectives may include land management. But how can this be regulated? 	The intention of the provision is to provide states a degree of flexibility in relation to the range of measures that may be put in place to work towards the achievement of the water quality targets. The targets are not mandatory and this is not a regulatory provision. At the time of accreditation and throughout the life of the plan the effectiveness of the	Noted. See earlier comments in relation to Chapter 8

CH	PT	CL	NFF ISSUE	AUTHORITY RESPONSE	NFF COMMENT
				measures will be assessed and monitored with the intention of providing an adaptive management approach that leads to continuous improvement and achievement of the target.	
		9.39	<p>Impact of WQM Plan on another Basin State</p> <ul style="list-style-type: none"> WQMP must have regard to the ability for other States to meet their water quality targets. This will be a significant issue in SA for upper states? Might be able to better understand the implications if some modelling was available comparing historical actual values to the proposed objectives and targets. 	<p>The main water quality impact that is expected to be relevant for this provision is salinity.</p> <p>The salinity targets that apply to 9.39 are modelled values already agreed under the Basin Salinity Management Strategy and are the values of Appendix A Schedule B of the Murray-Darling Basin Agreement. States already undertake a range of actions to meet these targets. To meet the provisions of chapter 9, it is anticipated that states would be likely to reflect the same actions into the water resource plan.</p> <p>Other water quality characteristics like nutrients or cyanobacteria cell counts being non-conservative don't lend themselves to a modelling approach.</p>	Noted. See earlier comments in relation to Chapter 8
10	Critical human water needs				
			<ul style="list-style-type: none"> There is a need to clarify that this Chapter only relates to the Murray River (not even its Tributaries). 	<ul style="list-style-type: none"> 10.03 states that critical human water needs refer to communities dependent on the River Murray System. In extreme circumstances, tributary water may be required to help meet critical human water needs. 	Noted
			<ul style="list-style-type: none"> The Chapter is confusing. The use of CHWN terminology for the normal conveyance water provisions in the Agreement creates confusion. NFF suggests using CHWN terminology only with reference to the Tiers 1-3 provisions. Even here, the CHWN conveyance requirement should be around 1240 GL (700 GL upstream of the SA border and 490 GL for SA). 	<ul style="list-style-type: none"> The term 'conveyance water', is often used to describe the extra water needed to delivery water to its point of use. However, in the Water Act it is specifically related to the delivery of water for critical human water needs. Clause 110 of the MDB Agreement deals with losses, and has some links to conveyance water. 	Noted
2	Water required to meet CHWN				
		10.02	<p>Meaning of water account year</p> <ul style="list-style-type: none"> Why is there a need to have a separate accounting year for CHN (i.e. 1 June to 31 May)? 	<ul style="list-style-type: none"> The MDBA has a long standing practice of a 31 May to 1 June water year for its water assessments for the states. The MDBA water year must start before the state water years, so our water resource assessments can be consider in their allocation policies. 	Noted
		10.03	<p>Amount of water required to meet CHWN</p> <ul style="list-style-type: none"> It should be clear that these volumes are the responsibility of the states to set aside as reserves and manage, i.e. not a shared 	<ul style="list-style-type: none"> While critical human water needs are a state responsibility, shared action may be required in extreme circumstances. The MDB Agreement requires that one of the three water sharing 	Noted

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			<p>responsibility.</p> <ul style="list-style-type: none"> Also this appears to be a permanent feature when it is supposed to be related to the Tiers 1-3 triggers? 	<p>arrangements is always in place. Critical human water needs must be set aside under all water sharing tiers, and as such is a permanent feature.</p>		
		10.05	<p>Water quality and salinity trigger points</p> <ul style="list-style-type: none"> There is a need to first ascertain the cause of the WQ trigger issue and source not just deciding to just add water. Then need to determine the right solution, e.g. dryland salinity issues cannot be resolve by triggering water quality additional flows. Should the trigger be at any given location and time or be triggered on so many days above a certain level (perhaps use of rice chemical protocols and management actions, i.e. below XX do y and below XXX do z. 	<ul style="list-style-type: none"> The trigger points in the draft Basin Plan are designed to come into effect when local and state based responses are no longer effective or when a system wide response is needed. Dilution is one possible action but will only be used when it is the best available option. The triggers have been designed to give the states flexibility, so they can determine if escalation is needed based on such things as the extent, or forecast duration of the problem 	Noted	
	3	<i>Monitoring assessment and risk management</i>				
		10.07(3)	<p>Process for managing risks to CHWN associated with inflow prediction</p> <ul style="list-style-type: none"> Is this the normal protocol now? i.e. does the MDBA assess with the states the risks to CHWN or conveyance water before issues water to the States? Don't believe so....implications might be risk to allocations is MDBA self assessing CHWN requirements. Doesn't agreement protocols kick in and doesn't this impact on state shares? 	<ul style="list-style-type: none"> The MDBA considers managing risks to critical human water needs as part of its inflow prediction process. This is done in consultation with the states through the Water Liaison Working Group (a Committee established under clause 203 of the Water Act). The states are to meet their critical human water needs from their share of the River Murray System, allocated according to the MDB Agreement. State shares could be impacted in extreme circumstances if a state is required to advance water to one or more states. This is allowed for in Schedule H to the MDB Agreement. 	Noted	
		10.07(4)	<ul style="list-style-type: none"> Does the management of CHWN risks go beyond the MDB Agreement provisions, particularly to consider water quality and the provisions to set aside and draw upon conveyance reserves. 	<ul style="list-style-type: none"> The requirements for critical human water needs were established in the Water Act 2007 (Cth). They are complementary to the MDB Agreement. The Agreement has been amended to support the requirements of the draft Basin Plan. 	Noted	
		10.08(4)	<p>Risk management approach for inter-annual planning</p> <ul style="list-style-type: none"> Is this consistent with our understanding? i.e. whether water is made available for uses other than CHWN? (additional flexibility) What does this mean as the 	<ul style="list-style-type: none"> The states must meet critical human water needs from their share of the River Murray Resource. The states have control over the use of this water, but must be able to demonstrate to the MDBA that their critical human water needs can be met. 	Noted	

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			MDBA will only control 1596 GL as all other water must be allocated (under the Agreement) to the states?		
		10.08(4)(b)	<ul style="list-style-type: none"> What is the MDBAs conveyance reserve policy? 	<ul style="list-style-type: none"> The provisions in the draft Basin Plan and the Agreement will ensure the conveyance reserve of 225 GL is set aside. 	Noted
4		Tier 2 water sharing arrangements			
		10.14(3)	Arrangements for carrying water over in storage <ul style="list-style-type: none"> Does this conflict with 10.07(4)? 	<ul style="list-style-type: none"> 10:14(3) reconfirms that the states are responsible for meeting their critical human water needs from their share of the River Murray System. 10.07(4) sets out how the MDBA will manage risks to critical human water needs associated with inflow prediction. Inflow predictions are vital for determining state shares, and if risks to critical human water needs are identified, we will use our existing processes with the states to ensure appropriate action, with as little impact on state shares as possible. 	Noted
5		Tier 3 water sharing arrangements			
			<ul style="list-style-type: none"> Tier 3 can be triggered for water quality issues. Is this appropriate? 	<ul style="list-style-type: none"> Water quality of an appropriate quality is just as important to critical human water needs as water quantity. Section 86E(2)(b) of the Water Act requires Tier 3 to include a water quality trigger. 	Noted
11		Water trading rules			
	2	Restrictions on trade of tradeable water rights			
		11.11(2)	Trade of water allocation which has been carried over <ul style="list-style-type: none"> Why would a carryover announcement need to be made before carry over water is traded. Are there any existing provisions in the Basin? If not, it should be removed. 	<p>Due to the differences in the administration of carryover in different states, this rule needed to address situations where a carryover announcement is made in order for carryover to be deemed to be available (such as NSW), or there is policy in place for the administration of carryover, such as Victorian spillable water accounts.</p> <p>The MDBA is considering a suggestion of removing the words 'or traded' in 11.11(2)(a) and in the definition of 'carryover announcement' as they may be redundant—once water is deemed to be available to be taken it should be allowed to be traded.</p>	Noted. Amendment suggestion is supported.
		11.12(2)	Access to carryover for traded water access rights <ul style="list-style-type: none"> Carry over is a right attached to entitlements through state water plans. So under what circumstances might this provision apply? If entitlement is converted to an entitlement in another catchment or state, it's characteristics would change to the destination 	<p>Tagging may not be the process that is used in all types of water resources in all Basin States to transfer an entitlement from one location to another. There may be instances where the state cancels an entitlement in one resource and then issue a entitlement in the destination resource. 11.12 (2) provides the ability for a state—despite 11.12(1)—to apply the carryover rules that apply to the resource where the entitlement is being moved to (destination water resource) when using a cancel reissue process to administer the trade.</p>	Noted but tagged entitlement trading is strongly supported to avoid third party impacts.

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			entitlement and its rules. But mostly use of tagged trading rather than use of conversion factors to convert the entitlement.		
		11.17(1)(c)	<p>Restrictions allowable for physical or environmental reasons</p> <ul style="list-style-type: none"> This will create an additional constraint on trade, i.e. introducing a trade barrier basically because the trade may compromise environmental watering requirements – but what does “environmental watering requirements” mean. Does this refer to delivery of environmental water. NFF should reject this as creating not reducing barriers to trade. 	<p>11.17 does not impose a restriction, rather it sets out the relevant reasons, for which a State may impose a reasonable restriction where such a restriction would otherwise be inconsistent with 11.15 or 11.16. Restrictions imposed by states will still need to be consistent with the water trading rules in subdivision A. Also, the rules can only relate to trade and trading restrictions, rather than ordering restrictions which may be imposed generally (i.e. not discriminate between traded and non-traded water).</p> <p>Under Clause 3 Schedule 3 of the Water Act 2007, one of the objectives for Chapter 11 is to recognise and protect the needs of the environment. Due to this objective, it was necessary to create a link to Chapter 7 of the Basin Plan to ensure that the two chapters are consistent. Chapter 7 Part 5 of the Basin Plan sets out the method that will be used to identify environmental assets and their environmental watering requirements.</p>	Noted. However, where environmental water is the same as water access entitlements, this should not be afforded any higher protection than previously enjoyed. The same could also be said of planned environmental water, which normally has a higher priority in water plans that held water. To do otherwise may impinge on other property rights and result in third party impacts.
		11.27-11.30	<p>Trade of water delivery rights held against IIOs</p> <ul style="list-style-type: none"> This is duplicating ACCC water market rules and will create confusion. Why not just reference the ACCC trade and market rules? 	<p>In developing Chapter 11, the MDBA liaised with the Australian Competition and Consumer Commission (ACCC) and the Department of Sustainability, Environment, Water, Population and Communities (DSEWPaC), specifically on areas involving water delivery and irrigation rights.</p> <p>The water market rules cover the process that is triggered once a customer requests transformation of their irrigation right, and ensure that the policies or administrative requirements of irrigation infrastructure operators do not represent a barrier to trade. The water market rules and the water charge (termination fees) rules do not cover trade of water delivery rights.</p> <p>The Water Act requires that the water trading rules relate to the trade of water delivery right (see s.26 and the s.4 definition of ‘tradeable water rights’). S11.27 - 11.30 provide all customers within an IIO the ability to trade delivery rights within the irrigation network without that trade being unreasonably refused or delayed by the IIO.</p>	See NFF submission
	3	<i>Information about water delivery rights and irrigation rights</i>			
		11.31-11.35	<ul style="list-style-type: none"> As a general comment, this is also 	In developing Chapter 11, the MDBA liaised with the ACCC and DSEWPaC, specifically on areas involving water delivery and irrigation	See NFF submission

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			duplication of the ACCC water market rules. Delete or just reference the ACCC rules.	rights. The water market rules cover the process that is triggered once a customer requests transformation of their irrigation right, and ensure that the policies or administrative requirements of irrigation infrastructure operators do not represent a barrier to trade. The water trading rules under the Basin Plan apply to all tradeable water rights held by water market participants, including irrigation infrastructure operators and their customers. S11.31 - 11.35 will ensure that all IIO members are informed of the water delivery rights and irrigation rights they hold. In the absence of this rule, this requirement would only be triggered at the point that a member requests transformation under the water market rules.	
	5	Information and reporting requirements			
		11.40-11.43	Information about water access rights <ul style="list-style-type: none"> Again is this duplication with the BOM? If the BOM's roles is the collect data, then the MDBA should just obtain the information from BOM. There is a need to minimise the transaction costs of organisations being required to provide the same information to multiple organisations. 	<p>The MDBA have had several discussions with BOM and have determined that under the current BOM regulations there is no unnecessary duplication (information such a labels identifying the data is necessary, but there is no duplication of substantive data). The MDBA has always been concerned about possible duplication in this area and with this in mind has drafted a set of information provisions that have flexibility in both collection and reporting by using the prescribed form as set out under s11.42, and this will allow us to work with other parties to minimise compliance.</p> <p>Also the information requirements in 11.40 - 11.43 only apply to water access rights, which in the Water Act 2007 (S4 definitions) only apply to a right under state law, rather than irrigation rights or water delivery rights held against an IIO. The intent is that S11.40 - 11.43 will only apply to Basin States.</p>	See NFF submission
		11.46	Price to be reported as a condition of trade approval <ul style="list-style-type: none"> What happens for a zero consideration trade, e.g. for business to business trades? 	The MDBA recognises that reporting a zero dollar trade on a trade application may be valid in some circumstances (especially business to business transfers) and therefore would not be breaching Chapter 11 as long as it is recorded on the transfer application form as \$0.	Noted. NFF assumes this will be adequately communicated to entitlement holders and water brokers.
		11.47-11.49	Allocation and policy information to be made available <ul style="list-style-type: none"> There a need to reference state legislation as allocation announcements provisions are legislated? 	<p>The intent of these rules is to ensure that allocation and policy decisions are made generally available to the market and that persons aware of these announcements before they are generally available restricted from trading. Regardless of whether allocation announcement provisions are legalised through a legislative framework, the rules would apply.</p> <p>The information requirements in 11.47 - 11.49 only apply to water access</p>	Noted

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				rights, which in the Water Act 2007 (S4 definitions) only apply to a right under state law, rather than irrigation rights or water delivery rights held against an IIO. The intent is that S11.47 - 11.49 will only apply to Basin States.	
12	Program for monitoring and evaluating the effectiveness of the Basin Plan				
	2	Principles			
			<ul style="list-style-type: none"> While the AG supports MERI and program logic (designed for NRM), is this the best option for water? Are the States in agreement? 	While MERI and program logic are widely associated with the NRM sector, they are generic frameworks/tools that have been applied in a diverse range of sectors, including community development, social justice, health, education, water and international development. While States have expressed a range of views both for and against MERI/program logic, no better alternatives have been put forward and it is not seen as a significant issue relative to other issues.	Noted. NFF assumes that the MDBA will work constructively with the Basin States to come to an agreed monitoring and evaluation framework.
S8	Key causes of water quality degradation				
			<ul style="list-style-type: none"> The causes appear to be dated, especially in regard to current agricultural practices (influenced by overseas issues)? What is the measured water quality/salinity history compared to the targets proposed? What are the appropriate land management & infrastructure solutions? Water quality testing is usually limited (e.g. pesticides are not measured except on restricted basis such as rice industry). So how can these targets be measured and more importantly monitored? What is the impact of non-irrigation causes like dryland salinity and salt water intrusions from drought and how can these be resolved (hopefully not with the Basin Plan)? 		The MDBA did not comment.