

1 February 2025

NSW Government  
Department of Climate Change, Energy, the Environment and Water

**By Email:** [wspconsultation@dpie.nsw.gov.au](mailto:wspconsultation@dpie.nsw.gov.au)

Dear Sir/Madam,

## **Submission: Proposed Prescribed Wetlands in draft inland unregulated Water Sharing Plans 2025**

Murrumbidgee Irrigation (**MI**) welcomes the opportunity to provide this submission in response to the public consultation on Proposed Prescribed Wetlands in draft inland unregulated Water Sharing Plans (WSP) 2025.

This submission is in addition to the MI submission on the Draft Water Sharing Plan for the Murrumbidgee Unregulated River Water Sources 2025 (23 December 2024).

### **1. Introduction**

- 1.1. MI is one of the largest private irrigation companies in Australia serving over 3,093 landholdings that are owned by over 2,300 shareholder customers. Our core business is water distribution. We provide irrigation water and drainage services to the Murrumbidgee Irrigation Area (378,911 Ha) via a network of over 1,740 kilometres of supply channels and 1,547 kilometres of drainage channels. The MIA is one of the most diverse and productive regions in Australia.
- 1.2. MI recognises the importance of a healthy river system and aquatic environments and works with irrigators and customers to promote enhanced environmental outcomes.

### **2. Background**

- 2.1. Recent reviews by the Natural Resources Commission (**NRC**) of inland unregulated Water Sharing Plans (**WSPs**) recommended all replacement plans include rules to protect significant wetlands within their plan areas.
- 2.2. The department has developed a draft policy that includes a method<sup>1</sup> to identify wetlands suitable to receive improved protection (based on a set of criteria) and to outline the new restrictions that will apply.<sup>2</sup>
- 2.3. The proposed prescribed wetlands for the Murrumbidgee Unregulated Water Source are identified on a map (see link).<sup>3</sup>

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<sup>1</sup> [Identifying wetlands for inclusion in water sharing plans](#)

<sup>2</sup> [Improving protection of wetlands in inland New South Wales](#)

<sup>3</sup> [Wetlands map for water sharing plan for the Murrumbidgee Unregulated River Water Sources 2025](#)



### 3. Issues

- 3.1. Barren Box Storage and Wetland (BBSW) must be removed as a prescribed wetland as it is an artificial operational water storage.
- 3.2. MI's view is that there is a lack of ground truthing, which we believe has resulted in significant errors in the identification of prescribed wetlands.
- 3.3. MI is concerned that there has been no direct notification to parties impacted by this process – such as landholders or IIOs – noting many of the proposed prescribed wetlands are on private property, within an IIO area of operations, or subject to other third-party impacts.
- 3.4. MI is of the view that the NSW Government must undertake good-faith negotiations with all impacted parties of a proposed prescribed wetland – including, but not limited to, reaching mutually-agreed resolution on mitigating impacts.
- 3.5. MI's concern is that the proposed process demonstrates a limited understanding of current management practices of wetlands. Notably, the process appears to ignore both existing obligations already in place (which risks duplicity and inconsistency), and voluntary management initiatives and partnerships (which risks unnecessary regulatory burden and perverse impacts).
- 3.6. MI encourages the department to take a more collaborative and partnership-based approach, noting the great successes demonstrated.
- 3.7. MI reads the NRC recommendation as being intended to apply to 'significant wetlands' but is of the view the department has gone well beyond this.
- 3.8. It is unclear what the intended outcomes are at a wetland-scale, and what management arrangements will be put in place to support realisation of those outcomes.
- 3.9. Given the significant implications of prescribing a wetland, this process cannot continue until (at least):
  - a proper ground truthing process has occurred to ensure accuracy and appropriateness;
  - a more discerning criteria for inclusion is adopted based on clear and attainable objectives;
  - negotiation has occurred with all relevant parties (i.e. landholders, IIOs, etc) given the extent of sites within private landholdings or with an IIO area of operations, and a resolution mutually agreed to, with impacts mitigated;
  - further engagement has occurred with landholders and IIOs to develop an improved understanding of current practice (both existing obligations already in place, and voluntary management initiatives and partnerships) to avoid duplicity, inconsistency, or perverse outcomes;
  - financial support for complementary measures is made available (subject to voluntary uptake) for environmental improvements, beyond just restrictions.



#### 4. Barren Box Storage and Wetland (BBSW)

##### Overview

- 4.1. BBSW must be removed as a prescribed wetland. These concerns are also detailed in the MI submission to the draft unregulated WSP.
- 4.2. BBSW is an artificial, operational water storage. It is an integrated component of MI's water delivery network, used on a daily basis by MI according to operational need. It is an engineered structure. It is not a natural swamp or wetland.
- 4.3. MI notes that the 2010 *Murrumbidgee Long Term Water Plan Part B*, which deals extensively with wetlands, including infrastructure-dependent wetlands, does not include BBSW. Indeed, at Figure 15 (page 192) that Plan denotes BBSW as a "Major Storage".<sup>4</sup>
- 4.4. MI notes one reason behind prescribing wetlands was that the NRC review (e.g. *Final Report – Review of the Water Sharing Plan for the Murrumbidgee Unregulated River Water Sources 2012*) found wetlands were not adequately protected by the current Water Sharing Plan. None of the policy justifications discussed in Section 5 of the NRC Review (from page 41) apply to BBSW. We do not believe this was intended to apply to BBSW, as an engineered operational storage.
- 4.5. BBSW is already subject to environmental protections, such as the Development Consent. It makes no sense to consider the introduction of a new regime of rules dealing with the same subject matter. This risks inconsistency, duplicity and confusion.

##### History of BBSW

- 4.6. The Government has recognised the operational nature of BBSW since MI's inception as an irrigation corporation. Indeed, in about 1999 the former Department of Infrastructure, Planning and Natural Resources (DIPNR) commenced a process to terminate access licences of irrigators with frontage to Barren Box. That was part of a broader agreement between DIPNR and MI that saw MI issue Member Contracts to those irrigators, such that they would be supplied from Barren Box and Mirrool Creek as water management works of MI. That agreement involved the State transferring the land and water of Barren Box to MI, in return for MI's return to the State in or around 2005 of a 20,000ML of water entitlement as part of the Water for Rivers scheme.
- 4.7. MI's operation and control of Barren Box was recognised in the privatisation documents and Deed between MI and the State in the late 1990s.
- 4.8. On 7 April 2004 the NSW Government Gazette proclaimed that the redevelopment of BBS into the Barren Box Storage and Wetland was State Significant Development. Development consent was then granted by the Hon. Craig Knowles MP personally on 10 June 2005. The consent was subject to over 20 pages of conditions, plus further supporting documents, which is a matter of public record. The conditions included those relating to the Lower Mirrool Creek Floodway and downstream releases of water.

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<sup>4</sup> [Murrumbidgee Long Term Water Plan Part B: Murrumbidgee planning units](#)



- 4.9. The development consent allowed MI to undertake a major civil construction project involving significant excavation of Barren Box, the construction of engineered bund walls and the installation of large pumps, regulators and connector channels. The Minister's consent also authorised MI to operate the completed structure. The result was the construction and ongoing use of BBSW.

*BBSW is beyond the scope of the draft WSP*

- 4.10. BBSW is the part of MI's network that is used to hold and deliver water to customers in its immediate vicinity and in the Wah Wah area. The water is directed into the cells of BBSW via mechanical regulators and is extracted via pumps when required. BBSW is situated on land parcels that are owned by MI. Even the wetland cell of BBSW can be filled with water artificially. BBSW is segregated into various sub-cells including the Active Cell, the Intermediate Cell and the Wetland Cell.

- 4.11. The water that is diverted into BBSW comes out from MI channels. The water is regulated water. MI's position is that:

- 4.11.1. The water in BBSW is not within the Murrumbidgee Western Water Source, given that:

It originated from channels used for the purposes of conveying water within the area of operations of an irrigation corporation specified in Schedule 1 of the Act (clause 3(3)(a) of the Draft WSP).

It is not "surface water" as defined in the Draft WSP. The definition of "surface water" at Schedule 4 is "...all water naturally occurring on the surface of the land, including all rivers, lakes and wetlands". Having been diverted to BBSW via MI's channels, regulators and pumps, most if not all water in BBSW is not there naturally. Also, the reference to rivers, lakes, and wetlands (which are all natural things) clearly excludes water contained within artificial structures. BBSW is an artificial structure.

- 4.11.2. The DPIE Risk assessment for the Murrumbidgee Water Resource Plan Area recognised that BBSW is a regulated water source. MI has a large number of other official materials that recognise the status of BBSW as an artificial, operational storage. Being filled with water from within MI's off-river irrigation system, the water within BBSW is generally from the Murrumbidgee Regulated River Water Source and thus clause 3(3)(b) of the Draft WSP would to that extent apply.

*Implications if BBSW is a prescribed wetland*

- 4.12. The designation of BBSW as a prescribed wetland imports a whole range of undesirable regulatory consequences, some of which are in direct contradiction to existing rights and approvals. For example:

- 4.12.1. At clause 38, the Draft WSP would prohibit the construction of a water supply work within BBSW unless the Minister is satisfied as to certain criteria.

- 4.12.2. At clauses 40, 42(c), 43(b), 46(c), the Draft WSP would prohibit certain dealings, including assignments and transfers of rights pursuant to various provisions of Part 2, Division 4 of the Act. The relevant clauses in the Draft WSP would relate to dealings that contemplate nominating a supply work within BBSW, other than where the



dealing involves a transfer or assignment from an access licence nominating a different supply work in BBSW. MI is concerned that the Draft WSP may frustrate Commonwealth law and policy that requires Irrigation Infrastructure Operators (IIOs) to make available transformation pathways to their customers. In such a case, an MI customer located on or near BBSW may wish to transform their share component to achieve their own access licence, with delivery to be effected via MI infrastructure on or near BBSW. In a physical sense there would be absolutely no change to the quantity or source of that customer's water, yet the Draft WSP would complicate or frustrate that process.

- 4.12.3. MI has rights under the Act (to which the Draft WSP would be subordinate) to construct, repair, operate and maintain water supply works within its Area of Operations. MI feels that the new provisions would be inconsistent with this right.
- 4.12.4. As outlined above, MI has development consent granted by the Minister personally for the construction and operation of water management works at BBSW.

## **5. Conclusion**

- 5.1. MI is of the view that BBSW cannot be listed as a prescribed wetland, nor should the replacement WSP attempt to deal with or regulate BBSW.
- 5.2. More broadly, MI shares the concerns raised by many landholders in NSW that this process is not fit-for-purpose and should be removed from the WSP replacement process until such time as proper process can be undertaken (including ground truthing, notification and negotiation with all impacted parties, and site-specific management objectives and measures identified and agreed to).
- 5.3. MI would welcome the opportunity to work constructively with the Department to discuss the best way forward, including to share our ongoing environmental work.

Yours sincerely,

**Michael Turnell**  
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