

Submission form for the draft Water Sharing Plan for the Murrumbidgee Unregulated Rivers 2025

Office use only

Submission number

How to fill out this form

The NSW Department of Climate Change, Energy, the Environment and Water is seeking your comment on the draft Water Sharing Plan for the Murrumbidgee Unregulated River Water Sources 2025.

Key issues and changes have been summarised in this submission form, although comment on all aspects of the water sharing plan is welcome. For water source specific details including rules, please see the water source report cards. More detailed comments are welcomed as attachments.

A copy of your submission will be sent to your email address provided in the next section.

Send completed submissions to: wspconsultation@dpie.nsw.gov.au

Note: The submission period has been extended and will now close at **11.59pm on Friday 10 January 2025.**

Comments on the **prescribed wetlands will be welcomed until 11.59pm Sunday 2 February 2025.**

Information on privacy and confidentiality

The NSW Government will consider all submissions received. The Government values your input and accepts that information you provide may be private and personal.

If you want your submission or your personal details to be treated as confidential, please indicate this by ticking the relevant box below. If you do not make a request for confidentiality, the department may make your submission, including any personal details contained in the submission, available to the public.

Be aware that the NSW Department of Climate Change, Energy, the Environment and Water may be required by law to release copies of submissions to third parties in accordance with the *Government Information (Public Access) Act 2009*.

How to fill out this form

<p>1. I give permission for my submission to be publicly available on the NSW Department of Climate Change, Energy, the Environment and Water website *</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>2. I would like my personal details to be kept confidential</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>

Your details

<p>1. Email address*</p>	<p>michael.turnell@mirrigation.com.au</p>		
<p>2. Name of respondent*</p>	<p>Michael Turnell</p>		
<p>3. Address</p>	<p>86 Research Station Road, Hanwood NSW 2680</p>		
<p>4. Contact phone number*</p>			
<p>5. Are you an individual or representing an organisation?* <i>Mark only one</i></p>	<p><input checked="" type="checkbox"/> Organisation <input type="checkbox"/> Individual (<i>skip to next section</i>)</p>		
<p>6. Name of organisation*</p>	<p>Murrumbidgee Irrigation Limited</p>		
<p>7. Who are you representing?</p>	<p><input type="checkbox"/> Government <input type="checkbox"/> Peak representative organisation <input type="checkbox"/> First Nation <input type="checkbox"/> Environment <input type="checkbox"/> Mining industry</p>	<p><input type="checkbox"/> Irrigator <input checked="" type="checkbox"/> Water related industry <input type="checkbox"/> Groundwater licence holder <input type="checkbox"/> Groundwater user – basic rights</p>	<p><input checked="" type="checkbox"/> Surface water licence holder <input type="checkbox"/> Surface water user – basic rights <input type="checkbox"/> Local landholder <input type="checkbox"/> Other:</p>

Your details

<p>8. Did you attend any of the following?</p>	<p><input type="checkbox"/> face to face meeting</p> <p><input checked="" type="checkbox"/> public webinar</p> <p><input type="checkbox"/> one-on-one or industry meeting</p> <p><input type="checkbox"/> none of these</p>
<p>9. Do your comments refer to a specific water source?</p>	<p><input type="checkbox"/> No <input checked="" type="checkbox"/> Yes</p> <p>Please specify which water source(s):</p> <p>Murrumbidgee Western Water Source</p>

Changes to access rules – Murrumbidgee I and Murrumbidgee II water sources

A higher cease to pump trigger will sometimes apply in Murrumbidgee I and Murrumbidgee II water sources in the upper Murrumbidgee River to protect releases of environmental water from Tantangara Dam during periods of low flow.

At these times, a higher cease to pump trigger at the relevant gauges will apply to protect the releases from extraction by unregulated river access licences. Details of the access rules will be publicly announced and will depend on seasonal conditions and the volume of the planned environmental flow releases.

<p>Please provide any comments you have on the proposed changes to access rules in Murrumbidgee I and Murrumbidgee II water sources.</p> <p>(Attach extra pages if required)</p>	<p>Comment:</p>
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Changes to access rules – flow-based rules in multiple water sources

Changes to gauge-based access rules are proposed as follows:

- In Yass Lower Water Source, introduce a cease to pump trigger of 2 ML/day at Yass River Upstream of Burrinjuck Dam gauge (410176)
- In Numeralla East Water Source, change the reference gauge and increase the cease to pump trigger to 6 ML/day at Numeralla River at Numeralla School gauge (410062)
- In Cooma Management Zone in Numeralla East Water Source, increase the cease to pump trigger to 1 ML/day at Cooma Creek at Cooma No.2 (The Grange) gauge (410081)
- In Adjungbilly Creek Management Zone in Adjungbilly/Bombowlee/Brungle Water Source, increase the cease to pump trigger to 15 ML/day at Adjungbilly Creek at Darbalara (The Elms) gauge (410038)
- In Killimicat Creek Management Zone in Adjungbilly/Bombowlee/Brungle Water Source, introduce a cease to pump trigger of 1 ML/day at Killimicat Creek at Wyangle gauge (4100114)
- In Borambola Management Zone in Tarcutta Creek Water Source, simplify the rule and increase the cease to pump trigger to 20 ML/day at Tarcutta Creek at Old Borambola gauge (410047).

Please provide any comments you have on the proposed changes to access rules in these water sources.

(Attach extra pages if required)

Comment:

Changes to access rules – addition of requirement for visible flow at the pump site

Most water sources and management zones are governed by gauge-based access rules and have the additional requirement for visible flow at the pump site before extraction may occur. However, in 8 water sources or management zones, see clause 57(3)(g) in the 2012 plan, there is only the requirement that visible flow at the flow reference point be met. In the draft plan, there is now the requirement that visible flow at the pump site also be met before extraction may occur.

This change is applicable to:

- Brungle Creek and Killimicat Creek management zones in Adjungbilly/Bombowlee/Brungle Water Source
- Bredbo Water source
- Bunyan Management Zone in Numeralla West Water Source
- Currawang Creek and Demondrille Creek management zones in Jugiong Water Source
- Yarra Yarra Water Source
- Yass Lower Water Source.

Please provide any comments you have on the proposed changes to access rules in these water sources and management zones.

(Attach extra pages if required)

Comment:

Possible change to access rule – Bunyan Management Zone

The department is seeking feedback on the possibility of a new access rule for this management zone, with a cease to pump trigger of 1 ML/day at Cooma Creek at Cooma No.2 (The Grange) gauge.

This change would mean the same access rule would apply in both management zones of the Numeralla West Water Source. The change would link access to flows to an online gauge.

The change would increase environmental protection, however it may result in a significant reduction in access to water for licence holders.

<p>Please provide any comments you have on the possible change to the access rule in Bunyan Management Zone.</p> <p>(Attach extra pages if required)</p>	<p>Comment:</p>
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Changes to access rules – natural in-river and off-river pools in all water sources

Natural in-river pools

In addition to any flow-based access rule, we propose to require that in-river pools to be at or above full capacity (i.e. 100% full) before water may be extracted.

Natural off-river pools

We propose that, from years 1 to 5 of the replacement plan, the current rule of take is not permitted when the off-river pool is below 80% of full capacity remain in place. However, from year 6 of the plan, we propose that the rule be take is not permitted when the off-river pool is below full capacity.

NOTE: Until year 5 of the plan, existing licence holders may apply for an exemption from the new rule and retain the current rule.

Changes to access rules – natural in-river and off-river pools in all water sources

Please provide any comments you have on the proposed changes to access rules for natural in-river and off-river pools in all water sources.

(Attach extra pages if required)

Comment:

Please see attached written submission.

Changes to access rules – water bodies which can receive environmental water deliveries

The 2012 plan protects planned environmental water (i.e. from an environmental water allowance) delivered from the regulated Murrumbidgee River into 8 lagoons.

The draft plan proposes to also protect held environmental water (i.e. licensed entitlement) and adds another 3 lagoons to the relevant schedule.

The 3 additional lagoons in new Table B in Schedule 3 are: Currawananna Lagoon and Mundoway (or Mundowey) Lagoon at Collingullie, in the mid-Murrumbidgee, and Yanga Creek, near Balranald.

Please provide any comments you have on the proposed change to protection of environmental water, including its application to an additional of 3 water bodies.

(Attach extra pages if required)

Comment:

Changes to trading rules

The draft plan proposes a number of changes to trading rules between water sources or management zones as outlined below:

- 'Limited trade in' is proposed in Billabong, Goobarragandra, Lake George, Mountain and Yarra Yarra water sources
- 'No net gain' trade is proposed in Bredbo, Burrumbuttock, Gilmore/Sandy and Upper Tumut water sources and Adjungbilly Creek Management Zone
- 'No trade in' is proposed in Lower Billabong Water Source.

A review of high flow rules determined to remove the possibility of converting to unregulated river (high flow) access licence in the following water sources: Adelong Creek, Tarcutta Creek and Upper Billabong.

Outside of their respective trading zones, where the rules are not changed, in the draft plan we propose the trading rules of 'Limited trade in' for Adelong Creek Water Source and 'No trade in' for Tarcutta Creek Water Source.

The rules for trading within individual water sources or management zones remain unchanged.

Please provide any comments you have on the proposed changes to trading rules.

(Attach extra pages if required)

Comment:

Protection of WSP Prescribed Wetlands

We propose to prohibit new or amended works or trades:

- within a WSP prescribed wetland displayed on a map
- within 3 km upstream or within a Ramsar wetland,

unless there will be no more than minimal harm to the wetland concerned.

This rule does not apply to replacement works.

The 'no more than minimal harm' exemption will not apply to 3 wetlands mentioned in the 2012 plan.

Please provide any
comments you have on the
proposed wetland rules.

(Attach extra pages if
required)

Comments:

Please see attached written submission.

Additional feedback

The previous sections relate to the key proposed changes from the current water sharing plan. However, comments on all aspects of the plan are welcome and encouraged. Please use the space below, or attachments if required or preferred.

Comments on any aspects of
the draft plan.

(Attach extra pages if
required)

Comments:

Please see attached written submission.

Additional Information

If you would like to provide any additional information in the form of supporting documents or files to help us understand your view, email wspconsultation@dpie.nsw.gov.au from the same email you provided above and reference the Murrumbidgee Unregulated Rivers WSP.

All submissions with approval for publication will be posted on the department's website after the public exhibition period closes along with the final review reports.

23 December 2024

Department of Planning, Industry and Environment
By Email: wspconsultation@dpie.nsw.gov.au

Dear Sir/Madam

Submission on Draft Water Sharing Plan for the Murrumbidgee Unregulated River Water Sources 2025

Murrumbidgee Irrigation Limited

This submission is prepared in response to the Draft *Water Sharing Plan for the Murrumbidgee Unregulated River Water Sources 2025*. This submission has been prepared and authorised by Murrumbidgee Irrigation Limited (**MI**).

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1. Introduction

- 1.1. As one of the most significant operators of water management works in the Murrumbidgee Valley, MI welcomes the opportunity to provide feedback in response to the *Draft Water Sharing Plan for the Murrumbidgee Unregulated River Water Sources 2025 (Draft WSP)*.
- 1.2. MI does not have Water Access Licences connected to the Murrumbidgee Western Water Source. However, although MI's off-river irrigation network is linked to Water Access Licences on the Murrumbidgee Regulated River source, the Draft WSP appears to geographically cover much of MI's Area of Operations and expressly refers to important MI assets. So, MI considers itself to be a major stakeholder in the proposals for reform.
- 1.3. MI has significant concerns about what it sees as a proposal to regulate the way that it operates certain parts of its network. MI supports a number of the policy objectives of the Draft WSP and looks forward to engaging with the Department to find solutions to the various issues.

2. About MI

- 2.1. MI is an irrigation corporation regulated under the *Water Management Act 2000* (NSW) (**the Act**). It owns and operates the infrastructure system used to provide water delivery and drainage services to primary producers in the Murrumbidgee Irrigation Area (**MIA**).



- 2.2. Physically, MI's Area of Operations (which is a statutory concept drawn from the Act) overlays a portion of what is referred to as the Murrumbidgee Western Water Source, on the Plan Map to the Draft WSP. Despite that, it is important to note that MI operates an off-river irrigation scheme fed by Water Access Licences attached to the Murrumbidgee Regulated Water Source. That network largely operates by gravity, such that water from the river offtakes is conveyed to end users via a series of channels pipes and storages within the Murrumbidgee Irrigation Area.
- 2.3. The integrity of MI's infrastructure is essential to allow access to annual allocation available on our Water Access Licences and to provide our customers with water supply and drainage services. The supply and drainage network was conceived as a whole. Any interference with upstream parts of the supply network will affect, or cut-off, downstream parts of that network. MI's network comprises over 1,740 kilometres of supply channels and 1,547 kilometres of drainage channels, serving 3,124 landholdings.
- 2.4. In that way, MI supports and enables the significant primary production output of the Murrumbidgee Irrigation Area (**MIA**). The irrigated agricultural and horticultural sectors are major employers and economic drivers in the MIA.
- 2.5. It should also be noted that as well as providing irrigation water delivery and drainage to primary producers, MI's infrastructure is used for town water supply, urban stormwater and floodwater management.
- 2.6. MI is the holder of (relevantly):
 - (a) Various bulk Water Access Licences with Water NSW, nominating the Sturt and Narrandera Regulators amongst the authorised Supply Works.
 - (b) Combined Water Supply Work Approval and Water Use Approval no. 40CA403245 (NSW DPIE).
 - (c) Operating Licence issued by the Governor of NSW under sections 123-124 of the Act dated 7 December 2016.
 - (d) Environment Protection Licence no. 4651 (NSW EPA).
- 2.7. Under its licences, approvals and the Act, MI is authorised to enter land to perform a number of functions, including the installation and reading of water meters, ascertaining whether a water supply contract has been breached, installing and replacing new works, and rectifying defective works. By its mandate under the Operating Licence MI has legal obligations around the maintenance, management and operation of efficient and commercially viable systems for the delivery and drainage of water in the MIA.
- 2.8. The MIA was first established in 1906 following the commissioning of Burrinjuck Dam in the Snowy Mountains. The MIA was conceived by the government of the day as a purpose-built scheme, designed to feed and provide employment opportunities for a growing nation. During the planning and construction phase, the NSW Government's was cognisant of flood impacts from the Murrumbidgee River and other systems such as Mirrool Creek in developing the MIA. Under the *Irrigation Corporations Act 1994* (NSW) and the conditions of the previous Water Management Works Licence (IC 5), MI was permitted to operate as an autonomous irrigation scheme. The licence provided for the supply of water to, and the management of water within MI's area of operations. This included surface water, drainage, subsurface supply, and floodplain water management works.



- 2.9. MI was under State control until it was corporatised and transferred to member ownership in the late 1990s. Today the MIA is home to over 50,000 people, with most jobs tied inextricably to the water MI supply to farms and industry. MI itself has 2,305 shareholders, all of whom are the local farmers and irrigators who are served by MI's network.
- 2.10. MI operates on a non-profit basis. Its Constitution prevents the distribution of any profits to its members during its operation or upon winding up. The company is wholly owned by its members (customers). Those local farmers and irrigators are the people who ultimately bear any costs incurred by MI.

3. Prescribed Wetlands and off-river pools

- 3.1. MI is concerned by the proposal to regard "Barren Box Swamp" as a prescribed wetland under the Draft WSP.

About Barren Box

- 3.2. While MI appreciates that Barren Box Swamp is a colloquial or historical name, the correct name for the body of water is Barren Box Storage and Wetland (**BBSW**).
- 3.3. BBSW is an integrated component of MI's water delivery network. 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.
- 3.4. 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.
- 3.5. 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. As outlined in more detail below, the conditions included those relating to the Lower Mirrool Creek Floodway and downstream releases of water.
- 3.6. 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.

Barren Box Storage and Wetland is beyond the scope of the Draft WSP

- 3.7. BBSW is an artificial water management work, used on a daily basis by MI according to operational need. It is an engineered structure. It is not a natural swamp or wetland.
- 3.8. 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.

- 3.9. The water that is diverted into BBSW comes out from MI channels. The water is *regulated* water. MI's position is that:
- (a) The water in BBSW is not within the Murrumbidgee Western Water Source, given that:
 - (i) 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).
 - (ii) 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.
 - (b) The DPIE Risk assessment for the Murrumbidgee Water Resource Plan Area recognised that BBSW is a regulated water source¹. 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.

BBSW should not be a WSP Prescribed Wetland

- 3.10. The Draft WSP introduces a new concept of Prescribed Wetlands. That concept is supported by new clauses in the Draft WSP and a map of the wetlands that are prescribed.
- 3.11. Currently the Draft WSP Prescribed Wetland Map² includes BBSW as a Prescribed Wetland. This should not be the case. As above BBSW is an artificial, operational water storage. 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:
- (a) 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.
 - (b) 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

¹ https://water.dpie.nsw.gov.au/_data/assets/pdf_file/0007/622276/murrumbidgee-surface-water-resource-plan-risk-assessment.pdf, see page lxxxvi

² https://water.dpie.nsw.gov.au/_data/assets/pdf_file/0008/621566/murrumbidgee-unregulated-wsp-wetlands-map.PDF



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.

- (c) 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.
- (d) As outlined above, MI has development consent granted by the Minister personally for the construction and operation of water management works at BBSW.

- 3.12. There is no policy reason to include BBSW. The NRC's January 2023 *Final Report – Review of the Water Sharing Plan for the Murrumbidgee Unregulated River Water Sources 2012 (NRC Review)* summarised on Page 1 that wetlands, many of which were of national significance and/or of significant Aboriginal cultural value, were not adequately protected by the current Water Sharing Plan. That appears to have been the justification for the introduction of the new Wetlands provisions. However, on any view that justification does not apply in the case of BBSW. As an engineered, operational water storage it is not in the same category as wetlands elsewhere in the Plan area. MI has considered the 2010 *Murrumbidgee Long Term Water Plan Part B: Murrumbidgee planning units*³. That 2010 Plan, which deals extensively with wetlands including infrastructure-dependent wetlands, does not include BBSW. Indeed, at Figure 15 (page 192) that Plan denotes BBSW, correctly in MI's view, as a "Major Storage". In any event its environmental properties and benefits, whilst not protected under the current Plan, are protected by a separate statutory instrument being the Development Consent granted by the Minister.
- 3.13. Having been fed by Regulated water taken via one or more Water Access Licences, nor is BBSW subject to the stated concern in the NRC Review that upstream environmental releases are subject to extraction in off-river environments. None of the policy justifications discussed in Section 5 of the NRC Review (from page 41) apply to BBSW. Although MI's view is that BBSW is not a wetland and is not part of the Murrumbidgee Western Water Source, there is no valid concern about connectivity⁴ and water input to BBSW given that it used daily by MI according to operational need.
- 3.14. There are other restrictions in the Draft WSP around off-river pools, including rules about when and in what circumstances water can be taken from those pools. Should there be any suggestion that BBSW constitutes a natural off-river pool or off-river dam pool (as defined in the Draft WSP), that would be incorrect. As outlined above, BBSW as an engineered, operational storage for water linked to the Murrumbidgee Regulated water source. Off-river pools and off-river dam pools are defined terms in the current 2012 WSP and there has never been any suggestion that they apply to MI's assets or operations. However, the Draft WSP at clauses 33-34 uses language that is broader than the language used at clause 57 of the current Plan. To avoid any ambiguity the Plan should clarify that water management works of irrigation corporations under Schedule 1 of the Act are excluded from the definition of off-river pools and off-river dam pools.
- 3.15. MI submits that BBSW should be removed as a prescribed wetland. It should also be made clear that BBSW is not subject to any other regime under the Draft WSP (e.g. those around off-river pools and dam pools) that may hinder MI's ability to use BBSW for its approved and intended purpose.

³ <https://www.environment.nsw.gov.au/-/media/OEH/Corporate-Site/Documents/Water/Water-for-the-environment/long-term-water-plans/murrumbidgee-long-term-water-plan-part-b-planning-units-200079.pdf>

⁴ See section 5.3 of the NRC Review



4. Application of Draft WSP to Mirrool Creek and Barren Box

- 4.1. The Department has invited feedback on the development of planned environmental water rules to protect flows through Mirrool Creek and Barren Box Storage and Wetland.

The Draft WSP should not regulate MI's use of its own network

- 4.2. The first thing to recognise is that Mirrool Creek, from its entry into MI's Area of Operation to Barren Box, is an operational channel used by MI to distribute water around its network. MI is the registered owner of the long, thin parcels of land on which Mirrool Creek sits. The Creek was de-proclaimed as a "river" under the *Water Act 1912* (NSW) in 2005 as part of an agreement between MI and the State. While it has retained its historical name, that length of Mirrool Creek has two mechanical regulators and a large number of points for the take or release of water. BBSW for the reasons above is a water management work of MI.
- 4.3. Although MI is of the view that the water in Mirrool Creek and BBSW would not even be subject to the Draft WSP, it would be inappropriate to use a Water Sharing Plan to regulate the way that a Water Access Licence holder (on a different source) moves its water around its own network.

Existing obligations

- 4.4. MI refers to the 10 June 2005 development consent granted by the Minister. MI was obliged under the Conditions of Consent to prepare and implement various management plans including a Wetland Rehabilitation and Management Plan. That Plan was required to include consideration of the water requirements of the Lower Mirrool Creek Floodway such that BBSW did not have a negative impact on the wetland system. It was also required to deal with deliberate releases of water to the Lower Mirrool Creek Wetland System of sufficient quantity to achieve certain ecological objectives. There were also obligations in relation to ensuring the availability of off-allocation and environmental surplus flow in the Mirrool Creek footprint to irrigators, including in the Wah Wah area, with a history of access to that water.
- 4.5. During the 2000s there was significant correspondence between MI and the Department of Planning, whereby that Department reviewed and provided feedback on MI's steps taken in compliance with the DA conditions.
- 4.6. MI has taken, and continues to take, significant steps in relation to those conditions. Those steps include, but are not limited to:
- (a) The involvement of an eminent ecologist in 2009 to provide commentary on guidance on forced releases from BBSW into the Lower Mirrool Creek Floodway. This resulted in advice on how to maximise the beneficial, ecological impact of forced releases in terms of distance and inundation area.
 - (b) MI's 2023 Operational Environmental Plan of Management.
 - (c) MI's Annual Environmental Management Reports detailing criteria for water releases as well as water release volume data.
 - (d) A project, well advanced but ongoing as of October 2024, for an environmental consultancy engaged by MI to develop a Rehabilitation Monitoring Program for the Lower Mirrool Creek Floodway.



- 4.7. It may be that the proposal to review the access and operating rules for Barren Box Storage and Wetland is influenced by the understanding expressed in the NRC Review that MI would obtain modification of the DA conditions in a way that removed the obligations relating to the Lower Mirrool Creek Floodway. If so, that is an incorrect understanding because no modification application is proceeding at this time.
- 4.8. The existing obligations relate to the Lower Mirrool Creek Floodway and BBSW releases. In that way the existing obligations deal with the same subject matter under contemplation from the NRC Review and the Draft WSP. The existing obligations are legally binding on MI. In that way, these measures do not carry the risks of other alternatives that were identified and discounted⁵ in the NRC Review, leading to the conclusion that amendment to the WSP was the most viable option.
- 4.9. MI would be pleased to provide further information about the work that it has done, is doing and will do to comply with the development conditions regarding the ecological health of the Lower Mirrool Creek Floodway including its wetland system. This work has been undertaken in close consultation with the Department of Planning.

There are better ways to achieve the desired policy objectives

- 4.10. MI recognises the Department's concern for the Lower Mirrool Creek wetlands. MI notes the discussion at section 5.4 of the NRC Review including the view that:
- (a) There is a need for transparency around the provision of water for the environment downstream of BBSW, which is a water sharing issue.
 - (b) The existing WSP is inadequate to protect flows along Mirrool Creek and onto the Lower Mirrool Creek Floodplain and does not recognise the interconnection between the Murrumbidgee and Lachlan Rivers via Mirrool Creek.
 - (c) The management rules for BBSW sit outside the current WSP and there is a lack of evidence that those rules are based on environmental needs.
- 4.11. However, the policy objectives themselves require consideration, before MI can express its views on how those objectives should be achieved. Some of the policy objectives are invalid, inappropriate or do not recognise the reality of existing lawful land uses. For example:
- (a) As noted at paragraphs 4.2 and 4.3 above, BBSW and Mirrool Creek upstream of BBSW are owned and used by MI on an operational basis.
 - (b) Whilst the broad objective of providing water for the environment is important, MI believes that the Draft WSP does not adequately recognise that the Lower Mirrool Creek Floodway is largely constituted of developed, cleared agricultural land that is privately owned and used for farming. Land uses along the Floodway include irrigated broadacre cropping and cattle grazing. In many places the land surface has been extensively modified including with laser-levelled and banded paddocks and with drainage channels and ground tanks to capture water. Any attempts to mandate further deliveries of water down the Floodway will deliver significant economic benefit to those private landholders, outside and beyond any contracted water and delivery entitlements that may be held with either MI or Gunbar Water. MI does not wish to discount the value in conservation of ecological assets, however, believes that there needs to be a realistic assessment of objectives and their consequences.

⁵ See pages 46-47 NRC Review



- (c) The existing management rules are based on environmental needs. MI is prepared to share further information about its work in this respect this with the Department.

4.12. MI notes Recommendation 7 (R7) from the NRC Review. That recommendation is:

To improve environmental outcomes for Mirrool Creek and the nationally significant Lower Mirrool Creek Floodplain wetlands, engage with DPE-EHG to:

a) install new infrastructure for monitoring flows in Lower Mirrool Creek and onto the floodplain and develop appropriate access and trade rules based on better understanding of the environmental values and water requirements of Mirrool Creek and Lower Mirrool Creek Floodplain wetlands

b) review operating rules for releases from Barren Box storage to Lower Mirrool Creek to ensure they reflect the latest knowledge regarding environmental water requirements and ensure these operating rules are codified in the replacement Plan and the relevant works approval

Recommendation 7a)

- 4.13. MI supports recommendation R7a) in principle because MI recognises the value in gathering more data about the Lower Mirrool Creek Floodway's ecological requirements.
- 4.14. This is in circumstances where the NRC Review recommended that the Department obtain an improved understanding of the water requirements of Lower Mirrool Creek and the Lower Mirrool Creek Floodplain Wetlands.
- 4.15. MI has undertaken considerable work, including ongoing work, to seek data and learn about those ecological requirements. This is in connection with MI's obligations pursuant to the DA conditions under planning law. As noted above MI is prepared to brief the Department on that work and, where appropriate, to collaborate and share the findings. It would be considerably more cost effective for the Department to work with MI in seeking to understand the ecological needs of the Lower Mirrool Creek system, rather than the Department duplicating MI's efforts with its own studies.

Recommendation 7b)

- 4.16. MI does not support Recommendation 7b). That recommendation in MI's view misunderstands the nature of MI's existing obligations and appears to be made on the false premise identified at paragraph 4.7 above.
- 4.17. Where there are existing obligations and legal apparatus dealing with the topic of BBSW and the Lower Mirrool Creek Floodway, it makes no sense to consider the introduction of a new regime of rules dealing with the same subject matter.
- 4.18. MI would be pleased to brief the Department on the nature and status of the development conditions, as well as MI's previous and ongoing work around BBSW and the floodway.

5. Conclusion

- 5.1. The current Draft WSP, and any future revisions, should not attempt to deal with or regulate BBSW. For the reasons given above, the proposed regime for Prescribed Wetlands and off-river pools should not purport to apply to MI's operational water storage assets.



- 5.2. Instead, the desired policy objectives, to the extent that they are feasible, are better dealt with using existing mechanisms. MI is willing to work with the Department to advance those key objectives utilising the existing legal apparatus.
- 5.3. Indeed, because MI is already subject to those detailed rules and conditions about BBSW and releases to the Lower Mirrool Creek Floodway, it is greatly concerned by the prospect of a new set of rules, that would deal with the same subject matter but may not be consistent. MI would be placed in an impossible position if two separate Departments were to require MI to comply with two separate sets of rules about the one water storage and its releases. Good policy calls for consistency and simplicity, as opposed to incongruity and duplicity.
- 5.4. MI strongly desires a meeting with the Department to discuss the Draft WSP and the proposals for reform. In that meeting MI would be pleased to outline its existing legal obligations as well as its ongoing environmental work pursuant to those obligations. MI is prepared to work constructively with the Department to plan the best way forward.

Yours sincerely,

Michael Turnell
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