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Peak body representing 2200 landholdings, annually producing \$6 billion in agricultural produce and supporting 25,000 jobs in the Murray Valley.

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## **SRI Submission to Select Committee on the Multi-Jurisdictional Management and Execution of the Murray Darling Basin Plan**

**5 May 2021 in Deniliquin, NSW**

### **Introduction**

Southern Riverina Irrigators (SRI) represent 2200 landholdings across the Southern Riverina.

Rich in diversity and producing staples including rice, crops, dairy and livestock along with numerous niche markets, our success is heavily underpinned by irrigation, availability of water and cost. Our region has the potential to produce in excess of \$6 billion of agricultural product while supporting 20,000 jobs.

The Riverina have been hit hard by the Murray-Darling Basin Plan and consequent poor water policy.

Over the last two decades our irrigation reliability has reduced from 84 per cent to 52 per cent and we have become the forgotten community as we continue to pay increasing fees and charges. Financial hardship and mental health issues have skyrocketed as farmers have been forced to watch crops die along with their income stream, as water flowed past their gates and downstream to foreign owned corporates or to questionable environmental sights.

We have one of the highest suicide rates in the country. It is no secret our region is struggling.

You only have to see the empty shops in the main streets of our towns and the for-sale signs on the front gates of our once prosperous irrigation community. Schools are closing and population is shrinking as business and community dependent on a thriving agriculture sector underpinned by irrigation can no longer afford to operate.

The Murray Dairy region has gone from producing over 3.1 billion litres of milk to just over 1.8 billion as dairy farmers have left the industry in droves. In the last few years over 90 dairy farms have closed down in the Finley area alone and with a flow affect into the community of \$4000 per cow the implications of this decline are enormous.

The township of Wakool, a once thriving regional area producing crop, dairy, rice and livestock has lost 34.5 per cent of its productive water since October 2016. Employment in irrigated agriculture has decreased by 71.8 percent and the population has halved to 800.

This story is repeated in towns across the Riverina.

### River capacity issues

We have recently seen the devastating impacts of low flows down the Darling River on the Basin.

No water flowing down the Darling (or into the Menindee Lakes) and the restriction at the Barmah Choke means the Murrumbidgee River in NSW and the Goulburn River in Victoria are “run” harder to make up for this slack.

Former Victorian Water Minister Lisa Neville (who is presently not working due to personal health issues) has indicated that the Goulburn River will not be destroyed in order to make up for the supply issues.

#### a. Choke trade restriction circumvention by NSW

The current Water Minister in NSW stated NSW would not breach the Choke nor risk it being damaged<sup>1</sup>.

**NSW takes a strong stand on protecting its environment**

# Loosen grip on Choke

**Rampant lower Murray irrigation development is unsustainable, argues MELINDA PAVEY**



**At limit:** Overlooking the Barmah-Millewa Choke, Koondrook-Perricoota. Picture: YURI KOUZMIN

FOR NSW the key issue around potential deliverability shortfalls in the Lower Murray, is the declining health of the Barmah Choke.

The NSW Government is not responsible for the expansion of permanent planting in the Lower Murray and is not interested in socialising this problem and destroying the Barmah Choke whilst further disadvantaging NSW Murray General Security licence holders.

The NSW Government does not support any new infrastructure, such as a pipe or new channel, through or around the Barmah Choke. The NSW Government has made it clear we will not tolerate any further degradation of the Barmah Choke. Just as Victoria has introduced limits on the Goulburn River to protect the local environment — a move NSW supported — we will do what we must to protect our environment and our communities.

A recent study released by the Murray Darling Basin Authority has highlighted shortfall risks for irrigators in the Lower Murray as a result of the declining capacity of the Barmah Choke. I grew up not far from the Choke and have visited the area since I became NSW's Water Minister.

I've seen for myself the severe erosion being caused by running the river at near full capacity — up to 8500 megalitres a day — to meet increasing environmental and horticultural demands downstream.

The new demand for water is largely a result of the almost 100,000ha of permanent planting — predominantly nuts — based in Victoria and South Australia, which make up around 85 per cent of all permanent plantings in the Lower Murray system. These plantings need ongoing access to water and are vulnerable to even short periods of interrupted supply.

Right now, if there was a major breakout as a result of pushing the Choke too hard, or running the river at or beyond capacity, it could be catastrophic to downstream communities. A breakout could mean the river would effectively have to be shut off while repairs that could take months are completed. To prevent this outcome, we need to look at both infrastructure and policy solutions that address the damage that has been caused to the Choke to prevent a major breakout and the potential for the Lower Lakes to move up to Murraybank Caravan Park.

We maintain our position that channel capacity on the River Murray is shared equally between NSW and Victoria. While this is not specified in the Murray Darling Basin Agreement, it is consistent with most other sharing terms spelt out, including storage in dams, river losses, and contribution to South Australian entitlement flows.

Other lower Murray States have developed irrigation industries to be beyond the capacity of the choked-up Choke, and now seek to limit development in NSW.

I have a simple message for anyone who thinks they can keep developing greenfield sites below the Choke — NSW cannot and will not come to your rescue if there are shortfalls.

We will continue to work with our irrigation water delivery companies like Murray Irrigation to optimise water delivery through the Chokes in a way that minimises losses so those losses can be reallocated to NSW Murray irrigators.

• Melinda Pavey is NSW Water Minister

## Bird shooting doesn't fly in a modern society

OUR native ducks and rural com- Duck shooting does not deliver what it

Despite this statement, NSW continues to circumvent the legislated Barmah Choke trade restriction and the *Murray-Darling Basin Agreement (Schedule D — Permissible Transfers between Trading*

<sup>1</sup> Melinda Pavey Opinion Piece in Weekly Times titled “Loosen Grip on Choke” (24 March 2020)



*Zones) Protocol 2010 (Protocol)* by transferring zone 10 water to zone 11 through the Barmah Millewa forest floor.

Water is run through the Barmah Millewa forest floor, which is not a natural river bed or channel, and is then re-credited to the CEWH. It is not clear if NSW is conducting this activity for other licenced entitlement holders.

**SRI requests that this Inquiry investigates this issue further: it is against the law, and the spirit of Basin Plan legislation.**

SRI has written to the MDBA who have responded that it does not have any information about these transfers: “*Basin States are responsible for processing trades across the Barmah Choke, including checking the trading zones, and ensuring there is trade capacity available.*”<sup>2</sup> The MDBA may seek to avoid responsibility for administrative matters, however, the operation of the system (in accordance with the legislated Objectives and Outcomes guide) is their responsibility.

Increased transmission losses impact upon State Water entitlements due to an increased amount of water required to “run the system”. The MDBA should exert some leadership on this issue because clause 30 of the MDB Agreement states:

**30. Authority’s Functions in Relation to River Operations**

- (1) *The Authority must not exercise any of its functions in relation to river operations in a manner that has the potential to have a material effect on State water entitlements unless it does so in accordance with a decision of the Committee made under this Agreement, or a provision of the document approved under clause 31.*

SRI understands BOC has not been approached by NSW (or Victoria) to authorise transfer of zone 10 entitlements to zone 11 entitlements. This is despite the volume of water required to “run the system” more than doubling (as set out below) in the past few years.

***SRI calls on this Inquiry to confirm if this has occurred and to make a comment as to who is responsible for the transfers through the Barmah Forest to circumvent the Barmah Choke.***

**b. Importance of Menindee Lakes**

Minister Pavey has not yet indicated the lack of flows down the Murray (which would result from NSW adhering to the Trade Protocol) would be compensated by using the Murrumbidgee River – however we note Murrumbidgee has several constraints which also reduce its flow capacity.

Consequently, in order for the Basin Plan to be balanced water must flow consistently down the Darling River.

In preparing the guide to the Basin Plan (which was published in 2010), Drew Bewsher used the following numbers:

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<sup>2</sup> Letter dated 30 April 2021 from Andrew Reynolds to Horne Legal

TABLE 20 WATER BALANCES FOR THE MURRAY SYSTEM FOR PREDEVELOPMENT AND BASELINE SCENARIOS

Water Balance	Model Run Nos Scenario	566	705	706	707	580	708	709	710
		Without Development				Baseline			
		Historical (GL/y)	2030 Dry (%)	2030 Median (%)	2030 Wet (%)	Historical (GL/y)	2030 Dry (%)	2030 Median (%)	2030 Wet (%)
<b>Storage</b>									
Total change in storage		-13.0	9.5	3.0	-8.7	-73.6	9.2	2.8	0.0
<b>Inflows</b>									
Darling (inflow to Menindee Lakes)		3272.5	-21.2	-8.0	21.7	1721.2	-31.0	-10.3	32.5
Murrumbidgee (Balranald)		2724.2	-23.6	-8.2	8.9	1271.4	-42.0	-15.8	16.6
Murrumbidgee (Darlott)		123.5	-44.1	-19.3	17.3	321.7	-30.3	-11.3	10.4
SMHS releases		616.9	-19.3	-5.4	5.8	1143.9	-15.9	-4.5	3.8
Ovens at Peechelba		1728.2	-31.9	-12.7	0.9	1708.0	-32.9	-12.9	1.1
Goulburn at McCoy's Bridge		3368.0	-31.7	-12.7	-2.5	1660.0	-46.1	-19.8	-4.8
Campaspe at Rochester		280.8	-38.6	-16.1	-3.5	150.6	-63.8	-24.6	-9.6
Loddon at Appin South		144.7	-39.1	-13.7	-8.9	60.9	-50.3	-15.1	-4.6
Directly gauged Murray subcatchments		4047.1	-30.3	-10.2	2.8	4035.9	-30.4	-10.2	2.8
Indirectly gauged Murray subcatchments		260.2	-32.2	-14.5	6.6	327.6	-26.3	-11.7	5.2
Total inflows		16566.0	-27.8	-10.3	6.3	12401.1	-33.2	-12.2	7.3
<b>Diversions</b>									
NSW Murray diversions		-	-	-	-	1693.7	-29.2	-5.9	2.0
NSW Lower Darling diversions		-	-	-	-	54.7	-13.8	-5.6	3.7
VIC Murray diversions		-	-	-	-	1655.8	-4.9	0.9	1.9
SA Murray diversions		-	-	-	-	665.0	-13.6	0.0	2.3
Total Diversions		-	-	-	-	4069.1	-16.4	-2.1	2.0
<b>Losses</b>									
Total net evaporation		442.4	-8.7	-1.6	10.6	599.5	-9.8	-2.0	10.8
Net groundwater loss		-	-	-	-	47.0	0.0	0.0	0.0
Environmental loss		-	-	-	-	57.6	-41.5	0.8	4.4
Total loss including SA		3633.3	-15.8	-4.7	5.6	2595.9	-16.1	-5.4	5.6
Total Losses		4075.7	-15.0	-4.4	6.1	3300.1	-15.2	-4.6	6.4
<b>Outflows</b>									
Barrage outflow		12503.4	-31.9	-12.2	6.4	5105.4	-57.5	-24.9	11.9
<b>Unattributed Flux (GL)</b>									
Total Unattributed Flux (GL)		0.00	-	-	-	0.11	-	-	-

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Baseline flows into Menindee Lakes based upon his assessment in a dry year were 1,721.2GL less 31% in the year 2030. This figure is **1,187.63GL**. In a wet year in 2030, it was predicted to be 32.5% more than the historical average, namely **2,280.59GL**.

Recent flood events over the past 12 months (including those following the first flush event where NSW attempted to protect flows and restricted water take), the inflows into Menindee Lakes (measured by total flow at Wilcannia for the period 30 April 2020 to 29 April 2021) was **611GL**. We note WaterNSW is anticipating this could rise to 950GL.

This is effectively half of what was predicted to arrive annually into Menindee Lakes in DRY years (in 10 years' time) and almost a quarter of what was expected to arrive in WET years.

Most of us will agree, the past 12 months would not be classified as dry.

Over the prior 3 years (which were quite dry) inflows into Menindee were significantly less than the predicted low flow years.

The proposed Menindee SDLAM project would see the amount of water re-regulated at Menindee reduced dramatically. The fact NSW wants to reduce storage capacity at Menindee Lakes, underlines its determination to:

- Over-allocate in northern NSW; and
- Try and keep the Menindee Lakes under NSW control – something that the current Water Minister has said in public on numerous occasions<sup>3</sup>.

<sup>3</sup> Note: The Menindee Lakes only come into MDBA control when the volume exceeds 640GL. It remains in MDBA control until they drop below 480GL.



What does this mean for the rest of the Basin? It means that is required to “pick up the slack” by forcing water down the Murrumbidgee, Murray and Goulburn rivers to make up for this. The Basin Plan was not modelled on this scenario.

*SRI asks the Inquiry to obtain a confirmation from the States of their priorities in running the MDB system.*

**c. Objects of the Water Act are being disregarded**

The objects of the *Water Act 2007* (Cth) are listed at section 3 and it is important to take stock of how the current situation with tolerating minimal flows in the Darling River aligns with these objects. Namely:

*(d) without limiting paragraph (b) or (c):*

*(i) to ensure **the return to** environmentally sustainable levels of extraction for water resources that are **overallocated or overused**; and*

*(ii) to protect, restore and provide for the ecological values and ecosystem services of the Murray-Darling Basin (**taking into account, in particular, the impact that the taking of water has** on the watercourses, lakes, wetlands, ground water and water-dependent ecosystems that are part of the Basin water resources and on associated biodiversity); and*

*(iii) subject to subparagraphs (i) and (ii)—to maximise the net economic returns to the Australian community from the use and management of the Basin water resources; and*

*(e) to improve water security **for all uses** of Basin water resources; and*

*(f) to ensure that the management of the Basin water resources takes into account the **broader management of natural resources** in the Murray-Darling Basin; and*

*SRI invites this Inquiry to use these objects as a compass or guide as it processes the various submissions that are being made to it.*

**Impact on other State Water Shares and SDLAM projects**

Queensland has been given access to large volumes of water has caused significant impacts on northern NSW which flows through the system to impact Victoria and South Australia.

Section 10 of the Water Act which deals with the basis for Basin water charge, water trading and water market rules says:

*(f) the inefficient and/or inappropriate use of the Basin water resources would have a significant detrimental impact on:*

*(i) the availability of the Basin water resources; and*

(ii) the health of the Basin water resources or the environmental assets associated with the Basin water resources; and

(g) the inefficient and/or inappropriate use of the Basin water resources would have a significant detrimental economic and social impact on the wellbeing of the communities in the Murray-Darling Basin; and

As you are aware, lower flows down the Darling River impact upon the Victorian State water share because its share includes 50% of the Lower Darling inflows when the Menindee Lakes are in MDBA control. This also impacts on South Australian water share when, like what happened in 2019, there is a period of “special accounting” and the SA annual entitlement is reduced.

Despite causing an adverse impact on state water shares, the Menindee Lakes SDLAM proposes to remove these storages from the Basin. This was not modelled by Drew Bewsher when preparing the Basin Plan and has permutations which appear to have been given little to no consideration.

An example is the intention of NSW to issue 390GL of floodplain harvesting licenses from 1 July 2021. These licences are proposed to have a 500% carryover allowance which would mean that up to 2,340GL could be taken in a flood event (ie. 500% carryover plus a 100% allocation). This is despite the Basin Plan being modelled on a total of just 46.2GL of floodplain harvest diversions in northern NSW and this being the current limit.<sup>4</sup>

#### Murray-Darling Basin Baseline Diversion Limits - estimate made in 2012 by MDBA

Surface water estimates of the BDL appear in Schedule 3 of the Basin Plan 2012 [F2012L02240] as a note to the description.

The limits are specified in the law as a description of a level of take. It was anticipated that the amounts may be refined over time based upon improved information. This feature of the Basin Plan was first included in the Proposed Basin Plan released in November 2011. The Plain English Summary provides more information about the uncertainty of the estimates in Schedule 3 and is available here: [https://www.mdba.gov.au/sites/default/files/archived/proposed/basin\\_english\\_summary.pdf](https://www.mdba.gov.au/sites/default/files/archived/proposed/basin_english_summary.pdf).

Further information about changing limits is available at: <https://www.mdba.gov.au/basin-plan-roll-out/sustainable-diversion-limits/changing>.

Zones	SDL Resource Unit (within zones)	take from a regulated river <sup>(1)</sup> (GL/y)	take from a watercourse <sup>(1)</sup> (GL/y)	take by floodplain harvesting <sup>(1)</sup> (GL/y)	take from a watercourse under basic rights <sup>(2)</sup> (GL/y)	take by runoff dams (excluding basic rights) <sup>(2)</sup> (GL/y)	take by runoff dams under basic rights <sup>(2)</sup> (GL/y)	net take by commercial plantations (GL/y)	total BDL estimate made by Authority in 2012 (GL/y)
<b>NORTHERN BASIN</b>									
<b>Queensland</b>									
	Condamine-Balonne	NA	570.3	143.0	NA	203.0	61.0	1.0	978.3
	Moonie	NA	28.8	4.4	NA	40.0	11.0	-	84.2
	Nebine	NA	3.5	2.7	NA	0.3	24.7	-	31.2
	Paroo	NA	0.2	-	NA	-	9.7	-	9.9
	Queensland Border Rivers	NA	232.2	9.9	NA	61.0	16.0	1.0	320.1
	Warrego	NA	44.3	0.4	NA	50.0	33.0	-	127.7
	<b>total northern Basin Queensland zone</b>	-	<b>879.3</b>	<b>160.4</b>	-	<b>354.3</b>	<b>155.4</b>	<b>2.0</b>	<b>1,551.4</b>
<b>Northern New South Wales</b>									
	Barwon-Darling Watercourse	NA	186.5	11.5	NA	NA	NA	NA	198.0
	Gwydir	296.2	11.2	17.8	NA	104.0	20.0	1.0	450.2
	NSW Border Rivers	188.4	16.3	3.0	NA	79.0	16.0	-	302.6
	Intersecting Streams	NA	3.0	NA	NA	105.0	6.0	-	114.0
	Namoi	251.2	78.1	14.0	NA	139.0	21.0	5.0	506.3
	Macquarie-Castlereagh	380.3	44.0	NA	NA	156.0	110.0	44.0	734.3
	<b>total northern Basin New South Wales zone</b>	<b>1,116.1</b>	<b>339.1</b>	<b>46.2</b>	-	<b>583.0</b>	<b>173.0</b>	<b>50.0</b>	<b>2,307.4</b>
	<b>total northern Basin</b>	<b>1,116.1</b>	<b>1,218.5</b>	<b>206.6</b>	-	<b>937.3</b>	<b>328.4</b>	<b>52.0</b>	<b>3,858.8</b>

#### a. Direct impacts

The loss of historic volumes of water at Menindee will have a direct impact on NSW Murray Valley General Security allocations which is potentially compensable<sup>5</sup>.

<sup>4</sup> <https://www.mdba.gov.au/sites/default/files/pubs/baseline-diversion-limit-estimates-as-included-in-basin-plan-schedule-3-2012%E2%80%9393surface-water.pdf>

<sup>5</sup> section 87AA of the *Water Management Act 2000* (NSW)



It is noteworthy shortly after the Menindee Lakes were unnecessarily drained in 2016, the MDBA elected to meet demand downstream two years in a row by running water through the Barmah forest during a hot summer for over four months each time.

**b. Constraints management strategy**

Another key SDLAM project which is called the “constraints management strategy” in which the MDBA claim to be able to save water for the environment by transferring larger volumes (from 7,800ML per day now to 40,000ML per day) downstream of Yarrawonga.

The Productivity Commission noted to this Inquiry that it took eight years to achieve consensus amongst just 108 landholders between Albury and Yarrawonga.

The prospect of obtaining agreement from over 3,000 landholders downstream of Yarrawonga seems highly unlikely as, for example, almost all SRI members (who reside in the relevant areas) are opposed to these actions. SRI understands that there is similar objection along the Goulburn River.

As a consequence these projects will not be delivered by 2024, if at all.

The Productivity Commission advised this Inquiry on 20 April 2021 in Sydney, that if water could not be obtained through the SDL projects, then the Basin Plan requires that the volumes be obtained in other manners. There has been an acknowledgement by the Federal Water Minister that on-farm efficiency programs have been a failure.

*As such, if additional volumes of water are to be obtained via buybacks, SRI calls on this Inquiry to consider and opine on:*

- a. The imminent overallocation of water in Northern NSW valley via floodplain harvesting licences; and*
- b. The buybacks ought to be confined to zones where the purchased water is intended to be applied - not the scattergun method previously adopted which has had many adverse impacts on the whole system.*

**Return of water to the environment**

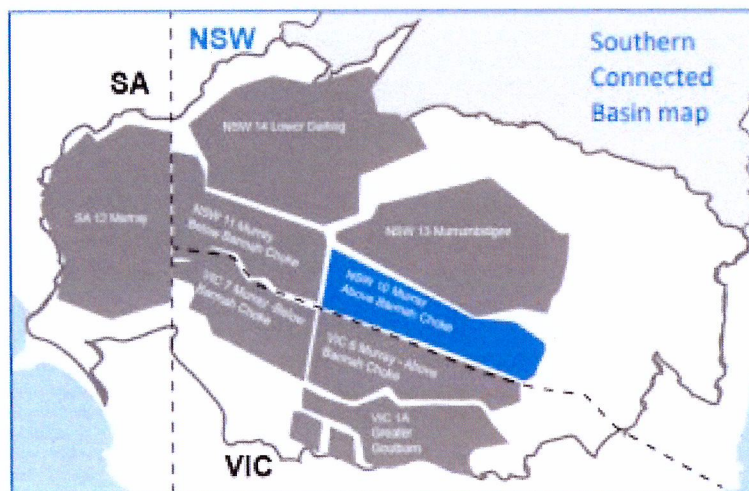
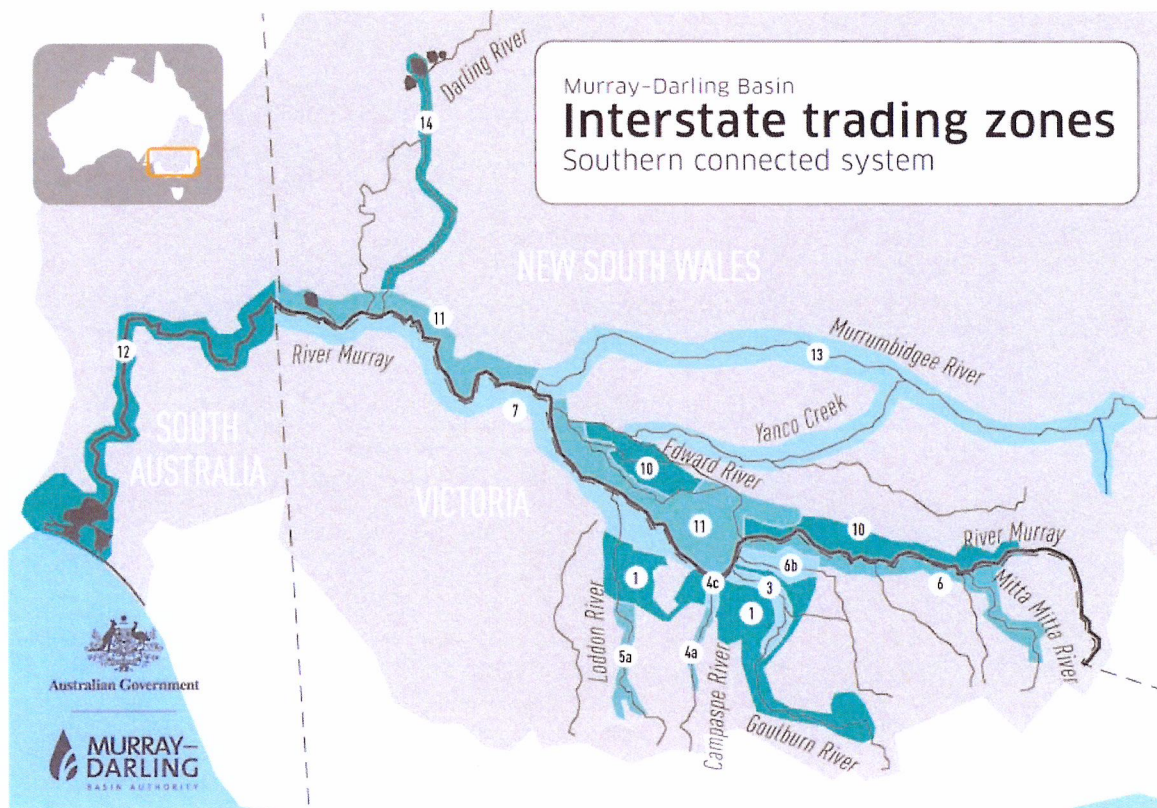
Over 80% of water buybacks occurred in the Southern Basin because:

1. There was more regulated and licenced water in the southern basin;
2. There are larger public storages for this water to be held;
3. The water licences in zones closer to the source – such as above the Barmah Choke was much cheaper and reliable; and
4. The Federal Government adopted a “value for money” approach (that is, buy as many megalitres as possible for as little money as possible – an aim that disregards where the water is purchased from).

The Productivity Commission commented in 2018 (and again to this Inquiry on 20 April 2021), it was unclear who was in charge of implementing the Basin Plan. Their observation was that initially the MDBA thought it was as simple as setting an SDL. However, the Basin Plan was much more complex than that.

*SRI submit that there is a leadership vacuum in the MDB and this Inquiry should make a recommendation to address this.*

**a. CEWO's zone 10 water entitlements**



**NOTE:** The above charts highlight the trading zones – zone 10 (above Choke) and zone 11 (below Choke).

The Commonwealth Environmental Water Holder (**CEWH**) was not in charge of purchasing water for the environment. Instead, the Department of Agriculture adopted what it viewed as a “value for money” approach to acquire the biggest volumes of water as cheaply as possible.

Consequently CEWO now hold nearly 400GL of water in zone 10 (which is above Choke water on the NSW side).



NSW also gift 50GL each year to the environmental watering of the Barmah Millewa forest (the **BMFEWA**).

It is normal that allocations are 100% in flood years, however, CEWH has nowhere to apply its water entitlements when the forest has already been flooded.

Water allocations are generally always 100% in years that follow flood events. The CEWH therefore holds surplus water to apply to the Barmah Millewa forest. In circumstances where the needs of the forest can be satisfied by the BMFEWA, it is a poor use of water entitlements by CEWH to repeatedly flood the forest (as it is currently forced to do in order to obtain any benefit from these entitlements).

*Consequently, SRI proposes that this Inquiry recommend:*

- a. CEWO should be divested of its zone 10 water and it be redistributed above Choke;*
- b. NSW be prohibited from circumventing the Barmah Choke trade restriction by sending water across the floor of the Barmah Millewa forest;*
- c. CEWH and the Federal Government focus their efforts on purchasing water that is being captured in inefficient on-farm storages which prevent the Darling Barka River from flowing (and contributing to Murray inflows downstream).*

Presently, NSW do not apply a conversion fee to transfers of water from zone 10 to zone 11 even if they occur via being sent through a forest (which is not hydrologically connected).

NSW have stated in its *Response to issues raised with the proposed Murray–Lower Darling Water Sharing Plan Factsheet*<sup>6</sup> that

*Under the Murray–Darling Basin Agreement, the Murray–Darling Basin Authority in consultation with the Basin Officials Committee can make protocols determining trade zones and exchange rates. However, section 12.21 of the Basin Plan explicitly states that exchange rates are not to be used in a regulated system. The Basin Plan allows exceptions in limited circumstances; however, it is unlikely that the Murray would fall into this category.*

In the opinion of SRI, clause 12.22 of the MDB Agreement, which provides the exception to the Basin Plan restriction on “exchange rates”, is not cumbersome and could easily be utilised by NSW to address this issue. This clause says:

**12.22 Authority may permit exchange rates in limited circumstances**

(1) Section 12.21 does not apply if:

- (a) the exchange rate is applied as a condition of the trade of a water access entitlement from one location (**location A**) to another (**location B**); and
- (b) the Authority has made a declaration under this section; and
- (c) the water access entitlement is to be traded between the 2 locations at the exchange rate specified in the declaration.

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<sup>6</sup> NSW Department of Planning, Industry and Environment | PUB20/507

- (2) *A Basin State may request the Authority to make a declaration under this section.*
- (3) *The Authority must make a written declaration permitting the application of a specified exchange rate to trades between 2 specified locations if:*
  - (a) *the Authority is satisfied that the purpose of the exchange rate is to address transmission losses; or*
  - (b) *the Authority is satisfied that:*
    - (i) *the purpose of the exchange rate is to redress the impact of previous exchange rate trades from location B to location A; and*
    - (ii) *the total volume of water access entitlements to be traded from location A to location B using the exchange rate would not exceed the total volume of water access entitlements previously traded to location A from location B using exchange rates.*
- (4) *The Authority must publish the declaration on its website.*

These transfers are actioned for CEWH (and potentially other water entitlement holders) by the MDBA at the request of NSW and the cost of transmission and further conveyance cost to deliver this water to the SA border is worn 50/50 by NSW and Victoria.

This has been partially responsible for the decrease in their reliability of general security allocations in NSW Murray Valley from 84% to 52%. The drop in average does not adequately reflect the impact, namely that NSW Murray Valley general security recently had allocations of 0%, 0% and 3% whilst the Murray River was run in flood, signifying the imbalance in the system.

**b. Increase in water to run the system**

In March 2019 the MDBA released a “Losses Report” in which it identified the conveyance losses for the system would be 850GL to 1,000GL. It said:

*This water year, 2018–19, the main factors influencing water losses has been the hot dry conditions combined with low inflows, high demands and the need for overbank transfers through the Barmah Millewa Forest. These factors have resulted in conveyance loss estimates for the year to date (1 June 2018 – 31 January 2019) at about 620 GL. Based on similar years, annual conveyance volumes are likely to reach between 850 GL and 1000 GL by the end of May 2019.*

The MDBA also released a report to say that in a similar year of 2015-16, the conveyance losses were 849GL<sup>7</sup>.

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<sup>7</sup> MDBA: *Conveyance losses in the River Murray System* document. See:  
<https://www.mdba.gov.au/sites/default/files/pubs/Conveyance-losses-river-murray-system-summary.pdf>



## Key findings

Conveyance losses to the end of January in the current water year were 665 GL. Losses are projected to be between 850 GL and 1000 GL by the end of May.

The losses are best compared to dry years with similar conditions, such as 2015-16, when losses were 849 GL.

In its water allocation statement on 15 July 2020 for NSW Murray Valley<sup>8</sup>, NSW DPIE stated 2,060GL of the shared State water resource was set aside to “run the system”. 50% of this came from NSW Murray Valley general security licence holders.

### State sharing of the Murray resource

The end of June accounts indicates that 4,400 gegalitres (GL) of total shared Murray resource is available in the extreme dry (99<sup>th</sup> percentile) case, of which about 2,060 GL is needed to run the system. The NSW portion of this shared resource is 975 GL based on rules in the Murray-Darling Basin Agreement. Following adjustments including trade, tributary inflows and usage to date, the assessment results in 885 GL of water being available for NSW to allocate.

*SRI requests that this Inquiry report the changes in volume of water required to “run the system” over the past three decades and what the MDBA and other stakeholders are doing to:*

- a. Minimise these losses; and*
- b. Compensate the parties (such as NSW Murray Valley General Security) for bearing the brunt of these losses.*

It is the view of SRI that this information will confirm how the distortion in zones of buybacks has facilitated a transfer of water from the southern to the northern basin. The south now underwrites a lack of flow down the Darling Barka.

### South Australian calling and reneging on water

South Australia are able to call for water from the Upper Murray storages of Hume and Dartmouth, without:

1. Paying the extra conveyance cost to get this water to the SA border; and/or
2. Committing to accept this volume of water. Once en route, there are limited options to stop delivery of these orders if SA cancel them. SRI members mistrust this process due to a lack of transparency of what happens to this water once it passes the SA border.

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<sup>8</sup> [https://www.industry.nsw.gov.au/\\_data/assets/pdf\\_file/0011/315200/WAS-Murray-20200715.pdf](https://www.industry.nsw.gov.au/_data/assets/pdf_file/0011/315200/WAS-Murray-20200715.pdf)

### Solution to the abovementioned issues

On the basis water transfers have more than doubled system losses which are paid exclusively by NSW and Victoria (as shown above), SRI asks this Inquiry to recommend that any water that passes through, or around the Barmah Choke, which is not that of Victorian or NSW entitlement holders (or part of the SA annual entitlement) should be taxed at least 50%.

There is a precedent, in 2009, NSW took 17% of licenced water entitlements from MIL shareholders under the rationale of “conveyance loss” from the Yarrawonga weir.

This water was taken from licence holders, irrespective of whether or not they even received any water to their properties. It is the submission of SRI that water travelling a few kilometres to its members via a purpose built channel, is much more efficient than travelling over a forest floor and the entire length of the winding Murray River to the SA border.

Irrigated agriculture above Choke puts less pressure on deliverability of water down the:

- a. Murray River (below Choke);
- b. Goulburn River; and
- c. Murrumbidgee River.

This encourages the use of water in the most efficient place (not just for the highest value crop).

The statement that water must go to the “highest value” crop/product is short sighted. In the driest continent on earth, and with the accumulating impacts of climate change, the focus must shift to water going to the most efficient use (which is part of the objects of the Water Act 2007 noted above). This clearly would not include inefficient private on-farm storages.

### Mistruths being pushed in NSW

Floodplain Harvesting is not just “opportunistic” – as Senator Perin Davey stated to Bev Smiles on 20 April 2021 at the Sydney hearing of this Inquiry. Overland flows can occur in any rainfall events. And the small to medium rainfall events are perhaps the most important flows to keep the Darling Barka flowing. As highlighted by the NRC and Bret Walker SC.

NSW are currently proposing an exemption to the collection of all rainfall runoff on the basis of avoiding a “double jeopardy” scenario of capturing runoff from crops (which may contain chemicals) without a licence.

However, the current regime presently exempts dams which are built for this purpose.

The relevant order with respect to harvestable rights in Eastern and Central Division of NSW, which was made pursuant to section 54 of the *Water Management Act 2000* (NSW) (**WMA**), is published at page 1628 of the Government Gazette No. 40 of 31 March 2006 (the **Order**).

It says that:

*a landholder has the right to capture 10% of the average regional rain water run-off by means of:*

1. *a dam OR*
2. *dams having not more than the total capacity calculated in accordance with Schedule 1, which are located on “minor streams”.*



However, Schedule 2 of this Order states that the following dams are excluded from this 10% rainfall runoff capture limit:

*3. Dams solely for the capture, containment and recirculation of drainage and/or effluent, consistent with best management practice or required by a Government agency or Local Government Council to prevent the contamination of a water source.*

*and*

*5. Dams without a catchment, such as “turkeys nest” dams and ring tanks, provided no water from harvestable right works is diverted into them.*

In light of this, the new rainfall runoff exemption was not required for the purpose stated by NSW.

In the opinion of SRI, the tailwater runoff exemption specifically benefits those landholders with dams that are on streams and used for the capture and storage of large volumes of water such as those derived from floodplain harvesting.

As this Inquiry should be aware, properties are now designed in order to prevent (or limit) the amount of water that runs off the property. This type of land-forming has increased dramatically in northern NSW since the introduction of the Cap in 1995.

Therefore, the consequence of NSW exempting this type of unlimited take would likely restrict, or even stop, flows from small-medium rainfall events (not necessarily floods) that historically assisted to form the baseline flows to sustain a river flowing throughout the year. In 1994 there was less than 600GL of storage capacity in northern NSW to capture this<sup>9</sup>. Today, there is circa 1,500GL. Consequently, a much greater volume of this water can be captured and stored than was previously the case. This has obvious impacts downstream which have not been considered by this tailwater runoff exemption.



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<sup>9</sup> Slattery Johnson Report 2021

## NSW ICAC

SRI is aware some irrigation lobby groups have campaigned hard for the introduction of the tailwater runoff exemption which could potentially be abused by those individuals with large storages located on a stream.

In November 2020, the Independent Commission Against Corruption in NSW (ICAC) stated in its report, *Investigation into complaints of corruption in the management of water in NSW and systemic non-compliance with 55 the Water Management Act 2000*, that:

*The commencement of the Water Management Act 2000 (“the WMA”) nearly two decades ago was aimed at providing a pivotal legislative mechanism for protecting and managing water in NSW.*

*During the period of this investigation, however, **the mandated priorities of the WMA were undermined due to a repeated tendency on the part of the NSW Government’s water agencies to adopt an approach to water management that was unduly focused on the interests of the irrigation industry.***

...

*The Commission finds that the finalised BDWSP represented not just a missed opportunity to reset the rules for water sharing as between the environment and irrigation in the Barwon-Darling. In its codification of current arrangements, it allowed extraction by water users to prejudice protection of the environment and basic landholder rights in a number of aspects, in an inversion of the WMA’s legislated water sharing priorities.*

*Submissions made on behalf of the department and Mr Connor contend that: ...*

*the goal was to put plans in place that protect the environment, and in a way that was neutral on water users, striving for that difficult win-win circumstance where the environment is no worse off and the irrigators are no worse off.*

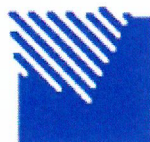
*The attempt to achieve such a balanced or “neutral” outcome is the antithesis of the “priority” concept in s 9(1) of the WMA. The Commission considers that this submission illustrates a failure to acknowledge or accept what is required to give effect to the mandatory, affirmative scheme established by the WMA.*

The two largest irrigation infrastructure operators (IIO) in NSW with over 5,000 landholdings is Murrumbidgee Irrigation Limited and Murray Irrigation Limited. Both of these organisations and their shareholders (amongst several other large irrigator groups) are not represented by NSW Irrigators Council (who falsely claim to be the “peak” irrigation body in NSW).

SRI wishes to take this opportunity to clarify that the irrigation industry interests being referred to by ICAC are not those interests of SRI or other large irrigator groups in southern and western NSW.

NSW Irrigators Council have a significant vested interest in the matters raised by ICAC and was given secret fortnightly meetings with the NSW DPIE. NSW IC lobbied the Federal Minister, Keith Pitt, not to listen to southern NSW groups on the basis that we are “loud people” “with no water, little income and increasing levels of desperation”.





**NSWIC**  
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IRRIGATORS'  
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8 May 2020

The Hon Keith Pitt MP  
Minister for Resources, Water and Northern Australia  
Parliament House  
CANBERRA ACT 2600

#### **ACCURATE INFORMATION AND THE TRUTH IN THE WATER DEBATE**

Dear Keith,

On behalf of the NSW Irrigators' Council I am writing to you in reference to the Interim Inspector General's report and the specific matter of accurate information within the debate on water policy and management.

I don't need to tell you the reality of the current drought effected challenge of Murray General Security farmers not having access to water for over two years. Most farmers are normally only interested in their farming operation and have left the policy and advocacy to organisations like NSWIC or our member organisations. With no water, little income and increasing levels of desperation, they have more time on their hands and there are increasing numbers of loud people, outside the Peak bodies, providing them with information. That information is provided under the influences of local politics, vested interests and desperation. While the providers of that information may have an objective of helping and finding solutions, too often the information and suggestions result in the advancement of a series of unrealistic solutions and incorrect assertions.

The use of social media and the subsequent acceptance of so many incorrect assertions has resulted in unrealistic hopes about the proposed solutions. These circumstances are made worse by the work of some highly motivated organisations, the loud people, who also seek to advance their cause by the intentional undermining public confidence in institutions and government agencies responsible for administering the law and water management. The work of these loud organisations are the antithesis of responsible management. They aim at undermining the property rights of higher priority water users with misinformation. There is a disregard for the triple bottom line sustainability, the responsibility towards stakeholders and through their misinformation and bullying of those who dissent, an unethical approach. The deliberate efforts to undermine institutions such as the MDEA does not improve the prospects of better policy, management or debate.

There is nothing wrong in an advanced democracy, in being critical of governments and policy, however the deliberate intention to undermine public confidence in institutions that administer the law and provide factual information, serves to confuse the debate. If those agencies that actually do know the information, the facts and figures, are totally dismissed, then how can any truth be grounded? It certainly appears that the motivation for the misinformation and undermining is political and/or personal gain, yet regardless of the motivation or who actually benefits, the result is that having undermined reliable sources of information, the assertions of the loudest voices unfortunately become the common belief.

These circumstances have resulted in division, mistrust and a lack of confidence in the institutions central to water policy and management. I believe that there is a need to recognise the need to create new narratives and meanings to alter the thinking on the issues. In order to address this situation and following highlighting of these specific issues by the Interim Inspector General, I propose a joint venture organisation of agencies and water related agricultural Peak bodies, which could identify specific incorrect or misinformation, and then ascertain the facts, before endorsing the correct information. Such a body or organisation, is clearly intended to re-establish confidence in the facts and figures, whilst directly countering misinformation.

Literally such a body, perhaps called the Murray Darling Basin Information Council (MDBIC), would promulgate the commonly agreed facts and figures, whilst refuting incorrect information. This correct information would be endorsed by all participating bodies (government and Peak bodies) via emails and/or a website. In order to restore order to the debate based upon a set of commonly held facts, the MDBIC would be created to be believable.

At the moment, the debate and misinformation has branded the Murray Darling Basin Authority (MDBA), as being politically controlled, liars and intentionally biased against NSW Murray GS licence holders. Given that this sustained campaign against the MDBA has undermined their social licence as an impartial, non-political agency, the MDBIC is designed to fill that void. It is designed to necessarily marginalise those that intentionally undermine confidence in the factual information available, and it can do so by having the facts and figures endorsed by not just the MDBA or the NSWIC, but also the NFF, NSWFA, the VFF, the South Australian Primary Producers, the NIC and other Peak bodies. In this way, those making incorrect assertions can't just call the MDBA liars, but every organisation that endorses the information as correct. This then makes it harder for them to maintain credibility, when calling everyone else who endorse a consistent set of facts and figures liars.

I understand that the NFF has also written to you about this matter. I would be grateful for your views on my proposal.

Yours sincerely,



Luke Simpkins  
CEO

NSW Irrigators Council also issued press releases informing its members that the taking of water by floodplain harvesting was completely legal pursuant to the Water Act 1912 and when notified by SRI that this was misleading and incorrect, it refused to retract them.

These dangerous statements and influence over NSW Government departments causes significant obstacles to consistent and transparent implementation of Basin wide policies. It also causes significant distrust from stakeholders and the MDBA should be more active in making all users aware of the law when states and "peak" irrigator groups fail to do so.

#### **Consistent wording and definitions**

SRI members and other stakeholders find it concerning States and Federal Government have failed to adopt consistent terminology and definitions. It has made issues unbelievably complex, simply by virtue of the variance of terms, acronyms and formulas to calculate key data and statistics.

Justin Field is a NSW parliamentarian who was aghast at a Parliamentary Inquiry in July 2020 that NSW was still coming up with new definitions of take and methods of take. A uniform set of words, definitions and consistency is urgently required to demystify the opaque terminology and inconsistent modelling.

An excerpt below from Bret Walker SC in his Royal Commission report acknowledges a similar complaint:

*An apparent subset of anticipated measures are the 'unimplemented policy measures', which are defined in sec 7.15(2). By navigating that tortuous definition, it is possible to*



*ascertain that ‘unimplemented policy measures’ are ‘anticipated measures’ that will not eventuate by 30 June 2019. In those circumstances, the otherwise ‘anticipated’ measure cannot be taken into account as part of the benchmark model, and accordingly sec 7.15(1)(b)(ii) requires its removal from consideration. At some point in time, for reasons inadequately explained, the Basin States and the MDBA began using the term ‘pre-requisite policy measures’ (PPMs) as a substitute for the term ‘unimplemented policy measures’.<sup>10</sup>*

### **Lack of Transparency**

We heard from the Productivity Commission at the Sydney Hearing it is required to enter into confidentiality arrangements with States. This is despite the Water Act 2007 giving clear powers and authority for it to conduct inquiries.

*SRI request that this Inquiry reports and investigates the basis for States or stakeholders to legally refuse the Productivity Commission from doing what it is legislatively mandated to do, on the basis that it must first sign a confidentiality agreement.*

This approach is the antithesis of the intention of the Water Act 2007, which again, at section 3 states one of its objects is:

*(h) to provide for the collection, collation, analysis and dissemination of information about:*

*(i) Australia’s water resources; and*

*(ii) the use and management of water in Australia.*

### **Water delivery priorities on river systems**

In the *Water Management Act 2000* (NSW) the priority for the delivery of water is clearly set out. Towns and critical needs first, then high security, then general security and finally supplementary.

When there are peak demands for water, some IIO’s use the number of delivery entitlements owned by a person as a reference to pro-rata access to flow-share.

This concept doesn’t exist on the rivers and SRI urge this Inquiry to consider it, because in the event of a peak demand period in say, a hot January, combined with low flows due to constraints issues and low volumes in the Menindee Lakes, if all water users attempt to take water at the same time without restriction, this could cause significant disruptions to flows to high security water entitlement holders near the South Australian border and/or towns in South Australia.

### **Re-model the Basin**

*Historically, the models have incorporated large inflows from the Darling River. If this will no longer occur, the Basin Plan must be re-modelled to determine these risks and how best to respond to them.*

<sup>10</sup> Page 295 of the SA Royal Commission on the Murray Darling Basin 2019

## Loss of priority to water for many towns/councils in NSW

In March 2021, the Member for Murray, Mrs Helen Dalton inquired with the NSW Water Minister about the protections for towns and communities for the delivery of water in peak times.

### HELEN DALTON MP

Member for Murray



#### Water Sharing Priorities

For the Minister for Water

1. If there is a constraint in a river system, is a river operator or Irrigation Infrastructure Organisation bound to deliver water in accordance with the water access priorities listed in Section 58 of the Water Management Act 2000?
2. Are there any special rules or exemptions with respect to the environment or Irrigation Infrastructure Organisations?
3. Under what circumstances would Section 58 of the Water Management Act 2000 not apply to water access?
4. Is it possible to contract out of the obligations of the Water Management Act 2000?

The response from the Minister (see below) appears to suggest that if the town is located within the footprint of an Irrigation Infrastructure Operator, then the delivery of town or high security water is not prioritised.

5503 - WATER MANAGEMENT ACT 2000

Dalton, Helen to the Minister for Water, Property and Housing

1. If there is a constraint in a river system, is a river operator or Irrigation Infrastructure Organisation required to deliver water in accordance with the water access priorities listed in Section 58 of the Water Management Act 2000?
2. Are there any special rules or exemptions with respect to the environment or Irrigation Infrastructure Organisations?
3. Under what circumstances would Section 58 of the Water Management Act 2000 not apply to water access?
4. Is it possible to put the obligations of the Water Management Act 2000 out to contract?

Answer -

- (1) Water sharing plan priority of delivery rules do not apply within the area of operation of Irrigation Infrastructure Organisations (irrigation corporations).
- (2) Section 58 of the Water Management Act 2000 sets the priorities between different categories of access licences. Any access licence held by an environmental water holder or by an Irrigation Corporation is subject to the priorities set by section 58 and the same rules as any other licences of the same category or categories. Environmental water that is not pursuant to an access licence (planned environmental water) would have the delivery priority as set in the relevant water sharing plan.
- (3) Section 58 of the Water Management Act 2000 only applies to access licences.
- (4) The question needs clarity for an answer to be provided.

Question asked on 24 March 2021 (session 57-1) and printed in Questions & Answers Paper No. 105

Answer received on 28 April 2021 and to be printed in Questions & Answers Paper No. 107



Interestingly, Mrs Dalton's inquiry about "contracting out" of the WMA was purposefully avoided by the Minister in her interpretation of Mrs Dalton's 15 word question.

This response indicates that NSW recognises or permits Murrumbidgee Irrigation to be contractually obligated to prioritise the delivery of water to large customers (such as almond plantations) over towns and high security entitlement holders. This is despite the water sharing priorities in NSW being clearly set out at section 58 of the *Water Management Act 2000* (NSW). Consequently, in the event of an extended hot and dry period, the townships of Griffith or Leeton may be unable to access, or have severely restricted access to, water.

The prospect of this occurring is not out of this world. Climate change is causing longer and more frequent hot and dry periods. If there is to be a month-long hot spell in say a January, rice growers, nut growers and horticulturalists will all be fighting for the delivery of water within the IIO. What protections are there for towns and high security entitlement holders who have a limited volume of delivery entitlements with their IIO? Should local councils now be forced to purchase more delivery entitlements and pass this onto their constituents or simply risk running out of water in these periods?

*SRI urges this Inquiry to respond whether or not in its view, such an outcome is good public policy and acceptable. Furthermore, SRI recommends a taskforce be created in which these issues can be raised, catalogued in a public domain and addressed.*

Ultimately, it is a better outcome to be clearer on these issues before a crisis hits than during it. Especially if this can assist people in making a decision to run a business (or buy a home) in these townships, or alternatively, to invest in developing permanent plantings.

**Where is the failure point of the Basin Plan and what is the solution to resolve it?**

Is it more resources, departments, legislation?

SRI submit that the solution is to adopt more common sense. It urges this Inquiry to take a wholistic approach to determining how the over-extractions at the top of the system is having permutations and consequences throughout the system.

SRI requests that clear and transparent signals are given to all stakeholders so that development can progress in line with the capabilities of the entire system.

**Chris Brooks  
SRI Chair  
5 May 2021**