

Submission

Barwon-Darling Water Sharing Plan Review

The rules in place prior to the 2012 Barwon-Darling Water Sharing Plan were based on science and extensive stakeholder consultation. The Water Sharing Plan included changes to those rules that were not based on any science and were not consulted on. The plan was also based on a fundamentally deficient Cap model. The pre-2012 rules should be reinstated.

Submission

Maryanne Slattery
Roderick Campbell

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Level 1, Endeavour House, 1 Franklin St

Canberra, ACT 2601

Tel: (02) 61300530

Email: mail@tai.org.au

Website: www.tai.org.au

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Introduction

The Natural Resources Commission is seeking public submissions to inform its review of the Barwon-Darling Water Sharing Plan. The review is to determine whether the water sharing plan is meeting its objectives and the objects of the NSW Water Management Act.

We welcome the opportunity to make this submission. In our view, the water sharing plan as currently in place does not meet its objectives. We recommend the reinstatement of the rules in place immediately before the 2012 Barwon-Darling Water Sharing plan was made.

SCIENCE AND CONSULTATION

By the early 1990s, there was mounting evidence of environmental decline in all river systems in the Murray-Darling Basin, including declining ecosystems, poor water quality and eroding the water security of existing irrigators.¹

In 1991, the Barwon-Darling/Barka experienced a 1,200km blue-green algal bloom, which killed 1,600 sheep and triggered a state of emergency.² A Scientific Panel comprised of a group of 10 senior scientists were engaged to understand what had caused the algal bloom and to ensure that it wasn't repeated.³

In 1995, the Murray-Darling Ministerial Council placed a Cap on water diversions that could be diverted under the 1993/94 level of infrastructure development.⁴ The Barwon-Darling Cap was implemented via the Cap Management Strategy.⁵

¹ Cordina, Brill, and Crean (2001) *Meeting the MDBC Cap in the Barwon-Darling River*, <http://ageconsearch.umn.edu/bitstream/125585/2/Cordina.pdf>

² Muir (2014) *"No triple bypass, no miracle cure, just a long haul back"*, <https://insidestory.org.au/no-triple-bypass-no-miracle-cure-just-a-long-haul-back/>

³ Muir (2014) *"No triple bypass, no miracle cure, just a long haul back"*, <https://insidestory.org.au/no-triple-bypass-no-miracle-cure-just-a-long-haul-back/>

⁴ Cordina, Brill, and Crean (2001) *Meeting the MDBC Cap in the Barwon-Darling River*, <http://ageconsearch.umn.edu/bitstream/125585/2/Cordina.pdf>

⁵ Barwon-Darling Water (2018) *Submission to the Murray-Darling Basin Royal Commission: Barwon-Darling 101*, <https://www.mdbrc.sa.gov.au/sites/g/files/net3846/f/mdbrc-exhibit-157-barwon-darling-101.pdf?v=1533086914>

The Scientific Panel undertook a study to identify the in-stream environmental flow needs of the Barwon-Darling/Barka River between Mungindi and Menindee. The specific objectives of the study were:

- i) to determine interim flow needs in hydrologic terms, that if met are adequate to arrest and, where appropriate, reverse in-stream environmental deterioration arising from changed flow regimes;
- ii) to provide a rapid preliminary assessment of the full range of low-flow environmental water needs;
- iii) to recommend a strategic environmental flow research program; and,
- iv) to provide the basis for a set of interim rules that might be incorporated into the Interim North-West Unregulated Flow Management Plan and subsequent valley management plans after hydrologic and socio-economic evaluation.⁶

The scientific panel made several recommendations to improve the health of the Barwon-Darling/Barka, including restoring low flows and halting the growth in extractions. These recommendations were progressively implemented over the following decade through environmental flow rules developed by the Barwon Darling River Management Committee and recommendations made to the Cap Management Strategy.⁷

- A Class water shares had a pump restriction to limit the amount of water that could be extracted at low flows (below 350ML/ day at Bourke). This preserved a flow throughout the length of the river;
- the access to flows for large scale irrigation were increased significantly to preserve low flows (for example flow access was increased from 390 ML/day to 1,250 ML/day);⁸

⁶ Thoms, Sheldon, Roberts, Harris and Hillman (1996) *Scientific panel Assessment of Environmental Flows for the Barwon-Darling River: A report to the Technical Services Division of the New South Wales Department of Land and Water Conservation*, https://www.researchgate.net/publication/247453179_Scientific_Panel_Assessment_of_Environmental_Flows_for_the_Barwon-Darling_River

⁷ NSW Government (2006) *Barwon-Darling and Far Western Water Quality and River Flow Objectives*, https://www.environment.nsw.gov.au/ieo/FarWest/report-02.htm#P223_26604

⁸ Barwon-Darling Water (2018) *Submission to the Murray-Darling Basin Royal Commission: Barwon-Darling 101*, <https://www.mdbrc.sa.gov.au/sites/g/files/net3846/f/mdbrc-exhibit-157-barwon-darling-101.pdf?v=1533086914>

- Reduction of water shares from 523GL to 189GL (a reduction of 63%);⁹

The 2012 Water Sharing Plan was developed over two years by the NSW Department of Primary Industry, in consultation with an Inter-Agency Group and a Stakeholder Advisory Panel. The Water Sharing Plan came into effect in October 2012, one month before the Murray-Darling Basin Plan came into effect.

Several changes to the draft Water Sharing Plan were made after the period of public consultation closed and submissions on the draft plan were received. The changes were not included as a formal submission on the submissions register. Those changes included:

- Removal of pumping restrictions on A Class licences;
- Conversion of B Class to A Class licences; and
- 300% of allocation can be taken in any year.^{10,11}

These changes combine to allow significantly more access to the extraction of flows and low flows (A Class flows) in particular. Modelling undertaken by MDBA estimated a 32% increase in flows under the 2012 water sharing plan.¹² That is, they reverse the environmental rules that were recommended by the Scientific Panel on the basis of several years of scientific investigation.

The access to 300% allocation in any one year effectively reverses the reduction of water shares made under the Cap Management Strategy. This is despite advice from the NSW Office of Water to the NSW Water Minister in 2011 that extractions at 300% over three consecutive years would result in the Barwon-Darling/Barka valley breaching Cap:

In all other unregulated rivers in NSW, three-year accounting rules (essentially equivalent to a 300% individual take limit over 3 consecutive water years) allows sufficient scope for those valleys to achieve diversions equal to [Cap] –

⁹Barwon-Darling Water (2018) *Submission to the Murray-Darling Basin Royal Commission: Barwon-Darling 101*, <https://www.mdbrc.sa.gov.au/sites/g/files/net3846/f/mdbrc-exhibit-157-barwon-darling-101.pdf?v=1533086914>

¹⁰ NSW Office of Water (2012) *Water Sharing Plan for the Barwon-Darling Unregulated and Alluvial Water Sources: Background document*, http://www.water.nsw.gov.au/__data/assets/pdf_file/0006/549024/wsp_barwon_darling_background_document.pdf

¹¹ NSW government (2012) *Water sharing plan for the Barwon-Darling Unregulated and Alluvial Water Sources 2012*, https://www.legislation.nsw.gov.au/~/_view/regulation/2012/488

¹² MDBA (2016) *Protection of Environmental Flows in Barwon Darling – Modelling View*, <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id:%22publications/tables/papers/588a4b32-df56-4a7f-98d4-688922e9c30a%22>

this is not the case in the Barwon-Darling where entitlements have been set using average extractions. Modelling shows that that an individual take of 300 per cent of Cap over three consecutive water years or indeed 500 per cent over 5 years and even 1,000 per cent over 10 years, would result in significant impacts on the Barwon-Darling – preventing diversions from ever achieving the [Cap]. These impacts are most significant for any individual that displays a diversion pattern that is more opportunistic than the average – generally the large irrigators with significant on-farm storages.¹³

The rules in place immediately prior to the 2012 water sharing plan were based on science and an extensive period of public consultation. Many rule changes in the 2012 Water Sharing Plan reversed the rules made on scientific advice. These changes were made without any new science, or in some cases, against the advice of agency scientists. That point alone renders the Water Sharing Plan in breach of all of the objectives of the Water Management Act.

CAP MODEL

The Australia Institute has reported on the significant problems with the Barwon-Darling Cap model in *Owing down the river*, which is attached to this submission.¹⁴ The Cap model is critical to the Water Sharing Plan because it sets the water shares in the plan and is the compliance tool for the plan.

The Cap model has never been accredited due to its many shortcomings. A Water Sharing Plan that is based on a fundamentally deficient Cap model cannot achieve the object of providing a sustainable and integrated management of the water sources of the State for the benefit of both present and future generations.¹⁵

¹³ NSW Office Water – Water Management Division (2011) *WS11/162 ministerial Approval: Public Exhibition of the draft water Sharing Plan for the Barwon-Darling Unregulated and Alluvial Water Sources*, Obtained by GIPA

¹⁴ Slattery, Johnson and Campbell (2019) *Owing down the river*, <http://tai.org.au/content/owing-down-river-0>

¹⁵ NSW (2000) *s3 Water Management Act (2000)*, http://www8.austlii.edu.au/cgi-bin/viewdb/au/legis/nsw/consol_act/wma2000166/

TRANSPARENCY AROUND WATER SHARING PLAN CHANGES

Last minute changes made immediately before the Water Sharing Plan was legislated were not communicated with stakeholders, the public or it would seem even to water agency staff. The changes seem to have been made with such haste that supporting documentation prepared by the agency was not updated to reflect the changes.

The draft Water Sharing Plan was developed over several years with an Inter-Agency group, comprising state and Federal Government agencies, and through a Stakeholder Advisory Panel, which was comprised of government and community stakeholders.¹⁶ During the finalisation of the Water Sharing Plan, changes were made from the draft plan.¹⁷ The draft Water Sharing Plan was changed after the period of public consultation had closed.¹⁸ The changes did not appear on the register of formal submissions received through the public consultation process and were not taken back to the Barwon-Darling Stakeholder Advisory Group, or the Inter Agency Panel.^{19,20}

The changes also did not appear in the Background Document to the Barwon-Darling Water Sharing Plan, or the Summary Sheet of the Water Sharing Plan, which suggests that even the NSW office of Water staff were unaware of the changes prior to the finalisation and publishing of those supporting documents.^{21,22}

¹⁶ NSW Office of Water (2011) *Public Exhibition of the draft Water Sharing Plan for the Barwon-Darling Unregulated and Alluvial Water Sources*, Obtained under GIPA 933

¹⁷ NSW Office of Water (2012) *Gazettal of the Water Sharing Plan for the Barwon-Darling Unregulated and Alluvial Water Sources*, Obtained under GIPA 933

¹⁸ NSW Office of Water (2012) *Gazettal of the Water Sharing Plan for the Barwon-Darling Unregulated and Alluvial Water Sources*, Obtained under GIPA 933

¹⁹ NSW Office of Water (2012) *Barwon-Darling Interagency Regional Panel: Draft Summary of recommended changes post public exhibition*, Obtained under GIPA 933

²⁰ Connor (2012) *Barwon-Darling IRP Meeting #5: Submission summary* Obtained under GIPA 933

²¹ NSW Department of Primary Industry (2012) *Water Sharing Plan for the Barwon-Darling Unregulated and Alluvial Water Sources: Background document*
http://www.water.nsw.gov.au/__data/assets/pdf_file/0006/549024/wsp_barwon_darling_background_document.pdf

²² NSW Department of Primary Industry (2012) *Rules Summary Sheet Barwon-Darling Unregulated River water source*,
http://www.water.nsw.gov.au/__data/assets/pdf_file/0007/548683/wsp_barwon_darling_rules_summary_barwon_darling_unregulated_river_water_source.pdf

The lack of transparency and consultation around the last minute changes to the water Sharing Plan generated such a significant amount of distrust in the process that it was referred to the NSW Independent Commission Against Corruption.²³ This is clearly a deeply flawed process that fails the NSW Water Management Act objects of best practise; the role of community in partnership with government; and the equitable sharing of water. The relevant parts of the Water Management Act and Water Sharing Plan are shown at Appendix A and B.

²³ Besser (2017) *Murray-Darling Basin Plan: 'Grenade' Matthews report reveals ICAC probing alleged water corruption*, <https://www.abc.net.au/news/2017-09-11/murray-darling-basin-plan-grenade-report-icac-four-corners/8893456>

Conclusion

The 2012 Water Sharing Plan fails to meet its own objectives and those of the NSW Water Management Act (2000).

The water sharing plan reversed rules that had been put in place to halt the decline of the river and halt the growth in extractions. The original rules were based on science and extensive consultation. The changes in the water sharing plan were made without new science and no consultation. The process to change the Cap model and the water sharing plan should be considered as worse practise and have created huge public distrust of both past NSW Water Ministers and the Department of Primary Industries (formerly NSW Office of Water).

We recommend that the rules in place immediately before the 2012 Barwon-Darling Water Sharing plan was made are reinstated. Specifically:

- Reinstating pump restrictions on A Class water shares (or an equivalent Individual Daily Extraction Limit);
- Remove the 300% take of allocation in every year;
- Remove unlimited carryover;
- An independent review of the Cap model and cumulative Cap credits;
- Reinstating the Cap Management Strategy.

Appendix A

OBJECTS OF THE WATER MANAGEMENT ACT

3 The objects of this Act are to provide for the sustainable and integrated management of the water sources of the State for the benefit of both present and future generations and, in particular:

- (a) to apply the principles of ecologically sustainable development, and
- (b) to protect, enhance and restore water sources, their associated ecosystems, ecological processes and biological diversity and their water quality, and
- (c) to recognise and foster the significant social and economic benefits to the State that result from the sustainable and efficient use of water, including:
 - (i) benefits to the environment, and
 - (ii) benefits to urban communities, agriculture, fisheries, industry and recreation, and
 - (iii) benefits to culture and heritage, and
 - (iv) benefits to the Aboriginal people in relation to their spiritual, social, customary and economic use of land and water,
- (d) to recognise the role of the community, as a partner with government, in resolving issues relating to the management of water sources,
- (e) to provide for the orderly, efficient and equitable sharing of water from water sources,
- (f) to integrate the management of water sources with the management of other aspects of the environment, including the land, its soil, its native vegetation and its native fauna,
- (g) to encourage the sharing of responsibility for the sustainable and efficient use of water between the Government and water users,
- (h) to encourage best practice in the management and use of water.

Appendix B

OBJECTIVES OF THE WATER SHARING PLAN

9 Vision statement

The vision of this Plan is to provide for healthy and enhanced water sources and water dependent ecosystems and for equitable water sharing among users in these water sources.

10 Objectives

The objectives of this Plan are to:

- (a) protect, preserve, maintain and enhance the important river flow dependent and high priority groundwater dependent ecosystems of these water sources,
- (b) protect, preserve, maintain and enhance the Aboriginal, cultural and heritage values of these water sources,
- (c) protect basic landholder rights,
- (d) manage these water sources to ensure equitable sharing between users,
- (e) provide opportunities for enhanced market based trading of access licences and water allocations within environmental and system constraints,
- (f) provide water allocation account management rules which allow sufficient flexibility in water use,
- (g) contribute to the maintenance of water quality,
- (h) provide recognition of the connectivity between surface water and groundwater,
- (i) adaptively manage these water sources, and
- (j) contribute to the “environmental and other public benefit outcomes” identified under the “Water Access Entitlements and Planning Framework” in the Intergovernmental Agreement on a National Water Initiative (2004) (hereafter the NWI).