

**INTERGOVERNMENTAL AGREEMENT
ON ADDRESSING WATER OVERALLOCATION AND ACHIEVING
ENVIRONMENTAL OBJECTIVES IN THE MURRAY-DARLING BASIN**

Between the Commonwealth of Australia and the Governments of New South Wales,
Victoria, South Australia, and the Australian Capital Territory

PREAMBLE

1. The Parties agree to implement this Agreement in recognition of the need to address overallocation of water resources and achieve environmental objectives in the Murray-Darling Basin (MDB).
2. In August 2003, the Parties to this Agreement agreed to provide new funding of \$500 million over five years to address water overallocation in the MDB, comprising the following contributions; Commonwealth Government \$200 million, New South Wales \$115 million, Victoria \$115 million, South Australia \$65 million and the Australian Capital Territory \$5 million.
3. This Agreement establishes arrangements for the recovery and management of water to support the decision by the MDB Ministerial Council of 14 November 2003 to implement a first step to address the declining health of the River Murray system (the Living Murray First Step decision), and to address other water overallocation issues in the MDB.
4. The Murray-Darling Basin Agreement (1992) and the relevant legislation enacted by each of the Parties to support the Murray-Darling Basin Agreement (1992) and joined by the Australian Capital Territory through a Memorandum of Understanding dated 27 March 1998 provide the statutory framework within which the Parties will work to achieve the specific objectives of this Agreement.
5. The Parties agree to implement this Agreement consistent with the National Water Initiative Intergovernmental Agreement and its objective of a nationally compatible system of managing surface and groundwater resources for rural and urban use that optimises economic, social and environmental outcomes.
6. Implementation of this Agreement will be dependent upon agreement by the Parties to the National Water Initiative Intergovernmental Agreement.
7. This Agreement acknowledges the water recovery activities of the Snowy Joint Government Enterprise established in accordance with the Snowy Water Inquiry Outcomes Implementation Deed (2002) and other, State and Territory based, water recovery bodies. The Parties agree to undertake their responsibilities under these various initiatives so as to give effect to integrated water resource management outcomes.
8. Other natural resource management initiatives subject to separate agreements by the Parties, particularly the National Action Plan for Salinity and Water Quality and the Natural Heritage Trust, play an important and complementary role in improving the sustainable management of water in the MDB. Continued implementation of the National Water Quality Management Strategy will also complement the outcomes of this Agreement. The Parties agree to implement these initiatives in a manner which facilitates the achievement of their common objectives.

COMMENCEMENT AND TERMINATION

9. The provisions of this Agreement will commence for each Party as it becomes a signatory to both this Agreement and the National Water Initiative Intergovernmental Agreement.
10. The funding arrangements under this Agreement will terminate five years from commencement, or on any later date the Parties agree in writing. Other elements of this Agreement, including environmental water management arrangements, auditing, monitoring and reporting, will continue beyond termination of the funding arrangements, until such time as agreed by the Parties.

INTERPRETATION

11. In this Agreement, words and phrases have the same meaning as in the National Water Initiative Intergovernmental Agreement, the Murray-Darling Basin Agreement (1992) and the Murray-Darling Basin Act (1993).

ROLES AND RESPONSIBILITIES

12. Responsibility for overseeing implementation of this Agreement lies with the MDB Ministerial Council.
13. The MDB Ministerial Council will develop and agree a Business Plan for implementation of the Agreement within three months of commencement.
 - i) The Business Plan will:
 - (a) describe how the actions and milestones agreed in the Agreement are to be achieved, including milestones and water recovery targets;
 - (b) include agreed indicative volumetric targets for each jurisdiction;
 - (c) include agreed indicative financial commitments for each jurisdiction; and
 - (d) detail the activities outlined in Clauses 72 to 77 of this Agreement.
14. The Parties are jointly and severally responsible for implementing this Agreement and accountable for the achievement of its objectives.
15. The Parties are responsible for ensuring there is adequate engagement of relevant stakeholders in the implementation of this Agreement.

OBJECTIVES

16. The objectives of this Agreement include:
 - i) to establish a framework for implementation of the Parties' commitment to invest \$500 million to address water overallocation in the MDB;
 - ii) to implement arrangements for cost effective, permanent, recovery of water to achieve the agreed environmental objectives of the Living Murray First Step decision (refer Clauses 3 and 17), or other such objectives as may be agreed by the Parties;
 - iii) to provide water on an on-going basis to meet agreed environmental objectives in the MDB; and

- iv) to improve management of environmental water in the MDB.
- 17. The priority for investment under this Agreement is the recovery of water to implement the Living Murray First Step decision in regard to achievement of specific environmental objectives and outcomes for six significant ecological assets; Barmah-Millewa Forest, Gunbower and Koondrook-Perricoota Forests, Hattah Lakes, Chowilla floodplain (including Lindsay-Wallpolla), the Murray Mouth, Coorong and Lower Lakes, and the River Murray Channel, through recovered water (refer Clause 21) being built up over a period of five years to an estimated requirement of an average 500 GL/year.
- 18. Any measures to address water overallocation or other environmental objectives in other areas of the Basin under this Agreement must be agreed by all Parties to this Agreement.
- 19. Water recovered under this Agreement will be held permanently within the water allocation and access entitlement frameworks of the Parties with the security, reliability and access characteristics necessary to achieve the environmental outcomes agreed under the Living Murray First Step decision or other such objectives as may be agreed by the Parties.

ELIGIBLE MEASURES

- 20. Measures eligible for accreditation against funding commitments under this Agreement (eligible measures) will recover or manage water to meet the environmental water needs of the significant ecological assets identified under the Living Murray First Step decision (refer Clause 17). Other measures will not be considered eligible under this Agreement unless agreed by all Parties.
- 21. Funding under this Agreement shall be for new eligible measures for the recovery of water agreed by the MDB Ministerial Council as meeting the purpose of the COAG funding commitment of 29 August 2003.
- 22. The obligations of the relevant Parties under the Snowy Joint Government Enterprise and the Snowy Water Inquiry Outcomes Implementation Deed are additional to this Agreement and are not included within its scope.
- 23. Water recovery proposals which may be considered eligible for accreditation against funding commitments under this Agreement may include:
 - i) investment in water infrastructure, whether on or off farm;
 - ii) purchase of water on the market, by tender or by other market-based mechanisms;
 - iii) investment in infrastructure and behavioural change to increase efficiency and reduce consumption in urban areas;
 - iv) regulatory measures as part of a broader package of proposals; and
 - v) any other such measures as may be agreed by all Parties to this Agreement.

REGISTER OF PROPOSALS AND ELIGIBLE MEASURES

- 24. A central register of measures proposed for accreditation against funding commitments under this Agreement will be maintained by the MDB Ministerial Council and be available to all Parties.

25. The register will have two parts:
 - i) proposed measures for further development and subsequent assessment against eligibility criteria (developmental register); and
 - ii) measures approved for accreditation against funding commitments under this Agreement (eligible measures).
26. Only proposals on the register of eligible measures will be accredited against funding commitments under this Agreement.
27. Any of the Parties and other interested persons may nominate a proposal for inclusion on the register.
28. A proposed measure nominated to the register may comprise a number of identifiable sub-components, where such an aggregation is necessary to the feasibility and effectiveness of the proposal. Such a proposal will be assessed as a single measure and may not be disaggregated except at the discretion of the nominating Party.
29. Any proposed measure nominated to the register will include the means by which the recovered water will be permanently secured through statutory instruments for the objectives of this Agreement, and any terms which will apply to the use of the water.

ASSESSMENT PROCESS AND CRITERIA FOR ELIGIBILITY

30. The MDB Ministerial Council will assess a proposed measure for its:
 - i) eligibility for listing as an eligible measure on the register; and
 - ii) accreditation of recovered water against funding commitments.
31. Parties and other interested persons nominating proposed measures will ensure that proposals have been adequately investigated to determine their probable feasibility against the assessment criteria, and will make all relevant information available to the assessment process.
32. The primary criteria for accreditation of an eligible measure will be:
 - i) the degree to which the characteristics of the recovered water will fulfil the requirements of the Basin Environmental Watering Plan to be developed under Clause 58, or any other environmental objectives which may be agreed; and
 - ii) the cost effectiveness of the proposed measure, including initial cost per unit of water, and ongoing costs arising from the management, storage or delivery of the water to achieve the agreed environmental objectives.
33. Other matters which may be taken into account in assessing proposals for further development or accreditation for funding include social and economic impacts, salinity and water quality outcomes, additional environmental benefits, and third-party impacts.
34. The MDB Ministerial Council will establish assessment criteria within three months of commencement of this Agreement, based on Clauses 32 and 33.
35. Proposed measures may be accepted onto the developmental register (refer Clause 25(i)) if they demonstrate sufficient likelihood of meeting the primary criteria (refer Clause 32) to warrant further investigation.

36. In recognition of the need to expeditiously identify eligible measures from the date of commencement of the Agreement, the Parties agree that where, in the first three months from commencement of this Agreement, a proposal:

- i) recovers new water that meets the objectives of this Agreement (refer Clause 16);
- ii) demonstrates that the environmental water is to be managed under the Basin Environmental Watering Plan (refer clause 58);
- iii) demonstrates that the environmental water is to be given statutory recognition (refer Clause 29);
- iv) demonstrates that the environmental water is accounted for on registers (refer Clause 55) and is confirmed by subsequent auditing provided for in this Agreement (refer Clause 78);
- v) acquires the water at a price not exceeding \$1,000 per megalitre of Long-Term Diversion Cap equivalent water; and
- vi) at the time it is registered, could not be substituted by any other proposal available at the time at the same or lesser cost;

then the proposal would be deemed to be an accredited measure for the purposes of this Agreement and for the crediting of the volume of water recovered and the value thereof. New water, in order to be defined on a common basis, is to be defined in terms of Long-Term Diversion Cap equivalent volumes.

37. Eligible measures for recovery of water through market mechanisms, regulatory measures, or changes to river or wetland management will be credited at a price agreed by the MDB Ministerial Council which is based on the estimated market price for water access entitlements of similar characteristics.

38. Eligible measures for recovery of water through infrastructure investment will be credited at a price agreed by the MDB Ministerial Council which will not exceed an agreed multiple of the estimated market price for water access entitlements of similar characteristics, noting that the cost of the measure beyond the credited water price will be met by the relevant Party or their proposal partners from sources other than those covered by this Agreement.

39. Crediting amounts for all eligible measures in Clauses 37 and 38 above will be decided by the MDB Ministerial Council subject to agreed criteria and rules to be developed by the Council within three months of commencement of this Agreement.

40. Parties agree to recognise, in the development of the criteria and rules in Clause 39 above, the following values associated with each proposal:

- i) the average cost per megalitre of water recovered by the proposal;
- ii) the financial credit to be acquitted against each Party's commitment upon successful implementation of the proposal; and
- iii) the cost per megalitre of recovered water that each investing Party is prepared to commit in light of the above two values.

INVESTING IN ELIGIBLE MEASURES

41. All Parties to this Agreement will have an equal first call opportunity to invest in any proposal on the register of eligible measures up to the proportion of their funding commitment to the \$500 million.
42. The jurisdiction in which the water recovery measure is to be implemented will have first call on any share not taken up by another jurisdiction and at their discretion may offer any additional shares to other investing parties.
43. The relevant jurisdiction for any proposed measure must agree to the measure for it to proceed in their jurisdiction.
44. Other interested persons not party to this Agreement may fund or implement a proposal on the register of eligible measures at the discretion of the Parties, provided that their participation promotes the objectives of this Agreement.
45. Funding contributions will be separately administered by each Party to this Agreement, but will be transparently accounted for at the Basin level through a financial register maintained by the MDB Ministerial Council. Financial accounting arrangements will recognise both joint and individual proposals.

WATER RECOVERY AND INVESTMENT TARGETS

46. Targets will be established for investment and water recovery under this Agreement which will demonstrate the commitment of the Parties to an early roll-out of implementation, establish transparent measures of progress, and ensure that effort and impacts are shared equitably between jurisdictions.
47. Subject to the primary eligibility criteria under Clause 32, indicative annual investment targets will be established for expenditure of the \$500 million commitment over five years and reviewed as required. Parties will contribute to the achievement of the indicative annual targets in proportion to their share of the overall funding commitment.
48. Three year indicative targets will be set for the amount of water to be recovered within each jurisdiction, recognising the differing opportunities within each, their relative share of water under the MDB long-term diversion caps established under Schedule F of the Murray-Darling Basin Agreement (the Long-Term Diversion Cap), and the watering regime required under the Basin Environmental Watering Plan (refer Clause 58).
49. Indicative water recovery targets will be described in a manner, to be settled by the MDB Ministerial Council, which reflects the differing reliability and security characteristics of recovered water, for example conversion to a common measure such as MDB Long-Term Diversion Cap equivalent volumes or description of the required product mix. Where recovered water is outside the current Long-Term Diversion Cap arrangements, the MDB Ministerial Council will agree the basis, if any, for crediting against volumetric targets.
50. Progress against the three year indicative water recovery targets will be reviewed annually, including a comprehensive assessment of progress towards meeting the requirements of the Basin Environmental Watering Plan and an evaluation of remaining investment opportunities.
51. Indicative targets for water recovery and investment shall be agreed by the MDB Ministerial Council within three months of commencement.

ACCOUNTABILITY FOR RECOVERED WATER

52. Water recovered under this Agreement will be clearly assigned in perpetuity for the purposes of this Agreement in licences and associated water accounts, as water access entitlements, or in water sharing plans, within the jurisdictions in which it is sourced, and within the jurisdictions in which it is received and managed.
53. Where recovered water is currently within the MDB Long-Term Diversion Cap, the Cap will be amended as soon as reasonably practicable to reflect its recovery for environmental purposes.
54. Parties will be bound in the use of the recovered water by the terms and commitments which accompanied the proposed measure (Clause 29), and such terms and commitments may only be amended by agreement of the MDB Ministerial Council.
55. Recovered water will be accounted for on registers to be maintained in the State or Territory where the water is sourced, and at an aggregated Basin-wide level. Such a register shall include the origin, security, reliability, associated storage or delivery entitlements, and other characteristics of the water, its application for achievement of the agreed environmental objectives, and, where relevant, any trading of the water.
56. The MDB Ministerial Council will identify as soon as reasonably practicable consequential changes to the MDB Agreement (1992) required to implement this Agreement.

ENVIRONMENTAL WATER MANAGEMENT

57. Implementation of the environmental objectives of the Living Murray First Step decision will be the priority for the use and management of the water recovered under this Agreement.
58. The MDB Ministerial Council will develop, in consultation with regional communities and within 12 months of the commencement of this Agreement, an environmental watering plan based on best available science which will address use of the recovered water to achieve the agreed environmental objectives of the Living Murray First Step decision (the Basin Environmental Watering Plan).
59. The terms and commitments attached to each implemented water recovery measure (Clause 29) will be consistent with the Basin Environmental Watering Plan.
60. Application of recovered water to environmental outcomes or sites need not be in the jurisdiction or locality where a measure is effected or where the funding is sourced.
61. The Basin Environmental Watering Plan will come into effect when agreed by the MDB Ministerial Council. Environmental watering of the six significant ecological assets of the Living Murray First Step decision (refer Clause 17) in the interim will be through current arrangements or other agreed arrangements.
62. The MDB Ministerial Council shall enter into agreements with the relevant jurisdictions to implement the watering of the six significant ecological assets (refer Clause 17) according to the flow or other environmental triggers stipulated in the Basin Environmental Watering Plan, and in accordance with the terms and commitments entered into under Clause 29.

63. The Parties will ensure that local watering plans will be consistent with the Basin Environmental Watering Plan prepared by the MDB Ministerial Council and give effect to any obligations therein.
64. Environmental water shall be held by jurisdictions or their nominees as an allocation of sufficient security and reliability to meet the requirements of the Basin Environmental Watering Plan, and be made available for the purposes of the plan.
65. Improved environmental outcomes in tributaries of the Murray River are to be promoted through the use of the recovered water where this is consistent with and does not compromise the achievement of the environmental objectives agreed for the six significant ecological assets identified under the Living Murray First Step decision (refer Clause 17).
66. The Parties will use their best endeavours to ensure that no detrimental effect on the environmental condition of Murray-Darling system, including its tributaries, will result from the recovery of water under this Agreement.
67. The Basin Environmental Watering Plan shall be reviewed at intervals agreed by the MDB Ministerial Council.

TRADING OF RECOVERED WATER

68. Water which is recovered under this Agreement and held as a tradeable water access entitlement may be traded on the temporary water market at times when this is not contrary to the Basin Environmental Watering Plan, the terms and conditions which apply to the water recovery measure (Clause 29) or to this Agreement.
69. Net revenue from the temporary trade of water recovered under this Agreement must be separately accounted for on the financial registers of the investing parties and set aside for the achievement of the objectives of this Agreement.
70. The MDB Ministerial Council will develop, within 12 months of commencement of this Agreement, a protocol concerning the trading of recovered water and the direction of revenue to meet the objectives of the Basin Environmental Watering Plan, or complementary river health outcomes where the revenue is not required for the purposes of the plan.
71. Water recovered under this Agreement may be traded on the permanent market only if the outcome of the transaction is to use the revenue derived to acquire water access entitlements which better match the requirements of the Basin Environmental Watering Plan (refer Clause 58).

INSTITUTIONAL ARRANGEMENTS

72. The MDB Ministerial Council will coordinate all activities under this Agreement which are to be delivered at the Basin scale, including:
 - i) development of a Business Plan for implementation of this Agreement (refer Clause 13);
 - ii) agreement on the types of measures eligible for accreditation against funding commitments under this Agreement (refer Clause 23);

- iii) development of assessment criteria and coordination of the assessment process (refer Clause 34);
 - iv) maintenance of the register of eligible measures (refer Clauses 24 and 25);
 - v) accreditation of measures against funding commitments under this Agreement (refer Clause 30);
 - vi) determination of any crediting amount under Clauses 37 and 38;
 - vii) coordination of opportunities for multi-jurisdictional funding of eligible measures (refer Clauses 41 and 42);
 - viii) establishing indicative investment targets, and monitoring performance against these (refer Clause 47);
 - ix) establishing indicative water recovery targets, defining the way in which they will be implemented and managed, and monitoring performance against the agreed targets (refer Clause 48);
 - x) maintenance of an aggregated Basin-wide register of recovered water, including any permanent or temporary trade in recovered water, and adjustment of the MDB Long-Term Diversion Cap as required (refer Clauses 53 and 55);
 - xi) development and implementation of an environmental watering plan for the Living Murray First Step decision environmental objectives (the Basin Environmental Watering Plan, refer clause 58);
 - xii) agreeing and giving effect to the terms and commitments which are associated with each water recovery measure (Clause 29), and any amendments to these;
 - xiii) monitoring and public reporting of outcomes against the Basin Environmental Watering Plan (refer Clauses 79 (iv) and 80); and
 - xiv) review of the Agreement (refer Clause 81).
73. The MDB Commission will have operational responsibility for all Basin-scale activities under the oversight of the MDB Ministerial Council, as listed above, unless otherwise agreed by the Council.
74. Parties will be responsible for proposing, developing and implementing eligible measures, holding recovered water in a form which meets the requirements of the Basin Environmental Watering Plan and making it available for the purposes of the plan, and ensuring community engagement in actions taken under this Agreement. These responsibilities include:
- i) undertaking feasibility studies and bringing forward proposals suitable for registration as eligible measures under this Agreement (refer Clause 31);
 - ii) entering into investment sharing arrangements with the other Parties (refer Clauses 41 and 42);
 - iii) meeting jurisdictional water recovery and investment targets (refer Clauses 47 and 48);
 - iv) maintaining financial records, including for any trade in recovered water (refer Clauses 69 and 78);
 - v) maintaining externally audited State and Territory-based registries of recovered water (refer Clauses 55 and 78);

- vi) implementation of water recovery measures, and giving effect to the terms and commitments accompanying each water recovery measure (refer Clause 29);
 - vii) ensuring community consultation in the development and implementation of measures (refer Clause 15);
 - viii) ensuring that recovered water is characterised within the State and Territory water allocation and access entitlement regimes with security, reliability, and access characteristics which meet the requirements of the Basin Environmental Watering Plan (refer Clause 19) ;
 - ix) making recovered water available for the purposes of the Basin Environmental Watering Plan, and where necessary entering into specific arrangements for this purpose (refer Clauses 62 and 64);
 - x) coordinating local or regional management of environmental water, and entering into agreements with local catchment authorities or their equivalents for this when appropriate (refer Clauses 63 and 77); and
 - xi) monitoring and public reporting of outcomes at the regional, State or Territory level (refer Clauses 79 and 80).
75. Regional catchment management authorities, water authorities, water users and similar bodies may propose, invest in or implement eligible measures where this is consistent with the objectives and requirements of this Agreement.
76. Regional and local bodies will be consulted in the local management of environmental water and the development of the Basin Environmental Watering Plan.
77. Local or regional catchment management bodies or their equivalents may be responsible for local management of environmental water at the discretion of the relevant jurisdiction, provided the objectives of any such body in management of the recovered water shall be consistent with the objectives of this Agreement and occurs within the institutional framework contained in this Agreement.

MONITORING, AUDIT AND REVIEW

78. The following will be subject to annual external auditing to the satisfaction of the MDB Ministerial Council:
- i) financial records of expenditure accredited against funding commitments under this Agreement;
 - ii) financial records of any temporary or permanent trade of recovered water;
 - iii) registries of recovered water;
 - iv) the environmental management of the recovered water; and
 - v) management of the impacts on the MDB Long-Term Diversion Cap which result from the recovery and delivery of water under this Agreement.
79. The Parties agree to establish within 12 months of commencement a suitable monitoring and evaluation plan for this Agreement that involves annual reporting to the MDB Ministerial Council on:
- i) actions taken under this Agreement;

- ii) progress against the indicative water recovery and investment targets set for each jurisdiction;
 - iii) any trade of recovered water, and the reinvestment of any revenue so derived; and
 - iv) performance against the Basin Environmental Watering Plan and the achievement of environmental objectives, including performance against environmental indicators.
80. All reports are to be made publicly available, including on the MDB Commission internet website.
81. The Parties will review this Agreement three years from commencement.
82. The MDB Ministerial Council and the Parties shall implement sufficient monitoring and information systems as required to enable such reporting and review.

VARIATION

83. This Agreement may be amended at the request of one of the Parties, subject to the agreement of all the Parties.

ACKNOWLEDGEMENT

84. The Parties agree that measures undertaken under this Agreement will be identified in accordance with a communications plan to be developed by the MDB Ministerial Council, and that opportunities will be provided for the Parties to be involved in any promotional activities associated with this Agreement or the implementation of particular measures.

DISPUTE RESOLUTION

85. If a dispute arises under this Agreement the members of the MDB Ministerial Council will use their best endeavours to settle the dispute through direct negotiation and by acting in a spirit of cooperation.

Signed for and on behalf of each of the parties by:

The Honourable John Winston Howard MP)
Prime Minister of the Commonwealth of Australia)

The Honourable Robert John Carr MP)
Premier of New South Wales)

The Honourable Stephen Phillip Bracks MP)
Premier of Victoria)

The Honourable Michael Rann MP)
Premier of South Australia)

Jonathon Donald Stanhope MLA)
Chief Minister of the Australian Capital Territory)

25 June 2004