

NSW First Flush Assessment,  
c/o Department of Planning, Industry and Environment,  
Locked Bag 5022,  
Parramatta NSW 2150

Dear Panel

## **NORTHERN BASIN FIRST FLUSH ASSESSEMENT – SUBMISSION TO DRAFT REPORT**

Thank you for the opportunity to provide comments on the *Draft Report from the Independent Panel Assessment of the Management of the 2020 Northern Basin First Flush Event*. The draft report is comprehensive, documenting the history, relevant legislation and events/processes leading up to and during the first flush event. However, many Victorian stakeholders remain concerned that the handling of the February 2020 first flush event reduced inflows to the Southern Basin and the Menindee Lakes, to the detriment of Victorian communities, the Lower Murray system and the environment.

There are growing concerns across the southern Basin regarding the impact northern Basin water resource management changes have on the overall health of our waterways. Floodplain harvesting rules, monitoring and compliance, and first flush arrangements should be systematically addressed. The first flush report is an important step towards improving compliance, accountability and transparency across the northern Basin. The report found that communication with stakeholders during and after the event was inadequate and fostered a lack of trust in managing agencies.

The Murray-Darling Basin Agreement, which sets out the management and water sharing arrangements for the Menindee Lakes, was predicated on assumptions about inflows to the Lakes that were not articulated. A post event assessment of the effectiveness of management approaches to first flush events and floodplain harvesting would build confidence in the management of future events.

While the Basin Plan limits the total average annual diversions of water, it does not specifically address the environmental and human impacts of extracting during periods of low flow, as well as “first flush” water after a dry period. As you are aware, these issues are particularly significant in the northern Basin because of the extent of private storages and that rivers are largely unregulated. Victorian stakeholders have raised concerns that floodplain harvesting policies and proposed changes to flow sharing rules in the Namoi allow increased floodplain harvesting and reduce the protection of planned environmental water. Along with the delay in licensing of floodplain harvesting until 2021, Basin stakeholders, including environmental groups, irrigators and local governments, are concerned that these changes could contribute to a lack of inflows in the south and have significant potential social, economic, environmental and cultural impacts.

It is important that Basin communities have confidence in the Basin Plan and associated state-based documents and policies. Victorian stakeholders will expect to see clear and accessible information from New South Wales about the effect of changes to floodplain management policies on inflows to Menindee Lakes, the environment and communities at the bottom of the Darling River system. It is pleasing to see that the draft report makes some

recommendations to provide greater transparency in decision making, engagement and communication with Basin stakeholders.

Several authoritative reports, including the Independent Assessment of the 2018-19 fish deaths in the lower Darling (the Vertessy Report, 2019) and the NSW Natural Resources Commission review of Water Sharing Plans (2020), have raised concerns that inflows to the Menindee Lakes are being reduced by northern Basin water management practices and changing rainfall patterns. Victoria is concerned that lifting the embargoes may have materially impacted inflows to the Menindee Lakes. Victoria owns half the water in the Menindee Lakes once levels exceed 640 GL. If flows are harvested in a way that prevents inflows to the Menindee Lakes, there is an impact on Victorian users.

In addition, the Menindee Lakes are important for providing water to the lower Murray River. The current low levels of the Menindee Lakes are a contributing factor to increasing deliverability demands being placed on the Murray River tributaries such as the Goulburn River.

Attached is the Department's response to the first flush review recommendations. If you have any questions, please contact Jessica Freame, Director, Intergovernmental, Department of Environment, Land, Water and Planning on (03) 9637 8930 or via email

[REDACTED]

Yours sincerely



**Helen Vaughan**  
**Deputy Secretary**  
**Water and Catchments**

14/08/2020

## **Northern Basin First Flush Assessment – Victorian Government Response to Recommendations**

***Recommendation 1 - Ensure that water management provides for and promotes connectivity between water sources.***

**Support in full** – Victoria is concerned that there are no protections in place to protect inflows to the Menindee Lakes. Improving connectivity between the systems would be beneficial for all water users. The report’s findings and recommendations give focus to the critical environmental needs (connectivity) and human needs but do not appear to consider the rights of downstream users or impacts on downstream entitlement holders.

Victoria considers better protection is required in the Northern Basin for first flush events. The extraction of 243 GL of water by irrigators/farmers during the February 2020 event is a significant volume. The report does not indicate if there has been any post-event assessment of the impact of harvesting this water on downstream outcomes such as reduced availability for irrigators or environmental impacts. Many stakeholder submissions to the review highlighted that upstream access to water should not be provided until downstream requirements were met (rather than forecast to be met). Victoria supports this approach as this would provide material protection for critical downstream needs.

***Recommendation 2 - Make any temporary water restrictions required to manage first flush events on a proactive basis (that is, prior to specific forecasts of rain).***

**Support in full** - Such restrictions would need to be accompanied with thorough and timely communications with affected stakeholders, including downstream users. Victoria strongly supports this recommendation as the report noted that while NSW Agency officers had reasonable internal decision-making processes in place and made substantial efforts to use the best available information, there was insufficient planning and preparation prior to the event, unclear objectives to manage the event and a lack of information to guide decision making.

***Recommendation 3 - Until there are further statutory provisions for first flush event management, publish guidance materials which outline how the NSW Government will use temporary water restrictions to manage first flush events.***

**Support in full** - The report noted a lack of planning and preparation for engaging with water users and the community when preparing the objectives, targets and principles. Preparing water users and the community for the first flush event and developing adequate incident management arrangements would have reduced uncertainty, and improved communication and therefore confidence in the management of the event. The lack of these arrangements likely contributed to a strong perception that the ‘goal posts’ shifted during the event.

***Recommendation 4 - Incorporate learnings from the 2020 Northern Basin First Flush event into systems that will be used to manage any future first flush event that arise in the short term, including by undertaking consultation with communities, Aboriginal people and water users on the objectives, principles and targets.***

**Support in full** - The practical adaptation of current arrangements for future events is unclear, with a lack of clarity about how monitoring, evaluation and reporting will be provided. Consultation with Traditional Owners and Aboriginal communities regarding the event is important and Victoria agrees

that this should be strengthened for future events. The proposed framework for managing any first flush events that may arise in the short term would be improved by including an assessment of objectives and targets met through a post event review. It is important that this recommendation is addressed early and communicated to stakeholders with minimal delays to provide confidence in the decision-making process.

***Recommendation 5 - Take steps to ensure the evidence base and methodology for first flush management is quantified, science-based and made publicly available.***

**Support in full** - To untangle the range of influences including climate change, on river flows, specific analysis of how the changes in NSW licensing arrangements may have impacted on Murray water security would be useful to understand and assess the impact of lifting embargos. Publication of these findings and communication to stakeholders will be particularly important. The report also highlights that in the context of a changing climate, the occurrence of cease to flow events is expected to increase. Therefore, implementing the report's recommendations to improve management of first flushes becomes more urgent given the increased likelihood of no-flow events due to climate change.

***Recommendation 6 - Review and update incident management systems for managing first flush events.***

**Support in full** – see Recommendation 3 response

***Recommendation 7 - Embed the management of first flush events in the regulatory and policy framework for managing drought. An example of the types of matters that could be incorporated into the WM Act, Extreme Events Policy, water sharing plans and incident response guides is set out in the table below. However, any framework adopted should be developed in discussion with communities, Aboriginal peoples and water users.***

**Support in full** - Recommending that the management of first flush events be embedded in the regulatory and policy framework for managing drought is welcomed. This would help ensure a consistent application of decision-making frameworks, and a transparent process. Victoria supports the suggested provisions for managing first flush events, in consultation with all stakeholders, into the Water Management Act, the Extreme Events Policy, Water Sharing Plans (WSPs) and other frameworks. This recommendation addresses the finding in the report that there is a reliance on section 324 of the *Water Management Act 2000* (NSW) rather than a regulatory framework to manage first flush events.

The report recommends that WSPs should describe and establish the point at which first flush rules take effect (triggers for first flush management) and describe the process to be followed to achieve the objective of first flush events in the relevant water source. Victoria strongly supports this recommendation as this would provide assurance to all stakeholders (local and downstream) that relevant matters will be taken into account in WSPs and provide transparency on how water resources are managed. Without such regulatory measures, Victoria remains concerned that the management of first flush events and associated floodplain harvesting policies will have implications for the environment and downstream users.

NSW is not due to implement licensing for floodplain harvesting until the end 2021. Victoria is concerned that floodplain harvesting may have a direct impact on inflow to the Menindee Lakes and the Southern Basin. This increases the risk of water users taking more water than is permitted under

their Sustainable Diversion Limits (SDL) whilst being compliant with conditions on their authority to take.

Fundamental to Water Resource Plans (WRPs) is a framework that supports regulation of water users, determining annual limits for take, accounting for that take, and measures to curtail increases in the unauthorised extraction of water. Specifically, section 10.11 of the Basin Plan requires that a WRP include rules to ensure that actual take does not exceed annual permitted take. Victoria would like assurance that processes are in place to support monitoring of take and compliance with diversion limits for floodplain harvesting.

***Recommendation 8 - Improve flow forecasting modelling and real-time monitoring capability, including measurement of extractions and the hydrometric system for inflows and monitoring end of system flows***

**Support in full** - Reduced flows into the southern Basin from the Darling system increase pressures on the Victorian system to deliver water for the lower Murray system. Arrangements are needed that provide for fair and balanced sharing of the resource between upstream and downstream environments and users. This can only be done with thorough and accurate modelling and monitoring of the system. It is important that this recommendation is accompanied by timeframes for delivery.

***Recommendation 9 - Ensure that current (and future) reform programs are accompanied by clear implementation plans and regular communication of progress to the public.***

**Support in full** - Noting that these actions will need to align with other recommendations.

***Recommendation 10 - Improve and resource communication coordination and capability.***

**Support in full** - Communication with stakeholders during and after any first flush event is vital to ensure they trust the management approach. Victoria supports better communication coordination and capability along the Barwon-Darling system and for downstream stakeholders along the lower Murray system.

Subsequently, all basin jurisdictions should be kept informed about the connectivity of first flush events. This would be supported through regular and formal updates to Basin Officials Committee on northern Basin and Darling River flows and flow management. Victoria is a key stakeholder and would expect to be engaged in the NSW decision-making process as the management of first flush events can have adverse impact on inflows to the Menindee Lakes and the lower Darling River. Victoria would also be willing to participate in appropriate governance arrangements.