

The Auditor-General  
ANAO Report No. 17 2017–18  
Assurance Review

**Department of Agriculture and Water Resources’  
Assessment of New South Wales’ Protection and  
use of Environmental Water under the National  
Partnership Agreement on Implementing Water  
Reform in the Murray-Darling Basin**

Department of Agriculture and Water Resources

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Canberra ACT  
28 November 2017

Dear Mr President and Mr Speaker

The Australian National Audit Office has undertaken an independent assurance review of the Department of Agriculture and Water Resources' Assessment of New South Wales' Protection and use of Environmental Water under the National Partnership Agreement on Implementing Water Reform in the Murray-Darling Basin, under section 19A(1) of the *Auditor-General Act 1997* (the Act).

An assurance review may be initiated on the basis of information obtained in the course of performing an Auditor-General function or in response to requests from stakeholders, including parliamentarians, parliamentary committees or a resolution agreed to by the Senate.

Following its presentation and receipt, the report will be placed on the Australian National Audit Office's website—<http://www.anao.gov.au>.

Yours sincerely



Grant Hehir  
Auditor-General

The Honourable the President of the Senate  
The Honourable the Speaker of the House of Representatives  
Parliament House  
Canberra ACT 2600

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# Assurance review—section 19A of the Auditor-General Act 1997

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## INDEPENDENT ASSURANCE REPORT

### DEPARTMENT OF AGRICULTURE AND WATER RESOURCES' ASSESSMENT OF NEW SOUTH WALES' PROTECTION AND USE OF ENVIRONMENTAL WATER UNDER THE NATIONAL PARTNERSHIP AGREEMENT ON IMPLEMENTING WATER REFORM IN THE MURRAY-DARLING BASIN

#### Qualified Conclusion

I have undertaken a limited assurance review of the Department of Agriculture and Water Resources' assessment of the performance of New South Wales (NSW) under the *National Partnership Agreement on Implementing Water Reform in the Murray-Darling Basin* (Murray-Darling Basin NPA) relevant to the protection and use of environmental water for the 2014–15 and 2015–16 financial years.

The limited assurance review examined whether the assessment undertaken has provided a high level of assurance about the protection and use of environmental water in the Murray-Darling Basin as evaluated against the following criteria ('the criteria'):

- Does the framework established under the Murray-Darling Basin NPA support the Department of Agriculture and Water Resources to effectively assess the performance of NSW in protecting and using environmental water in line with the Murray-Darling Basin Plan (Basin Plan)?
- Has the Department of Agriculture and Water Resources effectively assessed the performance of NSW against the milestones in the Murray-Darling Basin NPA?

Based on the procedures I have performed and the evidence I have obtained, the following matters have come to my attention:

- the lack of specific, measurable deliverables, and outcome measures in the milestones and criteria for assessing the performance of NSW under the Murray-Darling Basin NPA represent significant weaknesses in the performance framework; and
- while the Department of Agriculture and Water Resources has followed agreed processes for monitoring performance, there was a lack of evidence and explanation to substantiate its positive assessment of NSW's progress under Milestone 8<sup>1</sup> of the Murray-Darling Basin NPA for 2015–16, in light of serious issues raised about the state's water regulation arrangements. Importantly, there was little in the Department of Agriculture and Water Resources' submission to the Minister for 2015–16 to suggest that there were risks that NSW was not delivering environmental water consistent with the Basin Plan. These

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1 Milestone 8 is that the 'state has cooperated for Basin Plan arrangements for environmental watering'. The Department of Agriculture and Water Resources also assessed Milestones 6, 7 and 9 and identified issues in relation to Milestones 6 and 7 for 2015–16.

factors have limited the effectiveness of Department of Agriculture and Water Resources' assessment.<sup>2</sup>

Other than the possible effects of these matters, nothing has come to my attention that causes me to believe that the assessment undertaken by the Department of Agriculture and Water Resources for 2014–15 and 2015–16 has not provided a high level of assurance about the protection and use of environmental water in the Murray-Darling Basin, as evaluated against the criteria.

I have conducted the review in accordance with the ANAO Auditing Standards, which include the relevant Standard on Assurance Engagements ASAE 3000 *Assurance Engagements other than Audits or Reviews of Historical Financial Information* issued by the Auditing and Assurance Standards Board.

I believe that the evidence I have obtained is sufficient and appropriate to provide a basis for my qualified conclusion.

## **Responsibilities of the Secretary of the Department of Agriculture and Water Resources**

The Secretary of the Department of Agriculture and Water Resources is responsible for the Department of Agriculture and Water Resources' management of the Australian Government's interests under the Murray-Darling Basin NPA. This responsibility includes assessing the performance of NSW in accordance with the agreement, and making recommendations for associated payments to the Minister for Agriculture and Water Resources.

## **Independence and Quality Control**

I have complied with the independence and other relevant ethical requirements relating to assurance engagements, and apply Auditing Standard ASQC 1 *Quality Control for Firms that Perform Audits and Reviews of Financial Reports and Other Financial Information, and Other Assurance Engagements* in undertaking this assurance review.

## **Responsibilities of the Auditor-General**

My responsibility is to express a limited assurance conclusion on whether the assessment undertaken by the Department of Agriculture and Water Resources has provided a high level of assurance about the protection and use of environmental water in the Murray-Darling Basin, as evaluated against the criteria. ASAE 3000 requires that I plan and perform my procedures to obtain limited assurance about whether anything has come to my attention that the Department of Agriculture and Water Resources' assessment of the performance of NSW under the Murray-Darling Basin NPA has not provided a high level of assurance about the protection and use of environmental water in the Murray-Darling Basin, as evaluated against the criteria.

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2 The Department of Agriculture and Water Resources advised that it does not agree with this finding.

I have conducted my limited assurance review by making such enquiries and performing such procedures I considered reasonable in the circumstances, including examination and assessment of:

- the Murray-Darling Basin NPA and the requirements of the Intergovernmental Agreement on Federal Financial Relations;
- the Department of Agriculture and Water Resources' assessments of the performance of NSW in 2014–15 and 2015–16, and associated recommendations to the Minister for Agriculture and Water Resources; and
- information and advice provided by the Murray-Darling Basin Authority and the Commonwealth Environmental Water Holder in relation to the Department of Agriculture and Water Resources' assessments of the performance of NSW in those years.

Interviews were also conducted with Commonwealth officers with responsibilities for monitoring of the performance of NSW according to the Murray-Darling Basin NPA.

The procedures selected depend on my professional judgement, including identifying areas of risk that the monitoring of the performance of NSW was not in accordance with the requirements of the Murray-Darling Basin NPA.

The procedures performed in a limited assurance review vary in nature and timing from, and are less in extent than for, a reasonable assurance review and consequently the level of assurance obtained in a limited assurance review is substantially lower than the assurance that would have been obtained had a reasonable assurance review been performed. Accordingly, I do not express a reasonable assurance opinion on monitoring of the performance of NSW in accordance with the requirements of the Murray-Darling Basin NPA, as evaluated against the criteria.

Australian National Audit Office



Grant Hehir  
Auditor-General  
Canberra  
28 November 2017





## Appendix A—Findings in respect of specific aspects of the review

1. During the conduct of the limited assurance review, the following findings were made with respect to specific aspects of the review. These matters were addressed in the context of my assurance review as a whole, and in forming my conclusion thereon, and I do not provide a separate conclusion on these matters.

### Background

#### *Overview of the Murray-Darling Basin National Partnership Agreement*

2. In Australia, state governments have the constitutional responsibility for managing water resources within their jurisdictions. The Australian Government's involvement in water reform increased from the 1990s, and particularly from 1994 when the Council of Australian Governments (COAG) agreed to a national framework to manage Australia's water resources—the Water Reform Framework. The *Water Act 2007* and the *Murray-Darling Basin Plan 2012* provide the legislative framework for management of the Murray-Darling Basin's water resources by the Commonwealth in conjunction with the Basin States.<sup>3</sup> The legislation requires 'a return to environmentally sustainable levels of extraction for water resources that are over allocated or overused'.<sup>4</sup>

3. The current COAG 2013 *Intergovernmental Agreement on Implementing Water Reform in the Murray-Darling Basin* commits the Commonwealth and Basin States to implementing the next tranche of reform in the Murray-Darling Basin. Clause 7 of that Agreement requires the Australian Government to:

provide financial support to the Basin States via the *National Partnership Agreement on Implementing Water Reform in the Murray-Darling Basin*. This is in recognition of the costs that the Basin States will incur as a result of implementing the Basin Plan through activities including, but not limited to preparing new Water Resources Plans consistent with the Basin Plan, new compliance and reporting requirements, and amending water trading rules to make them consistent with Basin Plan requirements.

4. In addition, clause 7 notes that 'payments to Basin States are to be based on performance against the Murray-Darling Basin NPA milestones in accordance with the *Intergovernmental Agreement on Federal Financial Relations*. The Murray-Darling Basin NPA milestones are based on the measures and objectives stated in the Basin Plan and in this Agreement'. Under the Murray-Darling Basin NPA, the Commonwealth committed to providing \$174 million over eight years (2012–13 to 2019–2020) with \$83 million for NSW.

5. The *Intergovernmental Agreement on Federal Financial Relations* and the associated federal financial relations framework were implemented in 2009. Previously, Commonwealth-State financial relations were characterised by arrangements whereby the Commonwealth placed a high degree of prescription on payments to the states that made it difficult for states to set their own priorities and address their own circumstances to achieve the best overall community outcomes. To address these issues, the *Intergovernmental Agreement on Federal Financial Relations* directed the focus from input measures to output and outcome measures.

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3 The Basin States include New South Wales (NSW), Victoria, Queensland, South Australia and the Australian Capital Territory.

4 *Water Act 2007 (Cth)*, sub-section 3(d).

6. Accordingly, the role of the Commonwealth in monitoring performance under the Murray-Darling Basin NPA is to ensure that outputs are delivered and outcomes are achieved within agreed timeframes. This includes making suitable progress in sustainable water extraction, which involves the protection and use of environmental water through effective regulatory and compliance arrangements.

#### *Four Corners program*

7. On 24 July 2017, a Four Corners program ‘Pumped: who is benefiting from the billions spent on the Murray-Darling?’ presented allegations of widespread non-compliance with NSW water law, particularly in the Barwon-Darling River system in Northern NSW. It alleged that certain irrigators had pumped water from the river system in periods when pumping was not permitted, or in quantities greatly in excess of their entitlements. It also alleged that meter tampering was common in the region and that compliance and enforcement efforts by the NSW Government were ineffective.

8. The program prompted a request from the Shadow Minister for Environment and Water, the Hon Tony Burke MP that I investigate the allegations and other relevant matters. In response to the request (Attachment A), I have expanded the scope of a current audit of National Partnership Agreements<sup>5</sup>, and also undertaken a limited assurance review focused on the Murray-Darling Basin NPA that is the subject of this report.

### **Does the framework established under the Murray-Darling Basin National Partnership Agreement support the Department of Agriculture and Water Resources to effectively assess the performance of NSW in protecting and using environmental water in line with the Murray-Darling Basin Plan?**

9. Under the *Intergovernmental Agreement on Federal Financial Relations*, National Partnership Agreements are to reflect an outcomes framework, with alignment between the overarching objective of the National Partnership Agreement, the expected outcomes and outputs, and the performance indicators (or milestones) that inform the community about how governments are progressing towards achieving objectives, outcomes and outputs. Table 1 outlines the objectives, outcomes, output measures and performance milestones<sup>6</sup> of the Murray-Darling Basin NPA.

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5 The audit scope has been expanded to include how the Department of Agriculture and Water Resources is assessing the performance of New South Wales under the *National Partnership Agreement on Implementing Water Reform in the Murray-Darling Basin* relevant to the protection and use of environmental water. Refer Australian National Audit Office website <<https://www.anao.gov.au/work/request/allegations-concerning-murray-darling-basin>>.

6 Table 1 provides a summary of the milestones that apply from 2014–15 to 2019–20.

**Table 1: Objectives, outcomes, outputs and milestones of the Murray-Darling Basin National Partnership Agreement, 2012–13 to 2019–20**

| Objective  |
|--|
| To ensure that Murray-Darling Basin water reforms are implemented in the national interest of a healthy working river system, strong communities and sustainable food and fibre production.  |
| Outcomes   |
| <ul style="list-style-type: none"> <li>• Sustainable water extraction in the Murray-Darling Basin.</li> <li>• Water resource plans that operate efficiently and effectively and provide greater certainty of access to Basin water resources.</li> <li>• Greater certainty for all water users regarding the characteristics of held water entitlements and transition to Sustainable Diversion Limits consistent with Basin Plan requirements.</li> <li>• Efficient and effective delivery of environmental water to maximise environmental outcomes at a Basin and local level.</li> </ul>   |
| Outputs  |
| <ul style="list-style-type: none"> <li>• Enabling the Commonwealth to meet its commitment to ‘bridge the gap’ between baseline diversion limits and sustainable diversion limits, including by removing barriers to trade that are inconsistent with the Basin Plan, processing water entitlement trade applications within agreed timeframes, unbundling water entitlements from land where the benefits exceed the costs, and agree to enable groundwater and overland flow recovery through market-based approaches.</li> <li>• Cooperatively identifying and agreeing on initiatives to be considered by the Murray-Darling Basin Authority under the Surface Water Sustainable Diversion Limits adjustment mechanism.</li> <li>• Implementing the Basin Plan, including preparing Water Resource Plans consistent with Basin Plan requirements to provide certainty for water users.</li> <li>• Ensuring the characteristics of licensed entitlements held for environmental use will not be enhanced or diminished, relative to like entitlements held and used for other purposes, except as otherwise agreed between the Commonwealth and the relevant state(s) to facilitate improved environmental watering.</li> <li>• Working collaboratively with the Commonwealth and each other in exercising their environmental watering and planning responsibilities in accordance with the Basin Plan Environmental Watering Plan, and having regard to the Basin annual environmental watering priorities, as prepared by the Murray-Darling Basin Authority.</li> </ul>  |
| Milestones   |
| <p>6) The state has supported the Commonwealth in ‘bridging the gap’ by removal of volumetric or other barriers to permanent trade out of water irrigation areas; confirming that no restrictions were introduced on the trading of water access entitlements; that no action has been taken to impede Commonwealth measures to acquire water for environmental purposes; that Commonwealth applications for water entitlement and allocation were processed according to agreed standards; and that entitlements in regulated water systems were appropriately specified.</p> <p>7) Following publication of the Constraints Management Strategy by the Murray-Darling Basin Authority, confirmation that any actions taken by the state to remove or address constraints are consistent with the measures agreed through the inter-jurisdictional governance procedure for the Sustainable Diversion Limits adjustment mechanism.</p> <p>8) The state has cooperated in arrangements for Basin Plan environmental watering by confirming that the licenced entitlements held for environmental use have not been enhanced or diminished relative to like entitlements held and used for other purposes; that measures to protect environmental water (such as, water shepherding) are implemented; that the MDBA is provided with annual environmental water priorities consistent with Basin Plan; that the management and delivery of planned and held environmental water is consistent with the Basin Plan and that environmental watering has regard to the views of local communities and those materially affected; and long-term environmental watering plans are developed in line with agreed timeframes and the Basin Plan.</p> |

9) For New South Wales, Victoria and South Australia only, and for 2014–15 and 2015–16 only, the state has provided a brief description of supply measure projects for which feasibility and business cases are being developed for consideration under the Sustainable Diversion Limits adjustment mechanism.

10. The outcomes of the Murray-Darling Basin NPA are strategic, high-level goals that have been expressed in clear terms, and link to the overarching objective for Murray-Darling Basin water reform. The outcomes are not readily measurable in their own right, and rely on appropriately specified and aligned outputs and milestones.

11. The outputs of the Murray-Darling Basin NPA link to the agreement's outcomes largely through reference to the Murray-Darling Basin Plan (Basin Plan).<sup>7</sup> Essentially, the Basin Plan<sup>8</sup> establishes the amount of water that can be extracted each year from the Basin for urban, industrial and agricultural use—known as sustainable diversion limits—and the mechanisms by which jurisdictions will contribute to achieving related targets. Specific outputs and deliverables under the Basin Plan include:

- implementation of sustainable diversion limit targets from 1 July 2019 representing a reduction of 2750 gigalitres from pre-existing levels of diversion to achieve the Basin Plan's environmental outcomes<sup>9</sup>;
- Basin States to report against water resource plans<sup>10</sup> once these plans have been accredited by the Commonwealth Minister based on the Murray-Darling Basin Authority (MDBA) recommendations. All water resource plans are to be in place by 1 July 2019 when the sustainable diversion limits take effect;
- Basin States to report annually against long-term watering plans<sup>11</sup> aligning with the Basin Plan's surface water resource plan areas from 2016 onwards;

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7 For example, Outputs 1 and 2 relate to Outcome 1 through reference to the Basin Plans' sustainable diversion limits, and Output 3 relates to Outcome 2 through 'preparing Water Resource Plans consistent with Basin Plan requirements to provide certainty for water users'.

8 Over \$13 billion in Australian Government funding is being provided for implementation of the Basin Plan and associated activities, including \$10 billion for water recovery and to 'bridge the gap' to the sustainable diversion limits. By February 2017, more than \$7 billion of the \$13 billion investment in the Basin had been spent.

9 The Basin-wide sustainable diversion limits for surface water represents a reduction of 2750 gigalitres from pre-existing levels of diversion. Specifically, 13 600 gigalitres are to be diverted for consumptive uses (for example, irrigation) of which 2750 gigalitres will be redirected to the environment by 30 June 2019.

10 Water resource plans are a key mechanism by which each Basin State will implement the Basin Plan. These plans will set out how water will be managed in each of the surface and groundwater resources in the Murray-Darling Basin. Water resource plans will underpin the Basin States' implementation of the sustainable diversion limits established under the Basin Plan. Water resource plans are required to be assessed and accredited by the Commonwealth Water Minister ahead of full Basin Plan implementation on 1 July 2019.

11 Long-term planning for environmental watering in the Murray-Darling Basin operates at two geographical scales: the Basin scale and the regional scale. Three long term planning instruments—the Basin-wide environmental watering strategy, water resource plans and long term watering plans—coordinate environmental watering across the Basin. The Basin-wide environmental watering strategy has been prepared by the MDBA, whereas, long term watering plans and water resource plans are to be prepared at a regional level by the Basin States.

- implementation of pre-requisite policy measures by 30 June 2019 to credit environmental return flows for downstream use and to allow the call on held environmental water from storage during unregulated flow events<sup>12</sup>; and
- Basin States to develop plans by June 2016 for implementation of pre-requisite policy measures by 30 June 2019.

12. Most of the deliverables under the Basin Plan are to be implemented 1 July 2019—twelve months prior to the expiry of the Murray-Darling Basin NPA on 30 June 2020. The exception to this is the annual reporting by the Basin States from 2016 against long-term watering plans (captured by Milestone 8(f)) and the development of plans by June 2016 for the implementation of pre-requisite policy measures—which has not been explicitly captured by any of the milestones of the Murray-Darling Basin NPA.<sup>13</sup>

13. While the Murray-Darling Basin NPA reflects the outcomes framework of the *Intergovernmental Agreement on Federal Financial Relations*, the lack of specific, measurable deliverables until the later stages of the Murray-Darling Basin NPA (towards 2019) does not support clarity about the level of progress achieved in the earlier stages of the agreement.

*Arrangements established to assess the performance of NSW against the milestones in the Murray-Darling Basin National Partnership Agreement and recommended payments to NSW*

14. Under the Murray-Darling Basin NPA, NSW is to submit an annual Statement of Assurance by 31 August each year to the Commonwealth, setting out progress against the milestones set out in Schedule A of the agreement (as summarised in Table 1). The Commonwealth is then required to prepare a milestone assessment report by 31 October based on the Statement of Assurance and any supporting documentation.

15. The National Water Commission prepared the 2013–14 milestone assessment report, which was the first report under the Murray-Darling Basin NPA. Following the abolition of the National Water Commission in June 2015, the assessor role transferred to the Department of the Environment and subsequently through a Machinery of Government change to the Department of Agriculture and Water Resources (DAWR). DAWR produced the 2014–15 and 2015–16 milestone assessment reports.

16. On completion of its assessment, DAWR provides a submission to the Commonwealth Minister for Agriculture and Water Resources outlining the assessment findings, key issues and a recommendation about whether to make payments. Under the Murray-Darling Basin NPA there is no option to recommend a partial payment—payment options are all or nothing.

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12 Sustainable diversion limit targets are based on implementation of pre-requisite policy measures to facilitate the efficient use of environmental water. Pre-requisite policy measures include arrangements to re-credit environmental return flows from floodplains for downstream environmental uses, and measures that enable environmental water to be released from dams to complement natural flow events in ways that deliver more environmental benefits.

13 However, the development of a plan to implement pre-requisite policy measures could be assessed through a broad application of Milestone 8(d), which is 'confirmation that the management and delivery of planned and held environmental water is consistent with the Basin Plan'. This links to Outcome (c) of 'greater certainty for all water users regarding the characteristics of held water entitlements and transition to Sustainable Diversion Limits consistent with Basin Plan requirements'.

17. In assessing Basin States' performance against the Murray-Darling Basin NPA milestones, DAWR uses specific criteria, which were developed by the National Water Commission for assessing Basin States' performance in 2013–14. Refer Attachment B for criteria.

18. To support DAWR in making assessments against the criteria, the MDBA and the Commonwealth Environmental Water Holder (CEWH) provide advice to DAWR in the assessment period about each Basin States' performance against the criteria. Input from the CEWH and MDBA is critical to DAWR's assessment of the states' performance as these entities have responsibilities that provide a detailed knowledge of the operational environment of the Murray-Darling Basin and the actions of the Basin States:

- The MDBA, established in 2008, is responsible for implementing the Murray-Darling Basin Plan. Specific responsibilities of the MDBA involve developing implementation guidelines and monitoring the actions of the Basin States taken against the objectives and outcomes of the Basin Plan.
- The CEWH has legislative responsibility for managing the Australian Government's environmental water holdings to protect and restore environmental assets in the Murray-Darling Basin.

19. The assessment criteria require the Basin States to provide a statement against each part of each milestone, advising whether the milestone had been met, explaining the basis for this advice and providing reasons for any instances of non-compliance. Whereas some criteria specify the information required (such as a list of water allocation trades), the criteria do not add specific, measurable deliverables. In line with the milestones, the assessment criteria also do not include outcome measures about the protection and use of environmental water. In particular, there are no measures to confidently gauge progress towards the reduction of 2750 gigalitres from pre-existing levels of diversion to achieve the Basin Plan's environmental outcomes.

20. The lack of specific, measurable deliverables, and outcome measures, in the milestones and criteria for assessing the performance of NSW under the Murray-Darling Basin NPA, represent significant weaknesses in the performance framework. Accordingly, the framework established under the Murray-Darling Basin NPA does not support DAWR to effectively assess the performance of NSW in protecting and using environmental water in line with the Basin Plan.

### **Has the Department of Agriculture and Water Resources effectively assessed the performance of NSW against the milestones in the Murray-Darling Basin National Partnership Agreement?**

21. In accordance with the established processes, the Commonwealth's milestone assessment reports for NSW in 2013–14, 2014–15 and 2015–16 were based on the annual Statement of Assurance provided by NSW, supporting evidence provided by NSW, and assessments by MDBA and the CEWH of NSW's performance against the milestones.

22. Table 2 summarises the Commonwealth's assessment of NSW's achievement against the Murray-Darling Basin NPA milestones over three years, and the comments of the CEWH and MDBA. It shows that all the milestones have been assessed as 'met' or 'partially met' for each of the three years.

**Table 2: Summary of the Commonwealth’s assessment of New South Wales in meeting the milestones of the Murray-Darling Basin National Partnership Agreement, 2013–14 to 2015–16**

| Year        | MDBA and CEWH comments  | DAWR assessment |
|-------------|---|-----------------|
| Milestone 6 | The state has supported the Commonwealth in bridging the gap  |                 |
| 2013–14     | NSW Statement of Assurance acknowledged that it did introduce restrictions on the trading of water access entitlements for environmental purposes which were lifted on signing the NPA.   | Met             |
| 2014–15     | Milestone 6(a)—issue raised by MDBA concerning water trading arrangements that are inconsistent with Basin Plan Water Trading Rules. Specifically, interstate trade between NSW and Queensland, and NSW and ACT is not progressing.   | Partially met   |
| 2015–16     | Milestone 6(a) and 6(b)—issues identified by MDBA concerning water trading arrangements that are inconsistent with Basin Plan Water Trading Rules. Specifically, interstate trade between NSW and the ACT, between NSW and Queensland and inter-valley trade limits in NSW. Same issue raised in previous year. | Partially met   |
| Milestone 7 | Confirmation that any actions taken by the state to remove or address constraints are consistent with the measures agreed through the inter-jurisdictional governance procedure for the Sustainable Diversion Limits adjustment mechanism.  |                 |
| 2013–14     | No comment provided.  | Met             |
| 2014–15     | No comment provided.  | Met             |
| 2015–16     | MDBA advice that there has been a delay in preparing business case for constraints measures projects which were due by 28 July 2016.  | Partially met   |
| Milestone 8 | The state has cooperated in arrangements for Basin Plan environmental watering.   |                 |
| 2013–14     | No comment provided.  | Met             |
| 2014–15     | Milestone 8(b)—MDBA identified delays in the Nimmie-Caira Project Agreement for the protection and re-use of environmental water.<br>Milestone 8(d)—MDBA identified issues with management and delivery of planned environmental water in the Namoi catchment.  | Partially met   |

| Year        | MDBA and CEWH comments   | DAWR assessment |
|-------------|--|-----------------|
| 2015–16     | <p>Milestone 8(b)—the CEWH advised that NSW has not delivered against the milestones as per the <i>Project Agreement for the Protection and Reuse of Commonwealth Environmental Water</i>. Also no revised timeframes for the Nimmie-Caira shepherding project have been proposed by NSW.</p> <p>Milestone 8(c)—MDBA advised that NSW has not provided annual watering priorities for some areas which are primarily unregulated or where held environmental water is not managed. MDBA note that the impact is less significant than for regulated water resource plan areas.</p> <p>Milestone 8(d)—MDBA note that an amendment to the Namoi Water Sharing Plan is inconsistent with the Basin Plan. Specifically, changes to the share ratio of unregulated flows have reduced the volume and changed the timing of environmental water.</p> <p>Milestone 8(d)—the CEWH advised that the NSW review of planned environmental water could result in Commonwealth environmental water being substituted for planned environmental water.</p> <p>Milestone 8(f)—MDBA advised that NSW has been granted an extension for its long-term watering plans to May 2017.</p> | Met             |
| Milestone 9 | The state has provided a brief description of supply measure projects for which feasibility and business cases are being developed for consideration under the Sustainable Diversion Limits Adjustment Mechanism for 2014–15 and 2015–16.  |                 |
| 2014–15     | No comment required.   | Met             |
| 2015–16     | No comment required.   | Met             |

|      |  |                          |
|------|--|--------------------------|
| Key: |  | Milestones met           |
|      |  | Milestones partially met |
|      |  | Milestones not met       |

Notes: The assessment was conducted by the National Water Commission in 2013–14 and is included in the table for context. DAWR conducted the assessments in 2014–15 and 2015–16. There are nine milestones, although milestones 1–5 only applied for 2013–14. The substantive provisions of Milestones 1–5 were the same in Milestones 6–9. The key difference was that the 2013–14 milestones did not include Milestone 6(a), which related to compliance with elements of the Basin Plan trading rules that were not in place for 2013–14.

23. In assessing NSW’s performance for 2014–15 and 2015–16, DAWR’s rating that some parts of milestones 6, 7 and 8 were ‘partially met’ reflected concerns raised by the CEWH and MDBA. However for 2015–16, DAWR rated milestones 8(b), 8(c) and 8(d) as ‘met’ despite instances identified by the CEWH and MDBA where NSW had not met its requirements under the Murray-Darling Basin NPA (as outlined in Table 2). DAWR advised the ANAO that the 2015–16 rating reflected that NSW had made substantial progress in addressing these issues by the time of finalising the assessment against Milestone 8 in November 2016. Specifically:

- a change to the rules of the Namoi Water Sharing Plan (2004) that could have a detrimental impact to environmental water flows in the Namoi region would be addressed through a trial that would monitor the impact of this change over the next four years. The results of the trial would inform the development of the Namoi Water Resource Plan by 2019;



- concern that NSW was not meeting the deliverables of a project agreement to protect environmental water flows in the Nimmie-Caira region was to be addressed by a variation to the agreement with revised deliverables and timeframes; and
- NSW had submitted the required Pre-requisite Policy Measures Implementation Plan to the MDBA in June 2016.

24. Despite these actions and commitments, there were outstanding issues in relation to NSW's performance against Milestone 8, including:

- annual environmental watering priorities for some areas were not provided by NSW as required by May 2016; and
- no revised timeframes for the Nimmie-Caira water shepherding project had been renegotiated at the time (the project schedule was varied in January 2017).

25. Further, prior to the 2015–16 assessment process, the CEWH expressed considerable uncertainty as to the effectiveness of proposed actions and commitments by the Basin States, particularly NSW. In April 2016, the CEWH wrote to DAWR outlining concerns 'that the work being undertaken by the States to support delivery of environmental water through State managed systems, including on Pre-requisite Policy Measures (PPMs) and the amendment of Water Resource Plans, is simply not progressing', and that the 'direction and quality of this work to date gives me little confidence that I will be able to fully and effectively meet my obligations to manage environmental water in a way which delivers Basin-wide environmental objectives'. The CEWH also stated that:

in the northern Basin, there appears to be a failure, if not active disinterest by officials in the NSW DPI Water (DPIW) to develop or implement operational arrangements, such as water shepherding and piggybacking, that support the effective delivery of environmental water to achieve agreed Basin Plan objectives. DPIW are not properly managing licensing regimes which allow the cross-border and cross-catchment 're-regulation' of environmental water.

26. While not having reiterated its views as strongly to DAWR in the assessment period, the CEWH advised the ANAO that it did not believe that the issues raised in its April 2016 letter had been adequately addressed by NSW at the time the state's performance was being assessed by DAWR in November 2016. The CEWH considered that NSW still had little interest at that time in supporting the effective delivery of environmental water and that the proposed actions would do little to achieve agreed Basin Plan objectives.

27. DAWR's submission to the Minister for 2015–16 provided a positive rating of NSW's performance against Milestone 8. While the issues identified by the CEWH and MDBA against Milestone 8 were raised in the body of the submission, they were not included in the overall summary. Although DAWR was satisfied that a number of the issues identified by the CEWH and MDBA were being addressed by NSW, there were issues that remained outstanding, specifically, delays in the Nimmie-Caira project and the lack of water priorities for some of the less significant catchment areas. At the time, revised timeframes for the Nimmie-Caira project were being negotiated although final agreement had not been reached with NSW. Overall, there was little in the submission to suggest there were risks that NSW was not committed to delivering environmental water consistent with the Basin Plan.

28. While being aware of some concerns about weaknesses in NSW's compliance activities, there is no evidence of DAWR's consideration and weighting of these issues in the 2014–15 and 2015–16 assessment processes.<sup>14</sup> Serious issues with those compliance arrangements were subsequently exposed. A review conducted by Mr Ken Matthews concluded that 'aspects of water related compliance and enforcement arrangements in NSW have been ineffectual for some time and require significant and urgent improvement'.<sup>15</sup>

29. The Commonwealth Minister for Agriculture and Water Resources certified that NSW has met the performance benchmarks of the Murray-Darling Basin NPA based on departmental advice.<sup>16</sup> Consequently, prescribed payments were made by Treasury in 2013–14, 2014–15 and 2015–16. Although NSW did not meet milestones in 2014–15 and 2015–16, DAWR recommended for NSW to receive payment as the issues and concerns identified by the CEWH and MDBA 'did not have a material impact on the overall co-operation of states with the reforms'. However, there was no defined basis for assessing material impact or detailed explanation of the proportional impact of the issues and concerns.

30. While DAWR has followed agreed processes for monitoring performance, there was a lack of evidence and explanation to substantiate its positive assessment of NSW's progress under Milestone 8 of the Murray-Darling Basin NPA in light of the serious issues raised by the CEWH. Importantly, there was little in DAWR's submission to the Minister for 2015–16 to suggest there were risks that NSW was not delivering environmental water consistent with the Basin Plan. These factors indicate that DAWR has had limited effectiveness in assessing the performance of NSW against the milestones in the Murray-Darling Basin NPA.<sup>17</sup>

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14 The Commonwealth could have considered the effectiveness of compliance monitoring arrangements of the Basin States in its assessment of Murray-Darling Basin NPA Milestone 8(d).

15 The NSW Government commissioned Mr Ken Matthews to investigate the Four Corners allegations. His interim report was released on 11 September 2017. K Matthews, *Independent Investigation into NSW Water Management and Compliance*, Interim Report for NSW Government, September 2017, p. 4.

16 The responsible Minister in 2013–14 was Senator the Hon Simon Birmingham, Parliamentary Secretary to the Minister for the Environment.

17 DAWR advised that it does not agree with this finding.

## Attachment A: Letter from the Australian Auditor-General

The Auditor-General responded on 28 July 2017 to correspondence from the Hon. Tony Burke MP dated 25 July 2017, requesting that the Auditor-General conduct an investigation into allegations arising out of a recent Four Corners program concerning the Murray-Darling Basin.

The Hon Tony Burke MP  
Shadow Minister for Environment and Water  
By email: [tony.burke.MP@aph.gov.au](mailto:tony.burke.MP@aph.gov.au)

Dear Mr Burke

Thank you for your letter of 25 July 2017 requesting that I investigate allegations raised within the ABC *Four Corners* program first broadcast on 24 July 2017 and other relevant matters, including but not limited to the protection and use of Commonwealth resources held by the Commonwealth Environmental Water Holder and the implementation of the Murray-Darling Basin Plan.

The Australian National Audit Office (ANAO) is currently undertaking an audit of the effectiveness of monitoring and payment arrangements under National Partnership Agreements, with a report due to table in the Autumn 2018 session. This audit already includes Agreements related to the Department of Agriculture and Water Resources.

I have decided to expand the scope of this current audit to include how the Department of Agriculture and Water Resources is monitoring the performance of New South Wales (NSW) under the National Partnership Agreement on Implementing Water Reform in the Murray-Darling Basin relevant to the protection and use of environmental water.

I will consider tabling a separate report relating to the NSW issue later this year.

Yours sincerely

Grant Hehir  
Auditor-General

## Attachment B: Assessment criteria

| Milestones   | Assessment Criteria   |
|--|---|
| Milestone 6: The state has supported the Commonwealth in bridging the gap, as measured by:   |   |
| (a) after the Basin Plan Trade Rules come into effect, confirmation of the removal of volumetric or other barriers to permanent trade out of water irrigation areas that are inconsistent with the Basin Plan water trading rules  | (a) Basin Trade Rules do not come into effect until 1 July 2014   |
| (b) confirmation that no restrictions were introduced on the trading of water access entitlement, except where consistent with the Basin Plan water trading rules  | (b) Statement by state that action has not occurred   |
| (c) confirmation that no action has been taken to impede Commonwealth measures to acquire water for environmental purposes, except where consistent with the Basin Plan water trading rules  | (c) Statement by state that action has not occurred   |
| (d) confirmation that applications for water entitlement and allocation trades to which the Commonwealth was a party were processed consistent with the agreed service standards for trade processing times for state approval agencies  | (d) Statement by state that service standards have been adhered to, supported by a list of trades and the times taken to process those trades   |
| (e) specification of entitlements in regulated surface water systems, consistent with clauses 28 to 32 of the National Water Initiative in the timeframe agreed in the <i>Intergovernmental Agreement on Implementing Water Reform in the Murray-Darling Basin</i> , unless where otherwise agreed                               | (e) Provision by state of a list of systems where this applies, accompanied by a statement that identifies which of those regulated systems have entitlements that are consistent with the provisions of clauses 28–32 of the National Water Initiative           |
| Milestone 7: Following publication of the Constraints Management Strategy by the MDBA, confirmation that any actions taken by the state to remove or address constraints are consistent with the measures agreed through the inter-jurisdictional governance procedure for the Sustainable Diversion Limits adjustment mechanism |   |
|  | States supply a statement about what work or actions they have done on constraints since publishing of the CMS in November 2013 and whether it is consistent with the <i>Intergovernmental Agreement on Implementing Water Reform in the Murray-Darling Basin</i> |
| Milestone 8: The state has cooperated in arrangements for Basin Plan environmental watering, as measured by:   |   |
| (a) Except as otherwise agreed between the Commonwealth and the relevant state to facilitate improved environmental watering, confirmation that the characteristics of licensed entitlements held for environmental use have not been enhanced or diminished relative to like entitlements held and used for other purposes      | (a) Statement by state that action has not occurred   |

| Milestones  | Assessment Criteria  |
|---|--|
| <p>(b) Where feasible and agreed by the relevant basin state, and where associated third-party impacts have been considered, confirmation that measures have been implemented to facilitate the use of environmental water by protecting environmental water in-stream and on land through:</p> <p>i. the delivery of held environmental water in-stream through arrangements such as water shepherding to facilitate environmental flows</p> <p>ii. further use of environmental water at multiple locations along the river, such as through return flow provisions</p> | <p>(b) [For New South Wales only]. Statement in relation to the 'Agreement for the Protection and Re-Use of Commonwealth Environmental Water held in the Murrumbidgee Catchment'</p>   |
| <p>(c) confirmation that the MDBA has been provided with annual environmental watering priorities, consistent with the Basin Plan</p>   | <p>(c) Statement by state that annual environmental watering priorities have been provided, supported by copy of priorities provided if not public, or link to location if public</p>  |
| <p>(d) confirmation that the management and delivery of planned and held environmental water is consistent with the Basin Plan; including:</p> <p>i. the Environmental Watering Plan's <i>Principles to be applied to environmental watering</i></p> <p>ii. that a statement of reasons has been provided to the MDBA for any environmental watering that was not in accordance with the annual Basin environmental watering priorities</p>   | <p>(d) The basin plan requires this to be reported to the MDBA by 1 October for the prior watering year under clauses 13.14 and 8.44 of the Basin Plan</p> <p>Where a report to the MDBA has not yet been made, a statement by the state that confirms that the management and delivery of planned and held environmental water was consistent with the Basin Plan and outlines reasons for inconsistencies.</p> <p>Where a report has been provided to the MDBA, a statement by the state that confirms that the management and delivery of planned and held environmental water was consistent with the Basin Plan, with a copy of the material provided either linked to or attached.</p> |
| <p>(e) confirmation that environmental watering in regulated catchments has occurred having regard to the views of local communities and persons materially affected by the management of environmental water</p>   | <p>(e) Statement by the state that:</p> <ul style="list-style-type: none"> <li>• identifies all environmental watering events (including CEWH-held water) undertaken during the year</li> <li>• outlines the process for determining the views of local communities and persons materially affected by the management of environmental water, and how those were considered in undertaking watering</li> </ul>   |
| <p>(f) 12 months after the MDBA has made the Basin-wide Environmental Watering Strategy, or within another timeframe agreed between the MDBA and a basin state, confirmation that long-term environmental watering plans for surface water resource plan areas have been developed consistent with the requirements of the Basin Plan</p>   | <p>(f) Not assessable in 2014</p>  |

| Milestones   | Assessment Criteria                      |
|--|--|
| Milestone 9: For New South Wales, Victoria and South Australia only, and for 2014 –15 and 2015–16 only, the State has provided a brief description of supply measure projects for which feasibility and business cases are being developed for consideration under the SDL adjustment mechanism. |  |
|  | Confirmed by the state and copy provided |



