30 October 2026

Mr Andrew McConville
Chief Executive
Murray-Darling Basin Authority
GPO Box 1801
Canberra ACT 2601
Submitted online: www.mdba.gov.au

Dear Andrew,

Re: *Sustainable Diversion Limit Adjustment Mechanism Draft Determination 2026*

As Commissioner for the River Murray – South Australia, I welcome the opportunity to make a submission in response to the Murray-Darling Basin Authority's (**Authority**) *Sustainable Diversion Limit Adjustment Mechanism Draft Determination 2026* (**Draft Determination**). The observations contained herein are intended to supplement my submission responding to the 2026 Basin Plan Review Discussion Paper,[1] which addresses the Sustainable Diversion Limit Adjustment Mechanism (**SDLAM**) in further detail, and my submission to the statutory review of the *Water Act 2007* (Cth) (**Water Act**).[2]

As the driest State on the driest inhabited continent, and the jurisdiction at the end of a large transboundary river system, South Australia is fundamentally vulnerable to upstream extractions and to climate change. It has nonetheless managed its share of River Murray water conservatively. South Australia introduced a cap on its own extractions in 1969, almost three decades before the Basin-wide Cap was established under the Murray–Darling Basin Agreement (**Agreement**), while diversions in upstream States continued to grow.[3] Its irrigators have, by necessity, become highly efficient. Today, South Australia's River Murray sustainable diversion limit (**SDL**) of 537 GL/y represents around 7% of the southern-connected Basin limit of 7,382 GL/y.[4] Further, of the 1,154 GL/y available to it for consumptive purposes under the Agreement, South Australia allocates only 830 GL/y, leaving 324 GL/y in the river for the Ramsar-listed Coorong, Lower Lakes and Murray Mouth (**CLLMM**).[5] It is against this background that the consequences of the SDLAM shortfall, which arises predominantly from unimplemented measures in New South Wales and Victoria, must be considered.

1. SDLAM

The SDLAM was introduced as part of the negotiated *Basin Plan 2012* (Cth) (**Basin Plan**), with those negotiations including a detailed accountability framework of deadlines, an environmental equivalence test, limits of change and a reconciliation process.[6] Accordingly, it is not – despite some rhetoric to the contrary – a vehicle to mandatorily reduce water recovery for the environment. Indeed, Australia would struggle to maintain its claim as a global leader

[1] Emma Carmody, *Submission Responding to the 2026 Murray-Darling Basin Plan Review Discussion Paper* (Submission, 1 May 2026) (**Basin Plan Submission**).
[2] Emma Carmody, *Submission to the Statutory Review of the Water Act 2007 (Cth)* (Submission, 31 August 2026) (**Water Act Submission**).
[3] Government of South Australia Murraylands and Riverland Landscape Board, *Water Allocation Plan for the River Murray Prescribed Water Course* (Plan, 27 April 2023), p. 17; Water Act Submission, p.1.
[4] 'Current diversion limits for the Basin', *Murray–Darling Basin Authority* (Web Page, 2025) <https://www.mdba.gov.au/water-use/water-limits/current-diversion-limits-basin>.
[5] Water Act Submission, p. 2.
[6] Basin Plan, Chapter 7 and Schedule 6; Water Act s 23A.

in water governance if it were to legislate a novel mechanism to significantly reduce environmental flows under the Basin Plan in the absence of appropriate checks and balances. This is particularly true given the vital importance of maintaining the health and resilience of our rivers in a changing climate for the benefit of all Australians, including our youth and future generations.

Rather, the SDLAM – as agreed to by Basin jurisdictions – is a framework by which Basin governments could nominate potential supply measure projects designed to achieve modelled 'equivalent environmental outcomes' with less water recovery. Critically, these nominated projects must satisfy the legal requirements articulated in Chapter 7 and Schedule 6 of the Basin Plan; those that fail to do so are excluded from the supply contribution. On this basis, a generous interpretation of Chapter 7 is that its accountability regime has operated as intended. A less generous interpretation is that it has been stretched to the limits of credibility as a consequence of multiple extensions to deadlines, a large number of failed projects in New South Wales and Victoria, and the profligate use of public funds.

Regardless of which view one takes, the fact remains that the Basin Plan remains only partially implemented some 14 years after it was made to the detriment of our rivers and water-dependent ecosystems, including in South Australia. I would submit that any approach which further delays implementation or seeks to minimise the impact of inadequate water recovery in a changing climate will not only compound the harm already sustained by the environment, including the CLLMM, but will undermine the broader public's confidence in our laws and institutions.

2. Methodology

I note that the Draft Determination has been prepared in accordance with the requirements of Chapter 7 and Schedule 6 of the Basin Plan. I also wish to acknowledge the considerable technical work involved in reconciling a package of supply measures that has been substantially altered since the original determination in 2017.

The Draft Determination proposes a Basin-wide supply contribution of 340 GL/y, against the 605 GL/y determined in 2017. The resulting shortfall of 265 GL/y represents a corresponding increase in the volume of water to be recovered under the Bridging the Gap target. Separately, the Authority has determined that, at the time of its assessment, 221 GL/y has been recovered towards the 450 GL/y target for enhanced environmental outcomes, through efficiency contributions and additional held environmental water (**HEW**) contributions.[7]

As you are aware, the shortfall is primarily attributable to measures in New South Wales and Victoria that have been withdrawn or amended. By way of contrast, of the five measures for which South Australia is the sole proponent, four are in operation, while the fifth, the Eastern Mount Lofty Ranges Flows for the Future project, is expected to enter operation by 31 December 2026. A further five measures for which South Australia is a joint proponent, including the Chowilla project, are also in operation.[8]

3. 450 GL/y target

[7] Draft Determination, pp. 4-6, Tables 1-3.

[8] Draft Determination, p. 16, Table 4.

The 221 GL/y cited above reflects entitlements recorded in the SDLAM Register of Measures as at 1 July 2026; entitlements contracted but not yet registered will be accounted for through the varying HEW contribution. I understand that by the end of 2026, somewhere in the vicinity of 400 GL/y will have been acquired by the Commonwealth in pursuit of the 450 GL/y target, representing a significant achievement. The bulk of this water has been added to the Commonwealth's pool of held environmental water within a relatively short period of time, notably following the passage of the *Water Amendment (Restoring Our Rivers) Act 2023* (Cth) (**Restoring Our Rivers Amendment**). By way of contrast, Basin States have had over a decade to develop and implement supply measure projects and, as outlined in the following part of this submission, have benefited from multiple extensions to the deadlines that form part of the accountability framework embedded in Chapter 7 of the Basin Plan.

4. Successive extensions of the SDLAM timeframes

The original Basin Plan established fixed deadlines for the notification, implementation and reconciliation of SDLAM measures. Those deadlines have since been amended as follows:

Deadline	**Basin Plan Provision**	**As made (2012)**	**As amended**
Notification of supply measures	s 7.12(1), (1A)	30 June 2016	30 June 2017 (2016 amendment)
Notification of new supply measures	s 7.12(2A)	Not available	30 June 2025 (2023 amendment)
Amendment or withdrawal of notified measures	s 7.12(5)–(7)	31 December 2023	30 June 2026
Supply measures to enter operation	s 7.12(3)(a), (6)	30 June 2024	31 December 2026
Reconciliation	ss 7.11, 7.21(2)	30 June 2024	31 December 2026

The Restoring Our Rivers Amendment extended the date by which supply measures must enter into operation by two and a half years, following advice from the Authority that a significant number of measures would not be completed by 30 June 2024. Those amendments also permitted the notification of new supply measures until 30 June 2025, and three such measures were notified.[9] At the time of the Authority's analysis, nine supply measures remain in progress.[10]

While each amendment may have been justified at the time as a matter of practical necessity, the cumulative effect has been to significantly extend the notification and reconciliation process. This has occurred without any corresponding obligation on Basin governments to account, in the interim, for measures that have not delivered their intended outcomes.

Finally, it is worth noting that the aforementioned extensions provided Basin states with ample opportunity to notify additional supply measure projects. The fact that very few additional measures were notified suggests that there is limited prospect of any further, legitimate options being advanced by affected jurisdictions.

[9] *Water Amendment (Restoring Our Rivers) Act 2023* (Cth); Draft Determination, p. 11.
[10] Draft Determination, pp. 4, 7.

5. Consequences for South Australia and the CLLMM

The extensions described above have not been without cost. The 2017 determination increased SDLs in the southern-connected Basin on the basis of a supply contribution of 605 GL/y, notwithstanding that most of the relevant measures had not been implemented. The environment has accordingly awaited 'equivalent environmental outcomes' which, in respect of 265 GL/y, will not eventuate. This is on top of the fact that these modelled 'equivalent environmental outcomes' are themselves an alternative to actual water in the river, which is arguably sub-optimal, particularly for the CLLMM.

Further, and as I noted in my Basin Plan Submission, Commissioner Walker SC of the Murray-Darling Basin Royal Commission concluded that s 7.20(2) of the Basin Plan is ultra vires the Water Act as it permits SDLs to be adjusted on the basis of the projected outcomes of supply measures that have not been completed.[11] Put simply, water that ought to have been recovered for the environment has remained in the consumptive pool for the duration of the adjusted SDLs, notwithstanding that the core purpose of the Water Act, given effect through sections 4 and 23, is to limit extractions to an environmentally sustainable level of take (**ESLT**).[12]

As the most downstream State, South Australia, and the Ramsar-listed CLLMM in particular, has borne a disproportionate share of this burden. The consequences are no longer speculative. In January 2026, the River Murray downstream of the Darling River, and its associated aquatic and floodplain systems – encompassing the CLLMM – was listed as a critically endangered ecological community under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**Lower Murray Listing**), with ongoing over-extraction and river regulation identified as key drivers of its decline.[13] Further, during the drought years of 2018 to 2020, the Commonwealth's held environmental water was the only water flowing through the barrages,[14] which underscores the critical importance of sufficient water recovery for the end of the system, particularly in a drying climate.

6. Context: SDLs that do not reflect an ESLT

The supply contribution shortfall must also be considered in its broader legal context. The SDLs established under the Basin Plan are based on the historical climate record from 1896 to 2009 and do not take into account climate change. In my legal opinion, they do not reflect an ESLT even under historical climate conditions, let alone under future climate projections. The shortfall of 265 GL/y therefore compounds an existing deficit, and the 3,200 GL/y equivalent scenario must be understood as a minimum rather than a ceiling.

This context also bears on the constitutional foundation of the Water Act. As set out in my Water Act Submission, the Act's validity rests substantially on the external affairs power, with Australia's obligations under the Ramsar Convention on Wetlands and other environmental treaties given domestic effect through its environmental objects, its substantive provisions and

[11] South Australia, *Murray-Darling Basin Royal Commission* (Report, 29 January 2019); Basin Plan Submission, p.15.

[12] Water Act ss 4, 23; Water Act Submission, p. 2.

[13] Department of Climate Change, Energy, the Environment and Water, *Approved Conservation Advice for the River Murray downstream of the Darling River, and associated aquatic and floodplain systems* (Advice, 16 January 2026), p. 67.

[14] D Flett et al, *Basin-Scale Evaluation of 2021–22 Commonwealth Environmental Water: Synthesis* (Report, Commonwealth Environmental Water Holder, Department of Climate Change, Energy, the Environment and Water, 2023), p. 14.

the Basin Plan itself.[15] Leaving a shortfall of this magnitude unrecovered, at the very site those obligations are intended to protect, is inconsistent with that foundation.

7. Recommendations

I respectfully submit that the Authority's final determination, and its accompanying advice to the Minister, should make clear that:

a) the shortfall of 265 GL/y (or such revised figure as is determined in December 2026) must be recovered in full;

b) there should be no further extension of SDLAM timeframes, nor any substitution of alternative 'offset' arrangements or 'complementary measures' for the recovery of water entitlements;

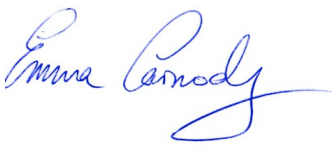
c) recovery should begin in 2027 and be undertaken in a staged manner, having regard to the period over which the environment, and South Australia in particular, has already borne the consequences of the shortfall; and

d) South Australian irrigators, including irrigation trusts, should not be prejudiced by recovery of a shortfall that is predominantly attributable to the withdrawal or amendment of supply measure projects in New South Wales and Victoria.

Finally, as I observed in my Water Act Submission, the challenges experienced by some Basin communities are the product of three decades of policy reform and structural changes, including but not limited to the separation of land and water, the development of water markets, tariffs, volatile terms of trade, rising costs and geopolitical events,[16] all of which are now being compounded by climate change. As such, it would be erroneous to attribute these challenges to water recovery alone, and they ought not to be advanced as a reason to defer recovery of the shortfall. However, appropriate support for communities experiencing compounding stressors should be made available by the Commonwealth.

Thank you for the opportunity to provide these comments.

Yours sincerely,



Dr Emma Carmody
Lawyer
Commissioner for the River Murray – South Australia

[15] Water Act Submission p. 3. See *Commonwealth v Tasmania* (1983) 158 CLR 1; *Richardson v Forestry Commission* (1988) 164 CLR 261; *Victoria v Commonwealth* (1996) 187 CLR 416.
[16] Water Act Submission, pp. 4-8.