Mr Philip Glyde  
Chief Executive Officer  
Murray-Darling Basin Authority  
GPO Box 1801  
CANBERRA CITY ACT  2601

Dear Mr Glyde,

SUBMISSION OF VICTORIA'S NORTH AND MURRAY WATER RESOURCE PLAN

I write to formally submit Victoria's North and Murray Water Resource Plan in accordance with section 63 of the Water Act 2007 (Cth).

Enclosed with this letter is the:

- Victoria's North and Murray Index Table – which outlines the response to each requirement of Chapter 10 of the Basin Plan in accordance with section 10.04 of the Basin Plan;
- Victoria’s North and Murray Comprehensive Report – which contains material to be accredited as part of Victoria's North and Murray Water Resource Plan and additional supplementary material to support the responses to Basin Plan requirements; and
- The Baseline Diversion Limit re-estimate paper.

For the purpose of section 63(6), and pursuant to section 56(2), the relevant Basin Plan that applies to the proposed Victoria’s North and Murray Water Resource Plan is the instrument noted on the Australian Government's Federal Register of Legislation on 11 July 2018 with reference F2018C00451.

Victoria’s North and Murray Water Resource Plan addresses the requirements of Chapter 10 of the Basin Plan for the following water resource plan areas:

- Victorian Murray water resource plan area
- Northern Victoria water resource plan area
- Goulburn-Murray water resource plan area

I have decided to submit one water resource plan for three areas on the basis that many requirements are addressed by State-wide policies and rules. There are some matters that are dealt with differently between surface water and groundwater and these are identified clearly in Victoria's North and Murray Index Table.

Attached to this letter is a Statement of Reasons addressing some of the key areas of concern raised by the Authority during the pre-assessment phase.

If you have any questions or require further clarification about this submission please do not hesitate to contact Dr Jessica Freame, Director Policy Partnerships on (03) 9637 8930 or email jessica.freame@delwp.vic.gov.au.

Yours sincerely,

Hon Lisa Neville MP  
Minister for Water

26/4/19  
Encl.
Statement of Reasons

Victoria’s North and Murray Water Resource Plan was developed to meet the requirements of Chapter 10 of the Basin Plan for the following water resource plan areas and relevant water resources:

- Northern Victoria water resource plan area and all surface water resources in that area as described under section 3.05(d) of the Basin Plan; and
- Victorian Murray water resource plan area and all surface water resources in that area as described under section 3.05(m) of the Basin Plan; and
- Goulburn-Murray water resource plan area and all groundwater resources beneath the area as described by 3.06(e) of the Basin Plan.

Consistency with Chapter 10

The Water Act 2007 (Cth) (Commonwealth Water Act) provides for the development of water resource plans in respect of each of the prescribed water resource plan areas in the Murray-Darling Basin. Water resource plans may be prepared by the Basin States and accredited by the Commonwealth Minister for Agriculture and Water Resources.

Victoria’s North and Murray Water Resource Plan has been prepared by Victoria for accreditation by the Commonwealth Minister for Agriculture and Water Resources. Victoria’s North and Murray Water Resource Plan must be consistent with the relevant Basin Plan, including:

- The requirements for water resource plans under Chapter 10 of the Basin Plan; and
- Any long-term annual diversion limit for the water resources of the water resource plan area (or any part of those water resources).

In determining whether the water resource plan is consistent with the Basin Plan, section 55(3) requires that regard must be had to the legislative framework within which the water resource plan operates. According to the Explanatory Memorandum for the Commonwealth Water Act, this is because water resource plans ‘will operate within the Basin States’ legislative framework’.

It is Victoria’s view that the content of Victoria’s North and Murray Water Resource Plan, developed in the context of the water resource management and legal framework in Victoria, addresses the requirements of Chapter 10 and is consistent with the Basin Plan.

In determining what material should form part of the accredited Victoria’s North and Murray Water Resource Plan, consideration was given to:

- The requirements of Chapter 10, noting that supplementary material and additional material, not in response to a Chapter 10 requirement, cannot validly form part of the water resource plan; and
- How each requirement can be satisfied having regard to Victoria’s legislative framework and water resource management framework.

The responses to each requirement of Chapter 10 relate to the Victorian legal framework and water resource management of the Victorian Murray, Northern Victoria and Goulburn-Murray water resource plan areas. Victoria has attempted to be clear in Victoria’s North and Murray Index Table as to why a matter in Chapter 10 may not apply to an area relevant to Victoria’s North and Murray Water Resource Plan.

Specific reasons for the response to each section (in some instances paragraph) of Chapter 10 of the Basin Plan are provided in Column 5 of Victoria’s North and Murray Index Table. The purpose of this document is to provide a summary of the principles that informed the preparation of Victoria’s North and Murray Water Resource Plan.

What can be accredited

A ‘water resource plan’ is defined in the Commonwealth Water Act as follows:

... a water resource plan means a plan that:

(a) provides for the management of the water resource plan area; and
(b) is either:
   a. accredited under section 63; or
   b. adopted under section 69;
but only to the extent to which the water resource plan:
(c) relates to Basin water resources; and
(d) makes provision in relation to the matters that the Basin Plan requires a water resource plan to include.

Parts of a water resource plan, which do not satisfy paragraphs (c) and (d) of the definition of a water resource plan, cannot form part of the water resource plan, even if the Minister has purported to adopt or accredit those provisions as part of the water resource plan.

In relation to paragraph (d), the 'matters that the Basin Plan requires a water resource plan to include' are those matters that respond to the requirements set out in Chapter 10 of the Basin Plan. Section 10.04(5) of the Basin Plan requires that a water resource plan identify 'additional material that does not address the requirements of [Chapter 10] ... so that it is clear to all parties that it does not form part of the accredited or adopted plan' (see Explanatory Statement of the Basin Plan 2012).

The inclusion of any obligations that are not supported by a requirement in Chapter 10 of the Basin Plan cannot be validly accredited as part of Victoria’s North and Murray Water Resource Plan.

Victoria’s Approach to water resource plans and key issues

Victoria has undertaken a comprehensive analysis of the Chapter 10 requirements and has determined that it is already meeting most of its obligations through its existing water management framework. In a few instances Victoria’s North and Murray Water Resource Plan addresses some matters to ensure water management is consistent with the Basin Plan.

Victoria’s responses to Chapter 10 requirements are targeted and developed to specifically address each requirement in a manner that supports Victoria’s water resource management framework. This has resulted in a more succinct response than may have been proposed by other Basin States to date. While MDBA advice on preparing water resource plans has included the assertion that Chapter 10 provides for a minimum requirement for water resource plan content, Victoria does not agree. Given the clear terms of the Commonwealth Water Act’s definition of ‘water resource plan’, additional material cannot be validly accredited as part of Victoria’s North and Murray Water Resource Plan. Therefore, Victoria’s North and Murray Water Resource Plan contains information, strategies and obligations required by Chapter 10 of the Basin Plan.

Victoria’s Water Resource Plan submission comprises of:

- an Index Table that includes Victoria’s response to each requirement in Chapter 10 of the Basin Plan, and references the components of the Comprehensive Report that form the response to a requirement of Chapter 10; and
- a comprehensive document that explains in plain English how Victoria manages the water resources in the water resource plan area and how the individual instruments within the Victorian framework achieve the objectives of the Basin Plan (including extracts where relevant).

Form of the water resource plan

While this matter appears to be largely resolved following the submission of the Wimmera-Mallee Water Resource Plan it is noted that Victoria has had a difference of opinion with the MDBA on the form of water resource plans.

The MDBA has indicated a preference that a water resource plan be constituted by State laws or instruments made under those laws. This is not a requirement of the Commonwealth Water Act or the Basin Plan. Accreditation depends on the content of the water resource plan meeting the Basin Plan requirements. Accreditation does not depend on the form of the water resource plan.
Victoria has not included any legislation, regulatory instruments or non-regulatory instruments in Victoria's North and Murray Water Resource Plan. The text and documents subject to accreditation are clearly identified in Victoria's North and Murray Index Table.

**Planned environmental water**

If water is not committed or preserved for environmental purposes or outcomes, that water cannot meet the definition of 'planned environmental water' under section 6 of the Commonwealth Water Act. Broadly speaking, planned environmental water must meet the following requirements:

- it is committed or preserved to some extent – either wholly or in part;
- the commitment or preservation is for an environmental purpose or outcome, either generally or only at specified times or in specified circumstances; and
- to the extent that water is committed or preserved, the water cannot be taken for any other purpose.

Victoria only has three instances of planned environmental water in Victoria's North and Murray water resource plan area. The three instances of planned environmental water have been identified in accordance with section 10.09 of the Basin Plan and is outlined in Appendix E of Victoria's North and Murray Comprehensive Report.

As outlined in Chapter 12 of the Comprehensive Report, water remaining in the system (referred to as 'above cap' under Victoria's North and Murray Water Resource Plan) can contribute to environmental objectives and outcomes. However, this does not alone characterise the water as planned environmental water under the Commonwealth Water Act. Victoria's instruments do not specifically commit or preserve water for specified environmental purposes or outcomes. Even where an environmental purpose of outcome could be implied, there is no protection of that water to prevent a person from taking or using the water for any other purpose.

As outlined in Water for Victoria – Water Plan, Victoria is focused on achieving shared benefits to meet a maximum amount of uses from limited water resources. Victoria aims to share the benefits of both unallocated and stored water to meet the objectives of community groups, including Traditional Owners, recreational users, maintained water fit for domestic and stock use and meeting environmental objectives.

On this basis, only the following instruments have been identified as providing for planned environmental water:

- Bulk Entitlement (Broken System-Goulburn-Murray Water) Conversion Order 2004
- Bulk Entitlement (Ovens System – Goulburn-Murray Water) Order 2004