

PROJECT AGREEMENT FOR STAGE 1 FUNDING FOR SUSTAINABLE DIVERSION LIMITS (SDL) ADJUSTMENT SUPPLY AND CONSTRAINTS MEASURES IN THE MURRAY-DARLING BASIN

An agreement between:

- the Commonwealth of Australia; and
- the State of
 - ◆ New South Wales
 - ◆ Victoria
 - ◆ South Australia.

The output of this Agreement will be Stage 1 activities (including designs, obtaining regulatory approvals, technical investigations and stakeholder engagement) to progress the development of supply and constraints measures nominated under the Murray-Darling Basin Plan's mechanism for the adjustment of Sustainable Diversion Limits. The activities will inform the Commonwealth's decision to fund the implementation of the measures.

Project Agreement for Stage 1 Funding for Sustainable Diversion Limits (SDL) Adjustment Supply and Constraints Measures in the Murray-Darling Basin

OVERVIEW

1. This Project Agreement (the Agreement) is created subject to the provisions of the Intergovernmental Agreement on Federal Financial Relations (IGA FFR) and should be read in conjunction with that Agreement and its Schedules, which provide information in relation to performance reporting and payment arrangements under the IGA FFR.

Purpose

2. This Agreement will support State and Commonwealth Governments in progressing the implementation of the package of supply and constraint measures (the measures) endorsed by the Murray-Darling Basin Ministerial Council for the Sustainable Diversion Limits (SDL) adjustment mechanism and for the relaxation of constraints to the delivery of environmental water (chapter 7 of the Murray- Darling Basin Plan 2012, Adjustment of Sustainable Diversion Limits).
3. The measures are an integrated package which have enabled an increase to the Basin Plan's SDLs. The changes to the SDLs require the implementation of the measures by 2024 otherwise the recovery of additional water from users will be required to meet the Basin Plan's environmental targets.
4. The implementation of some of the measures will be funded through two related Agreements, this Agreement and a proposed National Partnership for the implementation of supply and constraints measures in the Murray-Darling Basin.
5. This Agreement will support project development (Stage 1) activities including design work, investigations, consultations and assessments to prepare the measures for implementation. Physical, on ground construction works will not be funded in Stage 1 activities.
6. Measures which have completed Stage 1 activities as set out in relevant Schedules in this Agreement and have passed a gateway assessment of their viability by the Commonwealth will be eligible to be considered for implementation funding (Stage 2) under the proposed National Partnership for the implementation of supply and constraints measures in the Murray-Darling Basin.

Reporting Arrangements

7. The States will report against the agreed milestones during the operation of this Agreement, as set out in Part 4 – Project Milestones, Reporting and Payments.

Financial Arrangements

8. Under this Agreement, the Commonwealth's total financial contribution to the States for Stage 1 activities is estimated to be \$132 million representing 10 per cent of the current estimate of the total cost of the full implementation of the relevant measures. The actual contributions to the States for the measures will be set out in Schedules to this Agreement.

PART 1 – FORMALITIES

9. The States of New South Wales (NSW), Victoria and South Australia (SA) have identified the measures for the SDL adjustment mechanism and for the relaxation of constraints to the delivery of environmental water (chapter 7 of the Murray-Darling Basin Plan 2012).
10. Funding under this agreement is being made available based on the agreement of the States at the Murray-Darling Basin Ministerial Council (MINCO) meeting on 8 June 2018 to support the recovery of 62 gigalitres (GL) of water through efficiency measures (with neutral or positive socio-economic impacts) by 30 June 2019.
11. Commonwealth funding for the implementation of SDL adjustment and constraints measures is available for new expenditure on capital works and activities to enhance the management of rivers and floodplains and the delivery of environmental water. Funding is available only to the extent that the works and activities are not funded from other sources. Funding will not be provided for measures that are river operational rule changes, other than one-off payments to address third party impacts caused by the changes.

Parties to this Agreement

12. This Agreement is between the Commonwealth of Australia (the Commonwealth) and the State of New South Wales, the State of Victoria and the State of South Australia, (collectively the States).

Term of the Agreement

13. This Agreement will commence as soon as the Commonwealth and one other Party sign it and will expire on 30 June 2022 or on completion of the activities under this agreement, including final performance reporting and processing of final payments against milestones, unless terminated earlier or extended as agreed in writing by the Parties.

PART 2 – PROJECT OUTPUTS

Outputs

14. The outputs of this Agreement will be activities required to prepare the measures in the Schedules for assessment under the Commonwealth's gateway assessment and, if agreed, for implementation. The activities include:

- (a) development of detailed designs, technical investigations, assessments and other actions for regulatory approvals, stakeholder consultation, the assessment of any risks and impediments to the implementation of the measures and establishing landholder agreements in relation to constraints measures;
- (b) the resolution, or strategies for the resolution, of issues or risks identified in the assessment of the business cases for the measures including the refinement of costs and technical and operational issues; and
- (c) reports outlining strategies for the implementation of measures that may include information on proposed costs, progress with detailed designs and approvals, remaining issues and further work.

PART 3 – ROLES AND RESPONSIBILITIES OF EACH PARTY

Role of the Commonwealth

15. The Commonwealth will be responsible for:
- (a) monitoring and assessing achievement against milestones in the delivery of the activities under this Agreement;
 - (b) providing a financial contribution to the States to support the implementation of this Agreement;
 - (c) participating, at its discretion, as an observer in the project governance arrangements established by the State;
 - (d) undertaking a gateway assessment of the measures in this Agreement and advising the States on the gateway process including the information and other requirements for the process;
 - (e) in accordance with the *Building and Construction Industry (Improving Productivity) Act 2016*, ensuring that financial contributions to a building project or projects as defined under the Fair Work (Building Industry – Accreditation Scheme) Regulations 2016 are only made where a builder or builders accredited under the Australian Government Building and Construction WHS Accreditation Scheme is contracted; and
 - (f) ensuring that compliance with the Code for the Tendering and Performance of Building Work 2016 (Building Code 2016) is a condition of Australian Government funding.

Role of the States

16. The States will be responsible for:
- (a) all aspects of delivering the agreed activities set out in this Agreement;
 - (b) reporting on the delivery of outputs as set out in Part 4 – Project Milestones, Reporting and Payments;
 - (c) implementing arrangements to provide transparency for stakeholders in the development and implementation of supply and constraints measures, including a defined launch of individual measures and regular reporting on progress made in activities funded under this Agreement;

- (d) providing sufficient information for the Commonwealth to undertake a gateway assessment of the measures;
 - (e) in accordance with section 7.12 of the Basin Plan, providing any notification amendment in respect of a measure;
 - (f) ensuring that only a builder or builders accredited under the Australian Government Building and Construction WHS Accreditation Scheme is contracted, and providing the necessary assurances to the Commonwealth; and
 - (g) ensuring that compliance with the Building Code 2016 is made a condition of tender for and performance of building work by all contractors and subcontractors, and providing the necessary assurances to the Commonwealth.
17. The States will establish project governance frameworks that include project management steering committees to monitor and provide strategic direction on the implementation of the measures, the delivery of the activities specified in the Schedules and the requirements of this Project Agreement. The States will ensure that regular meetings of the project management steering committees are held from the start of Schedules to their completion and that regular reports on projects are provided to the Adjustment Implementation Committee, established to oversee the implementation of the full package of supply and constraints measures.

Shared roles

18. The Commonwealth and the States will be jointly responsible for agreeing bilateral and/or multilateral schedules to the Agreement in accordance with Part 4 – Project Milestones, Reporting and Payments.
19. The Parties will meet the requirements of Schedule E, Clause 26 of the IGA FFR, by ensuring that prior agreement is reached on the nature and content of any events, announcements, promotional material or publicity relating to activities under this Agreement, and that the roles of both Parties will be acknowledged and recognised appropriately.
20. The Parties will develop a governance framework for the development and implementation of, and reporting on, all the measures for the SDL adjustment mechanism and for constraints relaxation, including those not funded under this Agreement.

PART 4 – PROJECT MILESTONES, REPORTING AND PAYMENTS

21. Milestones for the measures, their relationship to the activities, expected completion dates, relevant reporting dates and expected payments to be made will be set out in bilateral and/or multilateral schedules to the Agreement. The Commonwealth will make payments subject to the performance report demonstrating the relevant milestone has been met.
22. If a milestone is met in advance of the due date, where the relevant performance report demonstrates that the milestone has been met, the Commonwealth may make the associated payment earlier than scheduled provided it falls within the same financial year as the original milestone date.

Reporting arrangements

23. The States will provide performance reports on the activities being funded in the Schedules to this Agreement during the operation of the Agreement. Each performance report is to contain a description of actual performance in the period against the activity milestones; and a report of actual expenditure against budgeted expenditure for the current milestone.
24. In recognition of the integrated nature of the package of supply and constraints measures, the States will also provide performance reports on the implementation of the measures in the package that are not funded under this Agreement.
25. Performance reports provided under this Agreement may be used by the Murray-Darling Basin Authority to assess whether reconciliation adjustments are to be proposed in 2024 under section 7.11 of the Murray-Darling Basin Plan 2012.

PART 5 – FINANCIAL ARRANGEMENTS

26. The Commonwealth's financial contribution to the States in respect of this Agreement is shown in the Schedules to this Agreement. All payments are GST exclusive.
27. The Commonwealth's and the State's estimated financial contributions to the operation of this Agreement, including through Project Agreement payments to the State paid in accordance with *Schedule D – Payment Arrangements of the IGA FFR*, are set out in Schedules to this Agreement.
28. Funding provided under this Agreement is not to be used to recover any costs incurred on measures prior to the commencement dates of the activities for individual measures as specified in the Schedules to this Agreement.
29. The Commonwealth will provide funding to the States to meet the actual project expenditure incurred on the measures at each milestone up to the maximum total amount agreed in the individual Schedules to this Agreement.
30. As soon as a State is aware that the total costs of the activities under an individual Schedule to this Agreement will exceed the maximum funding amount specified in that Schedule, the State is to advise the Commonwealth. The Commonwealth and the State agree to negotiate in good faith on amending the Schedule to address any reasonable additional costs.
31. The provision of Stage 1 funding or completion of Stage 1 activities in respect of a measure(s) does not guarantee Stage 2 funding for that measure or any other measures. Stage 2 funding for a measure is also subject to the outcome of the Commonwealth's gateway assessment of a measure.

PART 6 – GOVERNANCE ARRANGEMENTS

Enforceability of the Agreement

32. The Parties do not intend any of the provisions of this Agreement to be legally enforceable. However, that does not lessen the Parties' commitment to this Agreement.

Variation of the Agreement

33. The Agreement may be amended at any time by agreement in writing by all the Parties.

34. During the term of the Agreement, the Commonwealth and one or more of the States may agree to add Schedules to this Agreement.
35. Schedules to this Agreement that have no impact on other Parties may be amended at any time by agreement in writing by the relevant Commonwealth and State portfolio ministers.
36. Parties to the Agreement may terminate their participation in the Agreement at any time by notifying all Parties in writing. The Commonwealth and the relevant Party agree to negotiate arrangements for meeting the reasonable costs incurred by the Parties up to the time of termination of the Agreement.

Delegations

37. The Commonwealth Minister may delegate the assessment of performance against milestones and the authorisation of related project payments to senior Commonwealth officials, having regard to the financial and policy risks associated with those payments.

Dispute resolution

38. Any Party may give notice to another Party of a dispute under this Agreement.
39. Officials of relevant Parties will attempt to resolve any dispute in the first instance.
40. If a dispute cannot be resolved by officials, it may be escalated to the relevant Ministers.

The Parties have confirmed their commitment to this agreement as follows:

Signed for and on behalf of the Commonwealth of Australia by

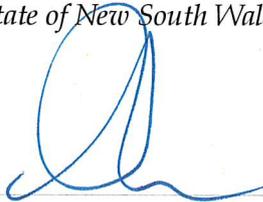


The Honourable David Littleproud MP
Minister for Agriculture and Water Resources

[Day] [Month] [Year]

14 12 18

Signed for and on behalf of the State of New South Wales by



The Honourable Niall Blair MLC
Minister for Regional Water

[Day] [Month] [Year]

14 12 2018

Signed for and on behalf of the State of Victoria by

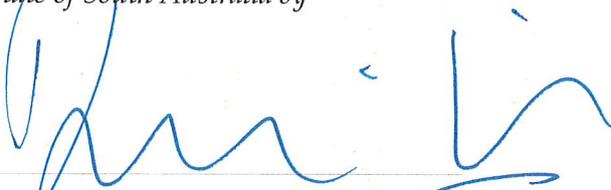


The Honourable Lisa Neville MP
Minister for Water

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Signed for and on behalf of the State of South Australia by



The Honourable David Speirs MP
Minister for Environment and Water

[Day] [Month] [Year]

14 12 2018