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Senate Select Committee on the Multi-Jurisdictional Management and Execution of the
Murray-Darling Basin Plan
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Submission

Senate Inquiry into the Multi-Jurisdictional Management and
Execution of the Murray-Darling Basin Plan

Introduction

The Inland Rivers Network (“IRN”) is a coalition of environment groups and individuals that has been advocating for healthy rivers, wetlands and groundwater in the Murray-Darling Basin since 1991.

IRN has participated in all aspects of consultation regarding the establishment and implementation of the Murray-Darling Basin Plan (“the Plan”) since the passing of the *Commonwealth Water Act 2007* (“the Water Act”).

We supported the development of the Plan and the substantial investment in its implementation because we saw this process as a significant direction for the long-term future of the Murray-Darling Basin (“the Basin”) and its important ecological, social, cultural and economic values.

The Sustainable Diversion Limits (“SDLs”) developed in the Plan were to be fully operational, by law, by 1 July 2019. IRN is very concerned that this fundamental requirement of the Plan has not occurred in a fully transparent and reported manner, mainly due to the NSW Government’s negative approach to the entire process.

Another of our primary concerns is the conflicting roles of the MDBA as agent and regulator, which was identified by the Productivity Commission’s review of the Basin Plan, which recommended the separation of these roles.

This submission outlines our major concerns with the implementation of the Plan.

Response to Inquiry Terms of Reference:

a. responsibilities in relation to the management and execution of the Murray Darling Basin Plan consistent with the objects of the Water Act 2007, in particular:

i. Commonwealth responsibilities,

Under the Water Act 2007 the Commonwealth Government is responsible for meeting a number of international agreements relevant to the Murray-Darling Basin.

A key environmental object of the Water Act (S.3(b)) is:

to give effect to relevant international agreements (to the extent to which those agreements are relevant to the use and management of the Basin water resources) and, in particular, to provide for special measures, in accordance with those agreements, to address the threats to the Basin water resources.

Relevant international agreement means the following:

- (a) the Ramsar Convention; Convention on Wetlands of International Importance especially as Waterfowl Habitat, Ramsar 1971
- (b) the Biodiversity Convention; Convention on Biological Diversity, Rio de Janeiro 1992
- (c) the Desertification Convention; United Nations Convention to Combat Desertification, Paris 1994
- (d) the Bonn Convention; Convention on the Conservation of Migratory Species of Wild Animals, Bonn 1979
- (e) CAMBA; Agreement between the Government of Australia and the Government of the People's Republic of China for the Protection of Migratory Birds and their Environment, Canberra 1986
- (f) JAMBA; Agreement between the Government of Australia and the Government of Japan for the Protection of Migratory Birds and Birds in Danger of Extinction and their Environment, Tokyo 1981
- (g) ROKAMBA; Agreement with the Government of the Republic of Korea on the Protection of Migratory Birds, Canberra 2006
- (h) the Climate Change Convention; United Nations Framework Convention on Climate Change, New York 1992
- (i) any other international convention to which Australia is a party and that is:
 - (i) relevant to the use and management of the Basin water resources; and
 - (ii) prescribed by the regulations for the purposes of this paragraph.

Another key environmental object of the Water Act (S.3(d)(ii)) is:

to protect, restore and provide for the ecological values and ecosystem services of the Murray-Darling Basin (taking into account, in particular, the impact that taking of water has on the watercourses, lakes, wetlands, ground water and water-dependent ecosystems that are part of the Basin water resources and on associated biodiversity)

IRN is of the opinion that the Commonwealth is failing to meet these objects and responsibilities in the making of and implementation of the Basin Plan.

Initial science, in assessing the volume of water needed to be returned to the environment from over-allocated water sources, identified a minimum volume requirement of 4,000 GL.

The Basin Plan was adopted with a volume of 2,750 GL and a commitment to 3,200 GL. These volumes are well below the scientifically-recognised requirements to meet the objects of the Water Act.

The Sustainable Diversion Limit Adjustment Mechanism (“SDLAM”) and the Northern Basin review has decreased the volume of real water returning to the system to 2,075 GL. These decisions were not based on science and will cause an ongoing decline in river and wetland health. This is a failure of the Commonwealth Government to meet its obligations.

The complexity of water recovery arrangements, including measurement and modelling, demonstrates a lack of transparency and possible misleading information.

IRN contributed significant input to both the SDLAM and Northern Basin review processes. The issues raised in our submissions (attached) were ignored by the Murray-Darling Basin Authority (“MDBA”). In summary the key issues in our submissions were:

For the SLDAM:

1. The draft determination is outside the Basin Plan limits of change¹
2. There is a high level of uncertainty and limitation in the modelling² and Ecological Elements method’s scoring³ and the final modelling outcome is not yet available
3. Six locations across the Basin breach the limits of change
4. Equivalent or better environmental outcomes from supply projects have not been demonstrated
5. Poor consultation process

For the Northern Basin Review:

1. The 415 GL SDL option better met environmental targets
2. The 102 GL reduction in shared return to downstream targets
3. The impact of a reduced SDL on Ramsar listed wetlands

Both these processes that resulted in a reduction of water recovery for environmental benefit by 675 GL, ignored the scientific evidence provided in a number of expert reports.

Specific Flow Indicators (“SFIs”) will not be met in the Northern or Southern Basin because of the adoption of a higher SDL under the Basin Plan. The SFIs are critical for meeting ecological targets including inundation of wetland areas and migratory bird breeding events as required under international agreements.

¹ Water Act 2007 s 23A(4)

² Independent Expert Advisory Panel Report, September 2017, Executive Summary p 1

³ Ibid p 7

The recent ecological disaster experienced in the Darling River system, termed an '*ecosystem in crisis*' by the NSW Natural Resources Commission⁴ demonstrates that more water is needed in the system, not less, and a flow regime which supports restoration of ecological processes.

IRN was very surprised and disappointed that the MDBA sent up the SDLAM recommendations to the then Water Minister, Barnaby Joyce, the day after the period for submissions closed on 3 November 2017. This timeframe was a strong indication that little attention had been given to submissions. The MDBA response to submissions was published a month later on 8 December 2017 and failed to address the key issues raised in the IRN submission.

IRN submissions to the SDLAM and Northern Basin Review processes are attached with this submission. These highlight the lack of consideration of Commonwealth responsibilities and the failure to make decisions based on science.

ii. state and territory responsibilities.

The Basin Plan required the SDL to be in place by 30 June 2019 through the accreditation of Water Resource Plans (WRPs). State and territory governments had the responsibility to develop the WRPs. Only one WRP was accredited at the Basin Plan deadline and only a few more are accredited now.

NSW is the largest land mass within the Basin and is responsible for the highest level of water extraction. The failure of the NSW government to submit WRPs by the extended, agreed time frame of 30 December 2019 is a serious failure of the implementation of the Basin Plan.

Not all SDLs have been met in various Basin catchments:

- Local water recovery required is **31.0** GL/y, mostly in the northern Basin,
- Shared water recovery required is **15.7** GL/y, mostly in the southern Basin. Following Basin state requests, the Authority agreed in March 2019 to a re-allocation of the shared recovery targets within Basin zones.⁵

Under the WRPs, States are required to manage water sharing arrangements under rules in Water Sharing Plans (WSPs). NSW has complicated the development of WRPs by concentrating on the making of new WSPs under the NSW *Water Management Act 2000*.

Many of these were required to be remade by 2014 under NSW legislation. The rules in the WSP, required by the Basin Plan, such as protecting held environmental water and shepherding it through unregulated and regulated water sources to ensure improved connectivity, are still under development.

⁴ NRC. Sept 2019. Final report, *Review of the Water Sharing Plan for the Barwon-Darling Unregulated and Alluvial Water Sources 2012*

⁵ <https://www.mdba.gov.au/progress-water-recovery>

NSW has failed to co-operate with the implementation of the Basin Plan and has threatened, on various occasions to pull out of the Plan, notwithstanding the agreement made at COAG in August 2019 and the Compliance Compact⁶ agreed to in 2018

The states and territories have responsibility for implementing the supply measures to deliver the SDLAM and the Nth Basin toolkit measures.

The States and territories have responsibilities as land managers under international agreements. They are the managers of Ramsar wetlands in protected areas and manage threatened and migratory species habitat under various state and federal legislation.

The availability of water to key areas and species identified under international agreements is a key aspect of rules in WSPs and the development of WRPs.

IN SUMMARY, IRN considers that most Basin states are failing to meet these responsibilities under the Plan and under international agreements.

b. the effects, positive or negative or otherwise, of the different approaches of the states and territories to water resource management in the Murray Darling Basin including, but not limited to:

i. legislation, regulations and rules,

The States and territories are responsible for setting annual water allocations across all forms of water access licences.

Victoria and South Australia have a high volume of high security water licences and very conservative allocation processes, whereas, NSW has a high proportion of general security licences and a less conservative allocation process that does not adequately factor in drought of record sequences. The 2014 amendment to the *NSW Water Management Act 2000* changed the definition of most recent drought of record. This caused over-allocation and serious deficiencies in water security during the current intense drought, particularly in the Northern Basin river systems.

This difference in approach is the main reason why irrigators on the Victorian side of the Murray River have access to water while those on the NSW side have nil allocation. Queensland is largely unregulated and has opportunistic allocation to inflows.

The management of flows in the Northern Basin is a key problem that has not been solved by the Basin Plan. There appears to be inadequate requirement for WRPs to protect first flush flows after prolonged drought, as recently observed in the extraction of water in Queensland and northwest NSW tributaries of the Barwon-Darling River.

Connectivity with the Lower Darling and Lower Murray is a key environmental objective and requirement that has not been adequately met.

Floodplain harvesting in the Northern Basin is currently unregulated in NSW and unmeasured in both NSW and Queensland. The impact of floodplain harvesting was not

⁶ MDBA. December 2018. Murray-Darling Basin Compliance Compact Interim Assurance Report

taken into account during the Northern Basin Review and is not being adequately managed through WRPs.

ii. measuring, monitoring and compliance,

The MDBA reported in November 2019 that 26% of water take in the Basin is not measured and is based on estimates. This is very unsatisfactory, and needs to be urgently addressed so that an accurate volume of water recovered for environmental restoration and river health can be calculated and reported.

All states should be required to adopt consistent measuring, monitoring and compliance processes, and report on these accordingly.

iii. enforcement

The establishment of the Natural Resources Access Regulator in NSW has been a good response to allegations of water theft and corruption in the management of water resource decision-making. This model should be replicated across all jurisdictions.

The enforcement of compliance to regulation requires sufficient and secure resources to ensure that rules of water management are effective.

At the federal level, an independent Basin Plan Regulator is needed to separate the roles of the MDBA.

iv. openness and transparency;

Modelling processes:

There has been a lack of transparency in the modelling processes used to develop the Base Diversion Limits and Sustainable Diversion Limits underpinning WRPs.

A recent review of ‘cap factors’ by the NSW and Victorian Governments, accepted by the MDBA has dramatically changed the modelled volumes of water recovered for the environment in a number of key catchments. The changes made to assumptions and factors in the models have not been made available.

There are key questions that need to be answered to explain the process. These include:

- Are there differences between Long-Term Diversion Limit Equivalence (LTDLE) and Long-Term Average Available Yield (LTAAAY) factors? What are they?
- Is there a difference between Baseline Average Availability factors and LTAAAY?
- How are “Upper Bound” LTDLE factors different to ordinary LTDLE factors?
- How were the LTDLE factors developed?
- Are the LTDLE factors used to calculate water recovery the same in SDL calculations? If not, why are they different?
- In what ways are the 2011 LTDLE factors out of date? How have these shortcomings been addressed in the 2018 factors? What is the new information used for the 2018 factors?
- What are the new assumptions about contemporary water use in the 2018 factors? How do they compare to the assumptions in the 2011 factors?
- Are the factors the same in BDL models and pre-development models?

- What are the allocation reliabilities for each valley and entitlement type indicated by the proposed BDL model? How is reliability defined?
- How are the different factors used? What is the purpose of each type of factor?
- How long are these factors expected to be fit for purpose? Why?

NSW Govt response to Matthews Report:

After media exposure of corruption and maladministration of water resources in NSW there was a commitment to greater transparency in decision-making, approvals and ownership of water licences. This has still not occurred.

Public access to important information through more transparent reporting of water take is outstanding. Recent decisions, and the reasons for those decisions, to lift embargoes on water take, announce supplementary access and permit floodplain harvesting in the Northern Basin in NSW from the first flows into river systems for over 3 years have not been transparent.

The lack of clear rules in NSW through accredited WRPs is an outstanding issue that has not been resolved, but requires urgent resolution.

c. any related matters.

The National Water Commission needs to be reinstated so that independent research and oversight of national water reform is undertaken with a consistent, transparent and scientific approach.

The enforcement of WRPs and all other compliance issues should be undertaken by an independent Federal Basin Plan Regulator separate from the MDBA. The Productivity Commission review of the Basin Plan recommended the separation of conflicting roles of the MDBA as agent and regulator. IRN strongly supports this approach.

IRN requests an invitation to present to an Inquiry Public Hearing.

Please contact us

Yours sincerely

Bev Smiles
Secretary