Gwydir Valley Irrigators Association Inc.

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Submission into the Australian Senate's Standing Committee on Environment, Communications and the Arts Inquiry into Water Licences and Rights

1st October, 2009

Terms of Reference: ***On 20 August 2009 the Senate referred the following matters to the Senate Standing Committee on Environment, Communications and the Arts for inquiry and report.***

The ability of the Commonwealth, across state borders, to sustainably manage water resources in the national interest, with particular reference to:

a. the issuing, and sustainability of water licences under any government draft resource plans and water resource plans;

b. the effect of relevant agreements and Commonwealth environmental legislation on the issuing of water licences, trading rights or further extraction of water from river systems;

c. the collection, collation and analysis and dissemination of information about Australia's water resources, and the use of such information in the granting of water rights;

d. the issuing of water rights by the states in light of Commonwealth purchases of water rights; and

e. any other related matters.

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This submission contains no confidential material.

Introduction: The Gwydir Valley Irrigators Association (GVIA) is a voluntary organisation that represents the interests of irrigation entitlement holders in the Gwydir Valley of North-West NSW.

Membership of the organisation represents is in excess of 90% of the privately owned (non-government) water entitlement in the valley, covering regulated, unregulated and groundwater sources.

The Association is a member of both the NSW Irrigators Council and the National Irrigators Council, but reserves its right to express views independently of these two bodies.

GVIA welcomes the opportunity to make this submission to the inquiry, and would be prepared to appear before the inquiry if the committee wishes for any additional information on any of the matters raised in this submission.

General: GVIA has to admit to being somewhat perplexed by the nature of this inquiry given its broad terms of reference, and the little in the way of guidance as to the expected scope of the inquiry or possible outcomes.

However, GVIA is concerned that this may be a political attempt to disrupt the progress of "Water for the Future"; it's Murray-Darling Basin Plan, and the application of the Commonwealth Water Act, prior to giving the above legislation and programmes the opportunity to work.

Water has been under almost constant reform in the Murray-Darling Basin since the first Council of Australian Government (COAG) Agreement on Water Reform in 1994 and the introduction of the Murray-Darling Cap in 1995.

On a National and Basin wide scale this was followed by the signing of the National Water Initiative (NWI) in 2004, the Federal Water Act in 2007, and the signing of the Intergovernmental Agreement on Murray-Darling Basin Reform in July 2008.

These agreements and the associated political will have spurned a huge array of water related reform activity including the $3.1 billion Federal water entitlement buyback, a yet largely unrealized $5.8 Billion of water infrastructure renewal, and a significant reform of water trade.

Paralleling this Federal activity, the NSW Government has been undertaking a massive reform of its water management regulatory and operational regime, including the introduction of the Water Management Act 2000 (WMA 2000), the corporatisation of State Water and the conversion of licenses from the Water Act of 1912 to the WMA 2000.

Key to this reform has been the progressive development and introduction of Water Sharing Plans for water sources across the State. In regard to groundwater, this reform has also included the assessment of sustainable yield for each major aquifer, and a massive reduction in total entitlement levels; so entitlements are now in line with sustainable yield.

Underpinning all this reform has been a growing recognition of the property right that is attached to water. That is, the holder of an irrigation entitlement holds a share in the available resource, and should government action either reduce that share, or the water yield reliability of that share, then the entitlement holder should receive just terms compensation.

The people of Australia, through their governments, have the right to alter the amount of water extracted in the Murray-Darling Basin, and in turn alter the share retained for the environment.

However, in making that alteration, Government must recognise the "building blocks" that have been laid down over the past decade, including the inherent property right associated with water, and provide just compensation for any changes.

The ability of the Commonwealth, across state borders, to sustainably manage water resources in the national interest, with particular reference to:

a. the issuing, and sustainability of water licences under any government draft resource plans and water resource plans;

It is not the role of the Federal Government to issue or otherwise engage in activity to affect the issuing of water licenses under draft resource plans and water resource plans.

If reform is going to be based on the recognition of the property right held over water resources, it is absolutely critical that those licenses are issued in a manner that properly represents that property right.

And therefore, Basin States should be able to retain the right to issue licenses for water in a manner that formally recognises that right.

However, in doing this the Basin States must act within the constraints of the Murray-Darling Cap and the NWI.

For example, the Murray-Darling Cap places a limit on the amount of surface water that can be extracted out of each valley. That cap includes water that is captured from overland flows.

On top of that the NWI (section 28) says - *"The consumptive use of water will require a water access entitlement, separate from land, to be described as a perpetual or open-ended share of the consumptive pool of a specified water resource…..".*

Therefore, the situation exists in NSW, where the taking of overland flow is accounted for under the Cap, is recognised consumption, but is currently unlicensed, and therefore at odds with the National Water Initiative.

The reason why it is currently unlicensed, is for NSW to meet the requirements of National Water Initiative, it has had to convert licenses from the Water Act 1912 to the WMA 2000.

This is a large undertaking, and the NSW Government has chosen to prioritise it.

The first licenses to be converted were mostly regulated licenses within the major valleys of the Murray-Darling Basin, some unregulated licenses, groundwater, and more recently unregulated licenses in the Coastal Valleys.

With regards to overland flows, the 1912 Water Act, did not specifically recognise this resource by way of issuing a licence, so the NSW Government has started the process of developing an overland flow/floodplain harvesting licencing policy.

What is important to recognise is that when WMA 2000 licenses are issued for overland flows, it will not increase the take of overland flow, because in the absence of the Basin Plan, the take will still be capped by the Murray-Darling Basin Cap.

The reality is; formal licencing will lead to a reduction in overland flow extractions, because licencing will give the State the legal ability to enforce the Cap.

It should be noted that the Commonwealth as recognised the legitimacy of licencing overland flow, by it's agreement to fund the "Healthy Floodplains" component of the NSW Priority Projects, which formed part of the 2008 Intergovernmental Agreement on Murray-Darling Basin Reform.

So in summary, while the net amount of licencing in NSW may increase through the formal licencing of overland flows, the additional licencing will not lead to, and cannot lead, to an increase in extractions. All licencing is doing is formally recognising a legitimate activity, in keeping with the requirements of the NWI and the WMA 2000.

Similarly, in GVIA's opinion, the NSW government's licencing of regulated river supplementary water is in only partial compliance with the NWI, as the licencing is not in perpetuity.

GVIA contends the NSW Government should be free to rectify this issue, without Federal government interference, by issuing those licenses in perpetuity.

While it might have been ideal for all States to fully have NWI compliant licencing regimes in places prior to the current round of reform, the reality is that there is currently different levels of compliance both between jurisdictions and within jurisdiction.

It is imperative that States be able to complete their work of ensuring all consumptive water use is licenced in accordance with the NWI, and in doing so ensure that the critical building blocks are in place to allow the successful completion of "Water for Our Future", including the effective implementation of the Basin Plan.

The ability of the Commonwealth, across state borders, to sustainably manage water resources in the national interest, with particular reference to:

b. the effect of relevant agreements and Commonwealth environmental legislation on the issuing of water licences, trading rights or further extraction of water from river systems;

In part this issues crosses-over GVIA's response to the previous section. It is important to understand that the key agreements include:

1. The 1994 COAG Agreement on Water Reform
2. The 1995 Interim Murray-Darling Cap
3. The 2004 National Water Initiative
4. The 2007 Federal Water Act and subsequent amendments
5. The 2008 IAG On Murray-Darling Basin Reform

All these agreements have built on the notion of a property right for water, as the fundamental basis for managing the resource within the Murray-Darling Basin.

It is absolutely important to recognise that Governments have the right to continue to issue NWI compliant licenses, provided they do not lead to a breach of the Murray-Darling Basin Cap.

While some may struggle to grasp the point, it is critical to be able to distinguish between the issuing of new licenses, and any growth in extraction that may breach the Cap.

The Commonwealth's ability to manage the Basin's water rights will come from its ability to adjust who holds entitlements (extractive users or the environment) rather than from manipulating the legitimate issuing of those licenses.

Licencing remains the obligations of the State, and will continue to do so under the Federal Water Act.

The ability of the Commonwealth, across state borders, to sustainably manage water resources in the national interest, with particular reference to:

c. the collection, collation and analysis and dissemination of information about Australia's water resources, and the use of such information in the granting of water rights;

As previously discussed, the fundamental control on the expansion of extraction of water in the Murray-Darling Basin has been the Murray-Darling Basin Cap.

Each State has been responsible for reporting on it compliance with the Cap, and that performance has been audited by the Murray-Darling Basin Authority and its forerunner the Murray-Darling Basin Commission.

While there are always arguments for greater levels of data, and improved levels of accuracy, the process has been effective in ensuring the Cap has been adhered to, or when breaches have been detected, action taken.

On top of this requirement, NSW has invested extensively in modeling extraction behavior and truthing these models (primarily the Integrated Quality and Quantity Model). This information has been used extensively to ensure Cap compliance and

more recently Water Sharing Plan requirements, which actually require a lower level of extraction than allowed for under Cap.

GVIA supports the move by the Commonwealth to collect and store more water data through the Bureau of Meteorology Project; is very aware of the CSIRO Sustainable Yield Reports (although it has well documented concerns about some of the information and conclusions in those reports), and supports many of the projects that will provide us with a better understanding of our water resources.

However, it is critical that it is recognised that the level of legitimate licencing is underpinned by the provisions of the Murray-Darling Cap and the NWI, and this licencing should be seen as a fundamental building block for any reform.

The ability of the Commonwealth, across state borders, to sustainably manage water resources in the national interest, with particular reference to:

d. the issuing of water rights by the states in light of Commonwealth purchases of water rights; and

Provided water rights are being issued by the State in keeping with the Murray-Darling Basin Cap and the NWI, it is irrelevant as to whether the Commonwealth is purchasing licences or not.

To the uninformed, it may not appear to make sense, for the Commonwealth to be seen to be purchasing licenses in a jurisdiction with the aim of increasing the environment's share, while at the same time the jurisdiction is issuing new extractive use licenses.

However, if those new licenses, are being issued in accordance with the Cap then it is part of the process to ensure all jurisdictions are entering this new phase of Commonwealth involvement in water purchases with a level playing field (at least in terms of licencing).

As GVIA has argued in this submission, not only is it perfectly legitimate for the NSW Government to issue floodplain harvesting/overland flow licenses to comply with its WMA 2000, it will also be legitimate for the Commonwealth to purchase some of those licenses if it wishes to increase the environment's share of this resource, over and above its current share as determined by the Cap.

What would not be legitimate is for the Commonwealth to prevent the State from issuing these licenses, which recognise long standing and legal water extraction, properly accounted for under the Murray-Darling Basin Cap.

The ability of the Commonwealth, across state borders, to sustainably manage water resources in the national interest, with particular reference to:

e. any other related matters.

For irrigators, the decision by the Commonwealth Government to take a more proactive involvement in the management of the Murray-Darling Basin's water resources is one that offers both opportunities and risk.

Few would deny that it makes sense to try to manage the resources in a co-ordinated way that is not unduly influenced by State boundaries.

However, what must also be recognised is that the water management regime we have now has over 100 years of State run history.

Therefore, it is critical that all users of the Basin's water resources enter this new phase of water reform on an equal playing field.

This most critical factor for ensuring this equality is the issuing of perpetual entitlements that recognises the holder's property right. It must be recognised that States are at different stages of meeting their licencing obligations under the NWI, and the whole reform process will fail if the Commonwealth acts in a way that prevents the States meeting those licencing obligations.

To some, the continued issuance of licenses on one hand, coupled to the Commonwealth buyback on the other, may seem like taking one step backward. However, the proper and legal issuing of entitlements is absolutely critical to the long term success of coordinated Basin water resource management.