



National Irrigators' Council

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Senate Standing Committees on Environment and Communications

Inquiry into Water Amendment (Long Term Average Sustainable Diversion Limit Adjustment) Bill 2012

Submission by the National Irrigators' Council

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Introduction

The National Irrigators' Council (NIC) is the peak body representing irrigators in Australia. NIC currently has 32 member organisations covering all MDB states, regions and commodities. Our members represent water entitlements of about 7 million megalitres. While this document has been prepared by the NIC, each member reserves the right to independent policy on issues that directly relate to their areas of operation, or expertise, or any other issues that they may deem relevant.

The National Irrigators' Council welcomes the opportunity to provide a submission to the Senate Standing Committees on Environment and Communications inquiry into the *Water Amendment (Long Term Average Sustainable Diversion Limit Adjustment) Bill 2012*. NIC supports the concept of an adjustment mechanism.

The National Irrigators' Council has long argued if environmental objectives can be maximised and achieved by using less water through building new or upgrading existing environmental works and measures, then the SDL should be continuously increased as these works and measures are implemented. This would offset the social and economic damage that otherwise be caused by removing consumptive water from communities while allowing for the watering of environmental assets.

We have previously argued that the water accounting methodology in the proposed Basin Plan needs to be amended so that water recovery can include such things as rules changes, works and measures and efficiency projects. Any rule and operating changes must see the characteristics and reliability of water entitlements maintained; and must have no third party impacts unless agreed to by all stakeholders.

We welcome the fact that the State and Federal Governments continue to negotiate the final version of the plan to include this type of provision in the final version of the Plan and to this end we support the main intent of the Water Amendment Bill which will allow an adjustment to the Sustainable Diversion Limit.

However NIC is concerned in particular about the Bill's following aspects:

Need for Transparency

We are concerned that Parliament would amend the Water Act to facilitate an SDL Adjustment Mechanism, when the details of the Mechanism, contained in the Basin Plan, have not been made public nor shown to stakeholders. To have confidence in the SDL Adjustment Mechanism we must understand the assumptions built into the mechanism's models, including the 'Initial Conditions of Development', that may affect the extent to which works and measures lead to SDL adjustments.

For this reason it is essential that the details of the SDL Adjustment Mechanism be provided to the Parliament, stakeholders and the community before the Water Act is amended.

Until the details in the final Basin Plan have been sighted, along with any Intergovernmental Agreements underpinning the Basin Plan or Regulatory Impact Statement, it is impossible endorsement to the Committee on the proposed Bill.

Recommendation 1: *The Committee should recommend that the Senate defer the Bill until such time as the Senate, stakeholders and the community can evaluate SDL Adjustment Mechanism in the context of a publically released Basin Plan that will be brought to Parliament.*

Stakeholder consultation

Section 23A(2)(c), which requires the MDBA to seek and consider advice from the Basin Officials Committee (BOC).

We are also concerned that the Bill does not require the formal input of stakeholders. The provision in Section 23A(2)(c) to 'seek and consider advice from the BOC' is inadequate. This is especially true given the MDBA's history of consulting with the States, stakeholders and the community, but taking

little notice of their advice. In some instances the MDBA has even passed on information which was subsequently found to be false. At the very least, the Bill must be amended to require meaningful stakeholder consultation and a formal provision for stakeholder consultation must be built into the process in which the BOC identifies and the MDBA assesses potential SDL adjustment works and measures.

Recommendation 2: *stronger legal direction is explicitly required throughout Section 23A(1), (2) and (3,) requiring the MDBA to not only seek and consider advice from the BOC, but also require formal consultation with stakeholders.*

Ministerial Oversight

Section 23B(6), which requires the minister to accept the Murray Darling Basin MDBA's recommendations on adjusting the SDL.

This section effectively gives the MDBA the final say on what will count towards an SDL adjustment. The MDBA having the final say is concerning given the MDBA's history of consulting with the States, stakeholders and the community, but taking little notice of their advice. These concerns are heightened when we consider that there is no formal provision for stakeholder consultation required by the Bill. Rather section 23A(2)(c) only requires that the MDBA to 'seek and consider' advice from the BOC.

NIC cannot support the level of discretion given to the MDBA until we fully understand the details of how the SDL Adjustment Mechanism will be implemented. We are assured by the Government that these issues will be addressed and adequate safeguards to curb the MDBA's discretion will be included in the Basin Plan and associated implementation documents such as an Inter-Governmental Agreement (IGA). The problem is that no one has seen these documents, in order to evaluate whether they give effect to these assurances. It is also essential that these details are not open to change without consultation.

Notwithstanding such changes, it is still unacceptable that the MDBA has the final say. The Basin Ministerial Council must be consulted on the MDBA's recommendations, and formally respond and the federal minister must have discretion on whether to accept the MDBA recommendations.

Recommendation 4: *Section 23B(6) be amended to provide that the Minister 'may' accept the MDBA's recommendation.*

Parliamentary Oversight

NIC does not support the abrogation of Ministerial and Parliamentary oversight and believe the Bill needs to be amended to ensure that the Murray Darling Basin MDBA does not have the ultimate power to accept or reject the proposed SDL Adjustments. This power must be retained by the Parliament. As stated previously, stakeholders have no confidence in the MDBA to make a determination taking into account stakeholder concerns.

NIC is calling for the Parliament to have a determinative role, by allowing for the disallowance of a proposed SDL Adjustment.

No Protection of Resumption Mechanism

Since the announcement of the SDL Adjustment Mechanism, Minister Burke has guaranteed that all current programs and funding would be directed to the current "gap" and that any additional recovery would be solely through new programs with new funding.

However this guarantee is not reflected in the Bill. The NIC is calling for this guarantee to be strongly represented in the proposed Bill.

No Formal Social and Economic Criteria

Before an SDL adjustment occurs, the relevant projects must be evaluated in terms of their social and economic impacts. If the project is proven to cause 'no detriment' economically and socially then the project will be approved.

However neither the Plan nor the Water Act contains adequate mechanism for measuring social or economic impacts. Further, the Authority's previous analysis of social and economic impacts has proven to be vastly inadequate, and as a result stakeholders have no confidence that the place which to measure economic and social outcomes before the mechanism was deployed. In the absence of proper social and economic impact assessments, stakeholders can have no confidence in the 'no detriment' provision. Consequently it will be impossible to apply the 'no detriment' test.

Therefore an appropriate and transparent measure of economic and social outcomes must be included in the proposed bill. However prior to this, the determination of this measure must be subject to consultation with Basin Stakeholders.

Conclusion

While the National Irrigators Council is supportive of the principle of an SDL Adjustment Mechanism, it is impossible for the NIC to endorsement to the Committee on the proposed Bill until.

However NIC Members have raised a number of apparent concerns regarding the Bill, and hopes that these concerned will be addressed before the Bill enters the Senate.

- NIC feels that it is very important that Basin Stakeholders are given the opportunity to provide formal input into the mechanism, and that this input is "*had regard to*" by the MDBA.
- Further, both the relevant Minister and the Parliament must have oversight over the implementation of the Mechanism.
- The Bill includes amendments to insert provisions within the Act that clearly outline that all current programs and funding must be directed to the current "gap".
- And the Bill must require the insertion of provisions into the Act that allow for an appropriate method for measuring social and economic impacts, which has been agreed to by the Basin Stakeholders.

Irrigators support the development of a Basin Plan and the principle that some water must be returned to the environment to ensure sustainable extraction into the future. We believe that the National Water Initiative (NWI), which was signed off by all Basin States and the Commonwealth Government in 2004, should remain the driver for water reform. That process sought to achieve economically efficient water use and investment that maximises the economic, social and environmental value of Australia's water resources.

The National Irrigators' Council would be willing to appear at any public hearing the Senate Standing Committee's on Environment and Communications are holding to expand on any of the topics discussed in this submission.