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Committee Secretary
Senate Legal and Constitutional Committees
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Canberra ACT 2600

SUBMISSION

Senate Inquiry into the Provisions of the Water Act 2007

I would like to submit the following information to this Senate Inquiry in relation to the Terms of Reference:

(1) The provisions of the Water Act 2007 (the Act), with particular reference to the direction it provides for the development of a Basin Plan, including:

The Act requires the Murray Darling Basin Authority (MDBA) to develop a Basin Plan based on the best available science and socio-economic analysis to provide for the use and management of the Basin water resources in a way that optimises economic, social and environmental outcomes (as well as a range of other considerations)¹

The development of sustainable diversion limits (SDLs) encompasses the needs of natural ecosystems that rely on the Basin, as well as the functions that support continued productive and recreational use of the Basin. The SDLs must be set at a level that would mitigate pollution, limit algal blooms, remove excess salinity and reduce acidity.

The requirement to set SDLs does not prioritise 'environmental' considerations, it prioritises a scientific assessment of sustainable extraction volumes over a long term annual average.

All of these matters have positive outcomes for long term economic and social uses of the Basin, as well as enhancing the environmental assets.

The Act is based on a recognition that long term social and economic values depend on environmental health. While setting out a path to return water extraction in the Basin to sustainable levels, the Act provides direction on what economic, social and environmental outcomes should be achieved.

The Act acknowledges that human use of the Basin should continue and that the Basin Plan should seek to optimise those uses.

¹ Water Act 2007 ss 20 and 21

a) any ambiguities or constraints in the Act which would prevent a Basin Plan from being developed on an equally weighted consideration of economic, social and environmental factors;

The Act provides for the consideration of the triple bottom line. The challenge is in the acknowledgement that the environment or health of the Basin river systems has not been taken into account while an unsustainable volume of licenced extraction has been granted by the Basin State Governments over an extended period of time.

The Act provides for a return to a balanced consideration of economic, social and environmental factors. A continuation of unsustainable extraction levels will severely constrain the future of economic, social and environmental values in the Basin.

There are no ambiguities or constraints in the Act which prevents the Basin Plan from delivering positive outcomes for communities and natural assets.

b) the differences in legal interpretations of the Act

The Act received bipartisan support after an intensive consultation period through the development of the National Plan for Water Security in 2007. All credible legal interpretations of the Act have been consistent.

c) the constitutional power of the Commonwealth to legislate in the area of water

The Act relies on a number of Constitutional heads of power as well as a referral from the Basin States.² All States, both Federal major political parties and a vast majority of stakeholders agreed that the Commonwealth should have a role in managing the water in the Basin.

All Australians have recognised that the current position of inconsistent and ineffective State regulation of water use in the Basin is no longer tenable. The National Water Initiative is an agreement that identifies the need for greater certainty for investment and the environment.³

There is agreement that this can only be achieved by the Commonwealth Government through the implementation of sustainable levels of water diversion.

(d) the role of relevant international agreements and the effect of those on the parts of the Act which direct the Basin Plan to give effect to those agreements and their effect on the Act more generally;

The reference to relevant international agreements in the Act reflects the obligations that Australia has already committed to and is required to comply with under international law. Australia has international obligations to protect and maintain water dependent ecosystems and migratory wildlife

² The Constitutional heads of power are trade and commerce; postal, telegraphic and telephonic; astronomical and meteorological observations; census and statistics; weights and measures; corporations power; external affairs; incidental powers; and governing of territories.

³ Clause 5 National Water Initiative

that use them. The inclusion of these obligations in the Act is consistent with the National Water Initiative and the need for their operation.

(e) any amendments that would be required to ensure that economic, social and environmental factors are given equally weighted consideration in developing the Basin Plan; and

The Act already considers economic, social and environmental factors on an equal footing. The Act provides direction on what economic, social and environmental outcomes should be achieved, while setting out a path to return extraction in the Basin to sustainable levels. Amendments to the Act will not assist to achieve that purpose.

The Act already gets the balance right and does not need to be amended.

(f) any other related matter.

The Act correctly prioritises the need to reduce water extraction and return water to the environment in order to support both the ecosystems and the communities that depend on them.

Healthy rivers support healthy, vibrant and sustainable communities with a sustainable economic base.

The only alternative to environmentally sustainable extraction levels is unsustainable extraction levels. This will not help current or future generations have certainty.

Yours sincerely

Bev Smiles