



Australian Dairy Industry Council Inc.

26 October 2012

Senator Cameron
Chair
Senate Standing Committee on Environment and Communication – Legislation
Via email: ec.sen@aph.gov.au

Dear Senator,

Re: Inquiry into the Water Amendment (Long-term Average Sustainable Diversion Limit Adjustment) Bill 2012

The Australian Dairy Industry Council (ADIC) welcomes the opportunity to make a submission to the above inquiry. While the dairy industry supports an adjustable Sustainable Diversion Limit mechanism in the Murray Darling Basin Plan, it has concerns about the timing and aspects of the Bill. These concerns are detailed below.

Background

Dairy is the largest irrigation-based livestock industry in the Murray Darling Basin, and accounts for a quarter of Australia's total milk production. The Basin dairy industry has a farmgate milk value of around \$980 million and regional processing worth \$2450 million in value-added dairy products. More than 12,000 people in the Basin rely on dairy for their livelihoods, including farm and factory workers, tanker drivers, dairy machinery technicians, financial services, vets, feed brokers and suppliers, farm equipment suppliers, agronomists and farm advisers.

Water availability and affordability are the dairy industry's key issues with the Murray Darling Basin Plan. As it stands, more than 1000GL (long-term annual average) in entitlements have already been purchased from irrigators. Almost 900GL of this has been sourced in the southern connected Basin, where it represents about 11% of the annual average water availability – and includes up to 17% of Victoria and South Australia's high reliability entitlements.

For dairy, the loss of this 900GL from the consumptive pool already means an uphill battle and higher costs to get milk production in the southern Basin back to the pre-drought levels that support 16 major milk factories and their jobs in the Basin in northern Victoria, NSW and South Australia.

It is not just higher costs and greater scarcity of water on the market during future dry spells, but the type and location of entitlements recovered also affects the viability of shared irrigation districts. This is because reduced water deliveries mean water companies must increase charges to cover the costs of maintaining and operating the system.

In short, a significant pain of adjustment is already inevitable even if no more water is transferred from the consumptive pool across to the environment.

The dairy industry supports improved environmental health in the Murray Darling Basin. The ADIC believes environmental outcomes similar to or better than the proposed 2750GL in entitlements can be achieved with a mix of up to 2100GL in entitlements and at least 650GL in environmental offsets through works and measures to deliver environmental water more efficiently.

Any remaining gap to 2100GL should be closed by investing in water-savings infrastructure, with buybacks a last resort conditional on community support and State approval.

The Water Amendment (Long-term Average Sustainable Diversion Limit Adjustment) Bill 2012

It is unacceptable that Parliament should amend the Water Act to facilitate an unknown adjustment mechanism on a 'trust us' basis. The Water Minister, Tony Burke, told Parliament in his second reading speech that the amendment introduced transparency to the SDL adjustment mechanism

process – this commitment should extend to providing the details of the mechanism itself so that Parliament, stakeholders and the community can make an informed judgement of the Bill's merits.

Recommendation 1: *The ADIC urges the Committee to recommend that the Senate defer the Bill until such time as the Senate, stakeholders and the community can evaluate the Basin Plan that will be brought to Parliament, including details of the SDL adjustment mechanism.*

The dairy industry is concerned in particular about the Bill's following aspects:

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

The ADIC does not believe this is adequate, given the Murray Darling Basin Authority's history of seeking, possibly even considering, but then take little notice of advice from the States, stakeholders and community.

It also has an unfortunate history of breaking commitments on what works and measures might lead to environmental offsets. The Living Murray (TLM) works are a case in point. Senior MDBA representatives repeatedly told media, public meetings and Parliamentary inquiries in 2011 and 2012 that TLM works could reduce the volume of water required to deliver environmental outcomes in icon sites, and stated their intention to assess the TLM works as potential SDL offsets to inform the 2015 review.

However, in July 2012, the MDBA began to tell the States and stakeholders that TLM works had already been included in the modelling after all, and therefore would not count towards achieving 650GL in environmental offsets. This experience does not engender confidence that the MDBA will consider advice in good faith from the States on evaluating and modelling works and measures that could lead to less water being recovered from irrigators.

Recommendation 2: *The ADIC recommends stronger legal direction explicitly throughout Section 23A(1), (2) and (3,) requiring the Authority at each step to not only seek and consider advice from the BOC, but also to "have regard to" that advice and to comply with all reasonable requests.*

2. Section 23A(4), which enshrines a +/-5% limit to the SDL adjustment.

This is unacceptable as it means the surface water SDL (10,873GL) cannot be adjusted by more than 540GL, even if 650GL in environmental offsets is achieved. In turn, that means a 2210GL recovery in entitlements, not the 2100GL sought by Victoria and NSW. The allowable adjustment must be +/-6%.

The Department of Sustainability, Environment, Water, Population and Communities has suggested in correspondence with the States that the surface and groundwater SDLs will be rolled together for the purposes of a net +/-5% adjustment, which on paper may allow a 710GL variation (ie. 5% of 14,397GL).

It should be noted that the most recent draft Basin Plan released in August 2012 specifies that the total net adjustment possible is limited to 5% of the total surface water SDL (Chapter 6, Part 3, opening notes to section 6.08).

Even if this changes to apply to the SDL net of surface and groundwater combined, this aggregation is not hydrologically or scientifically sound. Therefore, when subjected to technical analysis and review as part of the SDL adjustment in 2015, it is unlikely to result in the claimed policy intent to allow the surface water SDL to be adjusted to account for 650GL in environmental offsets.

It also needs to be remembered that the 650GL in environmental offsets in the southern Basin may not be the only adjustment considered in 2015. NSW and Victoria through the Basin ministerial council have sought a review of the proposed groundwater SDLs, to support claims to divert 40GL more groundwater than the Basin Plan currently would allow.

The August version of the draft Basin Plan also allows for a review of the northern Basin catchment SDLs. Queensland in particular is disputing the 100GL recovery target for the Condamine and in general the need for a shared 143GL from the northern Basin to meet downstream needs.

It appears there may be many claims to the volume allowed under the adjustment mechanism. All we really know for certain right now is that +/-5% will limit the surface water adjustment to 540GL, making it impossible to achieve the 2100GL cap on water recovered in the form of entitlements.

Recommendation 3: *Section 23A(4) should be amended to allow a +/-6% limit to the SDL adjustment mechanism.*

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

This effectively gives the Murray Darling Basin Authority the final say on what will count towards an SDL adjustment. The provision in Section 23A(2)(c) to seek and consider advice from the BOC is inadequate, given the MDBA's history of consulting with the States, stakeholders and the community, but taking little notice of their advice.

Having confidence in the MDBA means understanding all the assumptions built into their models that may affect the extent to which works and measures lead to SDL adjustments. However, the ADIC understands that the MDBA is struggling to provide the States with a comprehensive list of all the "Initial Conditions of Development" introduced to the August version of the draft Basin Plan.

These conditions are part of the modelling, and will moderate the extent to which any environmental works and measures will result in an SDL adjustment, so it is essential that they are transparent and not open to change without consultation.

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 InterGovernmental Agreement (IGA). The problem is that no one has seen these documents, in order to evaluate whether they can deliver on these assurances.

Notwithstanding these sight-unseen provisions in the Basin Plan and IGA, 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; Parliamentary oversight of the final SDL adjustment is also desirable.

More generally, the ADIC would also like to see formal provision for stakeholder consultation built into the process in which the BOC identifies and the MDBA assesses potential SDL adjustment works and measures. A representative stakeholder SDL adjustment reference group may be the appropriate means to this end.

The consultation process should also provide for this reference group to regularly brief the Basin Ministerial Council, to complement progress reports by the BOC and the MDBA. All MDBA, BOC and reference group reports should be publicly available for the sake of transparency.

However, please note that the consultation process required under Section F is not supported for the purposes of the SDL adjustment.

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

Recommendation 5: *Provision be made for the creation of a stakeholder reference group to be included in the process undertaken by the MDBA and BOC to identify, evaluate and assess works and measures to contribute to an SDL adjustment.*

General concerns

As already stated, the dairy industry is uncomfortable with the Water Act being amended to give effect to a Basin Plan and IGA that no one has yet seen, on a 'trust us' basis that the Plan and IGA will contain all the appropriate safeguards.

On this basis, we believe it is imperative that Parliament, stakeholders and the community have the opportunity to consider the IGA and the Basin Plan before the Water Act is amended, to be confident that these documents clearly and unambiguously set out how the following will be delivered:

That is, that:

- The 2750GL target will be met through a combination of at least 650GL in offsets and up to 2100GL in entitlements.
- The MDBA will count all water and environmental works and measures towards closing the gap to 2750GL first, before any consideration of upward adjustment.
- All remaining current funding for infrastructure and buybacks will be pooled and invested in works and measures to close the gap to 2750GL first.
- That the MDBA will consult with and have regard to the Basin Officials Committee on the works and measures, and comply with all reasonable requests from the Basin Officials.

In particular, the IGA needs to clearly and unambiguously direct the MDBA to:

- Identify at least 650GL in environmental offsets, including TLM works and efficiency measures such as improved river operations. Fall back on buybacks is not an option.
- Achieve the balance (up to 2100GL) through water recovery in the form of entitlements (ie, on- and off-farm infrastructure savings and buybacks).
- Close the remaining gap to the 2100GL through on- and off farm infrastructure savings, and buybacks only where these are community-led and supported, and approved by the relevant State Government.

The Basin Plan itself must be legally consistent with delivering the policy intent, including:

- Either removing the new provision for the SDL adjustment to be moderated against to 'initial conditions of development', or clearly defining what these conditions are so that they are not used to prevent the full 650GL in offsets contributing in full to the SDL adjustment.
- Similarly, mandatory targets for the lower lakes, Murray mouth and Coorong need to be removed from schedule 5 where their status as 'safety net provisions' will potentially neutralise the capacity to adjust the SDL by the full 650GL.

Conclusion

The dairy industry strongly urges the Committee to recommend that the Senate defer the Bill until such time as the Senate, stakeholders and the community can evaluate the Basin Plan that will be brought to Parliament, including details of the SDL adjustment mechanism.

The dairy industry also urges the Committee to give serious consideration to the merits of the changes recommended in this submission.

We would welcome the opportunity to present at public hearings on these issues. In the meantime, please do not hesitate to contact us if any further queries,

Yours sincerely

Mr Chris Griffin
ADIC Chairman

Mr Daryl Hoey
ADIC Basin Response Taskforce Chair