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Committee Secretary
Senate Standing Committees on Rural and Regional Affairs and Transport
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Canberra ACT 2600

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Date: 28th September 2017

Re: Inquiry into the integrity of the water market in the Murray-Darling Basin

Dear Committee Secretary,

WWF-Australia welcomes the opportunity to provide the following comments to the Senate Standing Committee on Rural and Regional Affairs and Transport inquiry into the integrity of the water market in the Murray-Darling Basin.

Response to Terms of Reference:

a) Alleged mismanagement of water resources

While we are unaware of any allegations of water resource mismanagement of the scale revealed in the 4 Corners program in the Queensland part of the MDB, we are aware of issues regarding the potential mismanagement of overland flow in the Boarder Rivers region¹, which could be detrimental to the socioeconomic and environmental objectives of the Basin Plan.

Although the Queensland Government is currently investigating the issue, the MDBA should also examine this issue as part of its review of state and territories compliance with the Basin Plan.

Recommendation

Include the investigation of potential mismanagement of overland flow in the Boarder Rivers region in the MDBAs review of states and territories compliance with the Basin Plan.

¹ <http://www.abc.net.au/news/2017-08-31/murray-darling-basin-plan-failure-farmers-claim-water-backed-up/8859412>

b) Investigation and disclosure by authorities of alleged mismanagement

1. Investigation of alleged mismanagement of water resources

While the various investigations that have been launched to date are welcomed, there is a significant risk they will be unable to (individually or collectively) adequately review the scale of the alleged mismanagement of water resources in the MDB due to their lack of independence, low transparency, narrow scope, restricted public engagement opportunities and inability to compel witnesses to give evidence or protect whistleblowers.

Given the inadequacy of the existing investigations, the Commonwealth should commission a full judicial inquiry (Royal Commission) into the allegations of water resource mismanagement in the MDB as it is the only level of inquiry that has the powers to compel witnesses to provide evidence, protect whistleblowers and ensure that investigation of the allegations is independent, transparent and unfettered.

Recommendation

The Australian Government must commission a full judicial inquiry into the alleged mismanagement of water resources in the MDB.

2. Public disclosure of alleged mismanagement

According to a recent article on The Guardian website², it would appear the MDBA has been aware of the alleged water theft in the Barwon-Darling River system since at least July 2016 via data generated from a satellite program it was using to monitor the flow of water down the river.

Analysis of the satellite data revealed that billions of litres of water was being extracted from one small part of the Barwon river in NSW, with much of the water appearing to have been taken unlawfully when the river was too low or when pumping was prohibited in order to protect Broken Hill's potable water supply.

From documents obtained by the Guardian, it appears that all members of the MDBAs board were informed of the evidence indicating that water was being extracted unlawfully from the Barwon river in early July 2016.

Despite being aware of the potential unlawful extraction of water, the MBDA did not exercise its powers under the *Water Act 2007* to investigate if water was being extracted unlawfully from the Barwon River or inform the public about the issue.

² <https://www.theguardian.com/australia-news/2017/sep/27/murray-darling-basin-authority-knew-of-allegations-of-water-theft-a-year-before-abc-report>

Given it was aware of the potential theft of water from the Barwon River, it could be argued the MDBA was complicit in covering up the potential water theft by not investigating the matter under its own compliance strategy³ when it became aware of the issue in July 2016.

As it will not occur under the investigations that have been launched to date, the actions of MDBA in relationship to its management of the alleged water theft revealed in the recent 4 Corners program should be investigated under a judicial review, which is the only level of inquiry with the powers to undertake an independent and unfettered investigation into the MDBAs response to the alleged water theft.

Recommendation:

The Australian Government must commission a judicial review of the MDBAs response to the mismanagement of water resources in the MDB.

c) Actions of member states in response to allegations of mismanagement

The Queensland Government has recently initiated an independent review of water measurement and compliance across the state. Although it hasn't been launched in response to the allegations of water resource mismanagement in the MDB, the review will include an examination of water measurement and compliance in the Queensland part of the MDB.

As the MDBA has been tasked with reviewing basin states and territories compliance regimes, the Authority should communicate with the Queensland Government to ensure there is alignment and consistency between the compliance reviews that each are conducting.

Recommendation

Ensure there is consistency and alignment between the compliance reviews that the Queensland Government and the MDBA are conducting.

d) Use of environmental water for irrigation purposes

Other than what is enabled under contractual arrangements with the Commonwealth Environment Water Holder (CEWH), no environmental water should be used for irrigation purposes.

To ensure that environmental water is not used for irrigation purposes, state and territory governments need to include robust rules in their water plans to enable environmental water to be 'shepherded' to its intended destination.

³ https://www.mdba.gov.au/sites/default/files/pubs/MDBA-Compliance-Strategy-Nov-2014_1.pdf

Recommendation

State and territory water management plans must include robust rules to shepherd environmental water.

e) Management of the Water for the Environment Special Account

Under s86AA (1) of the Water Act 2007, the objective of the Water for the Environment Special Account (WESA) is the enhance environmental outcomes that can be achieved under the Basin Plan by protecting and restoring the environmental assets of the MDB and protecting biodiversity dependent on the Basin water resources; so as to give effect to relevant international agreements.

According to the Department of Agriculture and Water Resources website⁴, \$3 979 000 from the WESA was paid to the New South Wales, South Australia and Victoria Governments during the 2015-16 financial year to prepare business cases for measures to address constraints to the movement of water in the Murray, Murrumbidgee, Gwydir and Goulburn River systems, which will underpin the Sustainable Diversion Limit Adjustment Mechanism (SDLAM).

While easing and removing constraints on the delivery of environmental water complies with s86AA (3) (a) of the *Water Act 2007*, it is questionable whether spending close to \$4m from the WESA on business cases for measures that underpin the SDLMA complies with the objective of the WESA.

In addition to whether the environment or tax payer have received any tangible benefits from the WESA funds spent during the 2015-16 financial year, other key concerns regarding the management of the WESA includes:

- Lack of transparency about how the WESA is managed,
- Inability for the public to engage in the management of the WESA,
- Poor public reporting on how the WESA is managed

Recommendation

The management of the Water of the Environment Special Account must be transparent and provide opportunities for the public to engage in its management.

⁴ <http://www.agriculture.gov.au/about/reporting/annualreport/2015-16/part-4/water>

f) Other related matters

Operation of the Commonwealth Environment Water Holder (CEWH)

Under existing arrangements, the CEWH is only responsible for managing environmental water once it has been purchased from willing sellers by the Department of Agriculture and Water Resources (DAWR), who are responsible for deciding which water parcels will be purchased, from which location or vendor; and at what price. This arrangement has resulted in a range of perverse outcomes, which includes:

- There has been little, if any strategic focus of the water buy-backs that have occurred to date,
- The DAWR has purchased water at extremely high price per megalitre in some cases, which has inadvertently distorted the water market,
- There have been negligible, if any environmental benefits provided by water buy-backs in some cases,
- There is an overall lack of transparency regarding DAWR's decision making process for purchasing environmental water and,
- There appears to be a potential bias by the DAWR towards particular water sellers

As they do not appear to be delivering much, if any tangible benefits to the environment or taxpayers, we recommend that the current water buy-back arrangements be reformed by giving the water buy-back decision making responsibility to the CEWH, which we believe will ensure that water purchases are strategic and deliver tangible benefits for the environment and taxpayers.

Recommendation

Give the CEWH the decision making responsibility for prioritising and purchasing water for the environment.

Northern Basin review

The MDBA proposal to reduce the volume of water which is returned to the environment in the northern part of the Basin from 390 GL to 320 GL is subject to the Australian, NSW and Queensland Governments implementing a range of 'tool kit' measures, which includes having rules in state water plans to protect environmental water so that it reaches intended destinations to support ecological assets.

As the 4 Corners program revealed, the rules required to protect environmental water are not currently in place under existing NSW water plans. Due to this, the proposed amendments to reduce the volume of water that is recovered for the environment in the northern Basin should not proceed until NSW and QLD water plans contain robust rules to protect environmental water.

Recommendation

The proposed amendment to the Basin Plan to reduce the volume of water recovered for the environment in the northern part of the Basin should not proceed until NSW and QLD water plans contain robust rules to protect environmental water.

Conclusion

WWF-Australia would appreciate the opportunity to discuss the above and other matters regarding the management of water resources in the MDB with members of the RRAT Committee. Please do not hesitate to contact me should you require any further information or clarification regarding the matters raised in this submission.

Yours sincerely,

Nigel Parratt
Water and Catchment Liaison Officer
WWF-Australia