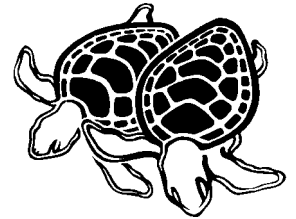


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Senate Rural and Regional Affairs
and Transport References Committee
SG.62
Parliament House
Canberra
ACT 2600

31 January 2006

Submission to the Senate Rural and Regional Affairs and Transport References Committee: Inquiry into Water Policy Initiatives

Dear Secretary

The Environment Centre of the Northern Territory (ECNT) is the peak environmental non-government organisation in the Northern Territory. We have taken an active interest in rural water policy and issues in the NT for more than 20 years. We will confine our comments to terms of reference (b).

(b) methods of protection for rivers and aquifers

ECNT's most recent work on rural water issues has focussed on the protection of the natural and cultural values of the Daly River Catchment in the Top End. ECNT was a participating member of the Daly Region Community Reference Group, set up in November 2003 by the NT Government to examine water and land management issues in the region. The catchment has long been targeted for large-scale irrigated agriculture and more intensive pastoral activity, which would involve increased surface and ground water extraction and native vegetation clearing. In late 2003 a moratorium on land clearing and pastoral subdivisions in about one-third of the catchment was imposed by the NT Government. Last year the moratorium was extended until 2007.

There is no official moratorium on water licence approvals however. There are currently 79 applications for a total of 51,655 Megalitres per annum (by 2010) currently being assessed by the NT Government (NT Government: *pers. comm.* 17/01/06). Should these be approved, this would result in a threefold increase in approved water extraction from the catchment by 2010, compared to the approved level in 2004.

ECNT has major concerns about the ecological sustainability of such a potentially large increase in levels of extraction, particularly as most of it will be from the Oolloo and Tindall underground aquifers. The Daly River is reliant on spring discharges from these aquifers to maintain ecologically crucial base flows during the Top End's dry season. Significant species such as the Pig-nosed turtle, recently considered for listing as a threatened species under the

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Commonwealth's EPBC Act, rely heavily on these dry season discharges for the maintenance of suitable riverine habitat.

In ECNT's view, the NT *Water Act* (and its administration) is currently out of step with Commonwealth goals under the National Water Initiative, particularly the following outcomes identified in the COAG Communique of 25 June 2004:

- *More confidence for those investing in the water industry due to...better monitoring, reporting and accounting of water use and **improved public access to information.***
- *More sophisticated, **transparent and comprehensive water planning** that deals with key issues such as the major interception of water, the interaction between surface and groundwater systems, and the provision of water to meet specific environmental outcomes;*
- *A **commitment to addressing overallocated systems** as quickly as possible, in **consultation with affected stakeholders**, addressing significant adjustment where appropriate.*

Although there has been no official moratorium on water licence approvals in the Daly River Catchment, the approvals process was effectively stalled for an 18 month period until mid-2005 whilst the Daly Region CRG made its deliberations and its report was considered by government. There were only a handful of licence applications (two or three it seems) that were approved in that time. The licence application and assessment process was then resumed by the relevant department with minimal, if any, public or stakeholder consultation. There is currently no public notification of water licence applications in the NT and no statutorily prescribed means for third party comment or appeal. Hence, there is no vehicle for community participation in the water licensing process at this time. Moreover, the Daly Water Allocation Planning process, run in conjunction with the Daly Region CRG meetings throughout 2004, was halted in 2005 and has yet to resume. There are also concerns that the Tindall Aquifer around Katherine is already overallocated for agricultural uses.

In ECNT's view immediate and urgent amendments to the Water Act are required. We have included a list of recommended changes to the Act in Attachment A – these are derived from a comprehensive review of legal and policy frameworks for water management in the NT carried out by the Environmental Defenders Office NSW in 2005. This review was commissioned by ECNT.

In the June 2005 NT election the incumbent Martin Government committed to an overhaul of the *Water Act*, as well as the implementation of a Living Rivers program to protect and manage the Territory's iconic rivers, with the Daly River likely to be the first included in the program. The Living Rivers program would be backed up with Living Rivers legislation and represents a very promising policy development (as does the Wild Rivers initiative in Queensland). Declaration of a Living River should also, in ECNT's view, provide additional protection for aquifers in the catchment.

Details are still sketchy as to how exactly these policy announcements will translate into practice. It is unclear how they will tie in with other NT Government environmental initiatives, such as the setting up of an Environmental Protection Agency, a possible revamp of Natural

Resource Management legislation and the implementation of the NT Parks and Conservation Masterplan.

In the meantime, the Water Act should undergo immediate amendment to improve ecological sustainability obligations, public notification and participation mechanisms, transparency and enforcement provisions.

It is encouraging to see more resources being targeted towards Daly River management and research from both the Commonwealth and Territory Governments (including \$3.5 million from the NT Government in its current term of office). However, ECNT is concerned that ongoing pressures for increased agricultural activity in the catchment will mean that water allocation decisions will be made on the basis of inadequate public consultation processes and rushed science. The precautionary principle must remain at the core of water allocation planning.

Finally, ECNT also supports wider calls for the inclusion of freshwater protected areas within the National Protected Areas System.

Thank you for this opportunity to participate in this important Senate Inquiry.

Yours sincerely,

Dr Gary Scott
Freshwater Project Officer
(on behalf of Environment Centre NT)

ATTACHMENT A

Review of Northern Territory Water Law **Environmental Defender's Office NSW, May 2005**

Note: The full report is available on the ECNT website
http://www.ecnt.org/html/cur_land_daly_updates.html

RECOMMENDATIONS

As mentioned in Part 1 of this paper, the Northern Territory's water resources, particularly its surface waters, are very different to those of the States of the Murray-Darling Basin. As such, the water management regimes for those other States are not necessarily capable of being directly applied in the Northern Territory.

Of particular relevance in this regard is the fact that water extraction levels within the Basin are exceptionally high and in many instances water sources are over allocated. Therefore, management decisions are directed towards trying to reinstate sustainability and restoring ecosystem health. In the Territory, due to the generally low levels of extraction and natural representativeness of the Territory's water resources, the focus should be on maintaining and protecting existing environmental values and ensuring problems associated with over allocation do not arise in the future.

In addition, the Territory has a number of "wild" or largely unregulated river systems. The ecological values of these systems, in particular through supporting significant wetlands and associated flora and fauna species, should be protected. Accordingly, a key focus for water management in the Territory should be on understanding these values and ensuring allocations, where permitted, do not adversely affect those values.

Notwithstanding the differences between the States and the Northern Territory, there are some important aspects of the New South Wales, Victorian and Queensland legislative models that may be instructive to the Northern Territory, particularly when considering broad compliance with the directives being set by the NWI. These matters include:

1. The need to set a clear object or purpose for the operation of the Act, having regard to broader environmental consideration such as the implementation of principles of ESD.
2. Designing management plans in a way that identifies environmental constraints and values and seeks to achieve sustainable outcomes in terms of both water use and environmental protection.
3. Regulating the extraction of water in a manner that recognizes the need to allocate water to the environment (as a priority) and ensuring that decisions about future consumptive allocations are made in a framework that has express criteria for decision making by the appropriate authority.
4. Regulating the approval of applications to construct or operate works or use water in a framework that sets clear criteria for decision making by

- appropriate regulatory authorities, in particular, ensuring decisions are consistent with promoting environmentally sound outcomes.
5. Ensuring there are adequate opportunities for public participation at key stages in the decision making process for water issues, such as the development of management plans and the consideration of applications for water entitlements and the use of water.
 6. Creating appropriate offences for unauthorized taking and use of water or unauthorized works and setting monetary or other penalties at levels which operate as true deterrents to other persons.
 7. Recognising the importance of conserving the environmental values of high conservation rivers, in particular maintaining natural flows in largely undeveloped river systems through a process of classification, regulation of activities within the catchments of those areas, and where appropriate, establishing protected or reserved areas.

Specific recommendations around each of these issues are set out below:

5.1 Purpose of Legislation

Recommendation 1:

The *Water Act* should include a clear statement of purpose or an objects clause that includes matters such as:

- the sustainable management of the resource,
- application of principles of ESD,
- protection of water sources and their dependent ecosystems and ecological processes,
- utilizing the best available scientific information to inform decisions relating to water management,
- providing benefits to the environment, and
- providing benefits to Aboriginal people.

Management Principles could also be developed to provide support for these objectives.

Recommendation 2:

Terms such as sustainable management and the principles of ESD should be defined in the *Water Act*.

Recommendation 3:

The *Water Act* should give clear top priority to the use of water for the protection of the health of aquatic ecosystems.

Recommendation 4:

There should be a duty upon decision makers under the *Water Act* to act in accordance with the objectives of the Act.

Recommendation 5:

Where persons are applying for entitlements to a share or use of water for consumptive purposes, the onus of proof should be borne by the applicant to demonstrate that the use will not damage the health of water sources and their dependent ecosystems.

Recommendation 6:

Decision makers should be required to utilize appropriate technical expertise and the best science available to inform decision making.

5.2 Management Planning

Recommendation 7:

The *Water Act* should provide guidance as to the types of water management plans that may be made under the Act and the contents of such plans.

Recommendation 8:

The Minister should take advantage of local expertise in formulating plans, through the formal establishment of community consultative committees made up of representatives from land owners, industry, local government and other appropriate government agencies, relevant aboriginal groups and conservation groups.

Recommendation 9:

The process for making a water management plan should be clearly set out with mandatory requirements for public exhibition of a draft plan, calls for public submissions within appropriate timeframes and a clear outline of the matters that the Minister must consider when deciding whether or not to make a plan.

Recommendation 10:

The *Water Act* should provide greater detail as to the content of (various types of) management plans, for example the need to identify objectives for the plan, strategies to meet the objective and mechanisms to provide for the measurement of success of the plan over its life, such as performance indicators or standards. Providing clear requirements for monitoring aspects of the water resource is critical to this process.

Recommendation 11:

Where a plan is dealing with allocations of water between consumptive and environmental purposes, the *Water Act* should make it clear that appropriate rules be developed to provide certainty and transparency in relation to the processes of allocation, extraction and any alterations that may be anticipated as part of an adaptive management regime.

Recommendation 12:

Water management plans should be considered in light of other natural resource initiatives in the Territory. In this regard, the *Water Act* should provide for consideration of draft plans by other appropriate Ministers, such as the Minister for the Environment. Furthermore, if provisions of a water management plan will affect other aspects of natural resource management, then there should be attempt to achieve some form of compatibility or consistency between various planning instruments.

Recommendation 13:

Water management plans should be reviewed on a regular basis, by default after a specified period of time or otherwise by reference to triggering events related to the results of ongoing monitoring.

Recommendation 14:

The Minister or the Controller should be required to regularly report (eg: on an annual basis) to the public on the performance of water management plans in achieving the objectives of the plan.

5.3 Water Extraction

Recommendation 15:

Types of water entitlements, such as different categories of licences for certain purposes, should be clearly specified in the *Water Act*.

Recommendation 16:

If the *Water Act* is to establish additional licence categories, then it should consider a hierarchy in relation to the security of each type of entitlement.

Recommendation 17:

The matters for consideration for the grant of a licence in section 90 of the *Water Act* should be mandatory considerations, not discretionary. Additional considerations relating to the impact of the proposed entitlement upon the sustainability of the system and upon ecosystem health and whether or not an applicant is a fit and proper person to hold a licence should be incorporated into that section.

Recommendation 18:

A mandatory process of public consultation should be engaged in for the grant of new licences. This process should involve notification of neighbours and the public more generally, inviting and considering submissions and an opportunity for an objector to appeal against the grant of a licence.

Recommendation 19:

The Minister or Controller should be required to publish reasons relating to decisions for the grant or refusal of an application for a licence.

Recommendation 19A:

The Minister or Controller should be required to consult with and obtain the concurrence of the Minister for the Environment in relation to any applications for licence or works approvals that are likely to have a significant impact upon the environment.

Recommendation 20:

Licences should continue to be granted for a maximum 10 year period.

5.4 Works and use of water

Recommendation 21:

The matters for consideration for the grant of a works or use approval in section 90 of the *Water Act* should be mandatory considerations, not discretionary. Additional considerations relating to the impact of the proposed entitlement upon the sustainability of the system and upon ecosystem health and whether or not an applicant is a fit and proper person to hold a licence should be incorporated into that section.

Recommendation 22:

The *Water Act* should identify the types of environmental impact assessment documentation required to be submitted with application for works or use approvals, triggered by either the significance of the environmental impact or alternatively the size of the development.

Recommendation 23:

A mandatory process of public consultation should be engaged in for the grant of new works or use approvals. This process should involve notification of neighbours and the public more generally, inviting and considering submissions and an opportunity for an objector to appeal against the merits of the grant of a licence.

Recommendation 24:

The Minister or Controller should be required to publish reasons relating to decisions for the grant or refusal of an application for a new works or use approval.

5.5 Public Participation

Recommendation 25:

The *Water Act* needs to promote information flows. Whilst a public register of licences and dealings is kept, it must also be published, for example on the internet. In addition, there is a need for information surrounding decision making, such as applications and supporting documentation, to be made available for inspection as part of the plan making and licence application processes.

Recommendation 26:

The *Water Act* should allow - both formally and in substantive terms - for people to be able to challenge and/or enforce the laws. Therefore, provisions relating to such aspects as open standing to challenge both decisions of the minister or Controller in exercising functions of the Act and to remedy or restrain other breaches of the Act should be incorporated.

5.6 Water Trading

Recommendation 27:

The *Water Act* should provide more clarity in relation to the circumstances in which the Minister will approve a trade in an entitlement, for example through the development of standardised water trading rules either through management plans or other instruments.

Recommendation 28:

The trading rules should clearly be linked to the environmental impacts of the transfer in the entitlement. In this regard, the Minister or Controller must be satisfied that the transfer will either maintain or improve the existing condition of the resource.

5.7 Enforcement

Recommendation 29:

Offences under the *Water Act* should be subject to significantly higher penalties, including imprisonment, to act as a significant deterrent against such offences.

Recommendation 30:

Innovative penalties, such as debiting water accounts or suspending licences in circumstances where offences have occurred should also be incorporated into the *Water Act*.

5.8 Wild river protection

Recommendation 31:

The *Water Act* should provide for investigation of the conservation values of the Territory's rivers and should provide a framework for classifying those rivers by reference to their pristineness or other significant natural values.

Recommendation 32:

Rivers that are classified as having significant natural values should be afforded protection through the development of conservation or other appropriate management plans.

Recommendation 33:

The *Water Act* should provide limitations upon the ability of the Minister or the Controller to issue licences for extraction or to carry out works within the catchment of a high conservation value river.

Recommendation 34:

Very high penalties should be imposed for activities that adversely affect those rivers.