



AUSTRALIAN FLOODPLAIN ASSOCIATION

Healthy Rivers - Healthy Communities

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South Australia Murray Darling Royal Commission- AFA submission:

The Australian Floodplain Association (AFA) arose from a conference held in Dubbo in 2005 to address the plight of rivers, floodplains and wetlands and communities dependent on those systems in both the Lake Eyre and Murray Darling Basins. It was formally constituted in 2006 with the aim of benefiting communities and land managers whose livelihoods depend on healthy, sustainably managed river systems and associated floodplains.

Its membership consists of floodplain graziers, community groups, shire councils and individuals from both urban and rural areas. All understand that healthy rivers mean healthy communities.

The AFA is pleased that the South Australian government has initiated a Royal Commission into the management of water in the Murray Darling Basin. We commend you for that initiative, welcome the opportunity to present a submission and would be glad to speak to you if that is possible. We

Our submission addresses TORs' 1,2,3,7,8,10,11,12,13.

Terry Korn PSM

President

Australian Floodplain Association

13 April 2018

TOR 1. Whether the Water Resource Plans defined by the Act and Basin Plan (which are to include the long-term average sustainable diversion limits for each Basin water resource) will be delivered in full and in a form compliant and consistent with the Basin Plan by 30 June 2019.

The Australian Floodplain Association contends that it is unlikely that all 22 water resource plans will be delivered in full and in a form compliant and consistent with the Basin Plan by 30 June 2019. (22 WRPs, 9 in NSW)

The reasons for this are:

- The MDBA and Basin states, especially NSW, are in a state of flux following the exposure of their poor management and also their lack of capacity to manage in the 24 July 2017 Four Corners program “Pumped”.

Between 2010-2017 the NSW government had downsized and restructured its water management agencies to such an extent the loss of corporate knowledge and lack of physical capacity prevented effective management of water in NSW. This was identified in the Matthews 2017 Interim Report which said:

“My principal finding is that water-related compliance and enforcement arrangements in NSW have been ineffectual and require significant and urgent improvement. Specifically:

- The overall standard of NSW compliance and enforcement work has been poor.*
- Arrangements for metering, monitoring and measurement of water extractions, especially in the Barwon–Darling river system, are not at the standard required for sound water management and expected by the community.*
- Certain individual cases of alleged non-compliance have remained unresolved for far too long.*
- There is little transparency to members of the public of water regulation arrangements in NSW, including the compliance and enforcement arrangements which should underpin public confidence.”*

- The question has to be asked about the commitment of NSW to the Basin Plan when it employed such a strategy during the crucial first five years of the Basin Plan. The strategy suggests that the NSW government had no intention other than going through the machinations of amending water resource plans so that they complied with and were consistent with the Basin Plan. They no longer had the resources to spend the time nor to apply the intellectual capacity and rigour to meaningfully review the water resource plans within its jurisdiction of the Murray Darling Basin.
- A similar question has to be asked of the Murray Darling Basin Authority. It wasn't until the Four Corners Program and a subsequent media storm that the authority undertook a Basin-wide compliance review. This identified significant deficiencies, a mea culpa, a rapid change in direction, a re-alignment of resources, modified corporate behaviour and improved community engagement.
- Looking at this evidence it appears that both the MDBA and the NSW government had adopted a “tick and flick” policy with water resource plans. That is they only intended to make minimal changes to existing plans rather than a comprehensive evaluation before accrediting them. This suggests corporate culture is an issue.

From the end of 2017 both the NSW government and the MDBA (to their credit) have shifted resources to address the deficiencies identified in a series of damning reports on their mismanagement (Matthews reports 2017, NSW Ombudsman report, MDBA Compliance Report).

The NSW government launched a Water Reform Action Plan on 13 March which focuses on four main areas – (a) Better Management of Environmental water, (b) Transparency Measures, (c) Water Take Measurement and Metering, (d) Implementing the NSW Floodplain Harvesting Policy. These changes are accompanied by a draft government Bill titled “*Water Management Amendment Bill 2018*”.

The MDBA has increased resources in the compliance area which will assess the 22 water resource plans within the Basin.

NSW agencies and the MDBA have had to greatly alter their original approach to water resource plan assessments by restructuring and increasing staff levels. It is doubtful that they will be able to recruit sufficient staff with appropriate knowledge and skills to undertake meaningful community consultation, review and amend all 22 plans (nine in NSW), negotiate and agree on compliance and consistency issues and have them accredited by June 2019.

TOR 2. If any Water Resource Plans are unlikely to be delivered in full and in a form compliant and consistent with the Basin Plan, the reasons for this.

See the reasons listed under the first Term of Reference.

TOR 3. Whether the Basin Plan in its current form, its implementation, and any proposed amendments to the Plan, are likely to achieve the objects and purposes of the Act and Plan as variously outlined in ss.3, 20, 23 and 28 of the Act, and the ‘enhanced environmental outcomes’ and additional 450 GL provided for in s. 86AA(2) and (3) of the Act, respectively.

International Obligations

In its submission dated 24 February 2017 to the MDBA on the Northern Basin Review proposed amendments, the Environmental Defenders Office Australia says

“There is considerable doubt as to whether the obligations contained in the Ramsar Convention, the Convention on Biological diversity and various treaties protecting migratory birds will be properly implemented under a 2750GL+ adjustment mechanism scenario. It is there for unacceptable – and potentially unlawful- to further reduce the volume of water available to the Macquarie Marshes and Gwydir Wetlands, as provided for under the Proposed Amendment.”.....“While the modelling for the 320GL scenario indicates that all four indicators are met in the Macquarie catchment, two are met with a high level of uncertainty. There is also evidence to suggest that not meeting these targets is not sufficient to restore the health of the Macquarie Marshes. Furthermore, four of the nine indicators for the Gwydir fail to even meet the high uncertainty threshold, which means there is a high probability that these ecological targets will not be met.” (Source: Environmental Defenders Office of Australia submission to the MDBA on the Proposed Amendments arising from the Northern Basin Review 24 February 2017)

Some Australian Floodplain Association members live in these wetlands and from their long term observation share the concerns identified by the EDO Australia. The current proposals of the MDBA will not improve the wetlands and the communities they support. Nor do they optimise the social, economic and environmental outcomes as they are weighted heavily to the irrigation industry rather than the broader community.

Water Security for All Users

S3(e) of the Water Act 2007 says the object is to improve water security for all uses of Basin water resources. This cannot be said for communities downstream of Bourke on the Barwon Darling system. Reliability of flows has greatly decreased over time to an extent once secure stock and domestic supplies are no longer secure. The following is an extract from a paper by Geoff Wise dated 26 November 2016. Mr Wise sat on the MDBA's Northern Basin Advisory Committee.

"161129 CHANGES IN RELIABILITY OF FLOWS IN DARLING RIVER AT WILCANNIA

There has been up to a 1,000% DROP IN RELIABILITY of river flows at Wilcannia over the last nearly quarter century (22 years) compared to the previous three quarters of a century (74 years).

- *Over one quarter (27%) of all Decembers now experience zero flows
> 1,000% decrease in reliability*

- *Nearly half (44%) of all Octobers, Novembers and Decembers experience zero or very low flows

(less than average daily flow of 33.3 ML/day or 1,000ML/month)
> 800% decrease in reliability*

- *13.6% of all months of the year experience virtually zero flows
(less than an average of 1 ML/day total flow or 30 ML/month)
> 800% decrease in reliability*

- *A quarter (24.6%) of all months of the year experience zero to low flows
(less than 33 ML/day or 1,000ML/month)
> 720% decrease in reliability*

- *The river has stopped flowing completely for 20% (20.5%) of all months between November and February

> 550% decrease in reliability*

- *The river has stopped flowing completely for at least one month in nearly half (45.4%) of all years
> 480% decrease in reliability*

This compared the periods before and after the Commonwealth Government introduced a Cap to limit any further growth in extractions in recognition of the declining health of the river systems in the Murray Darling Basin."

These alarming figures tell us that there is no security for all water uses across the Basin and that s86A and s86B of the Water Act are not being complied with.

Socio-economic outcomes

In relation to socio-economic outcomes, this is best summed up by the review undertaken by the Wentworth Group of Concerned Scientists. The summary of their findings are –

- "1. Irrigation businesses across the Murray-Darling Basin have benefited from the conversion of annual entitlements to permanent property rights and the capacity to trade those rights, a capital injection of \$2.7 billion of public investment to purchase water entitlements, and \$3.6 billion in irrigation infrastructure subsidies.*

- 2. The gross value of irrigated agricultural production has risen since the early 2000s and has been maintained in the past 5 years. Money paid to irrigators by the Commonwealth to recover water and the ability to trade water has helped some irrigators adjust to the drought and cope with other pressures.*

- 3. While agricultural production has been maintained, employment in agriculture in the Basin has declined by nearly 26% in the past 15 years. This decline has slowed considerably in the past 5 years, but has not increased in line with the rise in agricultural employment nation-wide. Most of the decline in agricultural employment in the Basin occurred in dairy farming and growing cotton, grapes, fruit and livestock grain. Despite this, there was a 2% increase in the overall number of people employed in the Basin from 2011 to 2016, largely due to increases in employment in other sectors such as education and training, health care and social assistance.*

4. *Employment and economic production in some regional centres, such as Griffith and Shepparton, have grown significantly over the past decade while other, usually smaller, communities have experienced declines. More efficient water use and water trade have contributed to these structural changes, including expansion of high-value production in the southern Basin.*

5. *The total number of agricultural businesses has also declined across the Murray-Darling Basin in line with national trends. Factors behind the decline include drought, technological improvements which have reduced demand for labour, and increasing farm business size to improve profitability. In some districts such as Deniliquin and Moree, water reforms have also been modest contributing factors. In these districts, water purchase have reduced water available for production while improvements in water efficiency and trade have led to rationalisation of agriculture (e.g. automation, out-sourcing and consolidation) and reduced demand for labour.*

6. *A major failure of water reform has been insufficient investment in structural adjustment to support communities affected by water reforms to adapt to a future with less water. Less than one per cent of the \$13 billion has been made available to assist these communities.* (Source: Wentworth Group of Concerned Scientists - REVIEW OF WATER REFORM IN THE MURRAY-DARLING BASIN 2017)

TOR 7. The likely impact of alleged illegal take or other forms of non-compliance on achieving any of the objects and purposes of the Act and Basin Plan, and the 'enhanced environmental outcomes' and the additional 450 GL, referred to above.

The likely (in fact, known) impact is that less water is available for ecosystem function of the Barwon Darling River system and ultimately South Australia. This in turn impacts on the quality of life experienced by communities down to the Murray mouth because the health of the river determines the health of a community from a cultural, economic, social and environmental viewpoint.

"Water in the river lifts the spirits. It attracts tourism, recreational fishers, photographers, artists, birdwatchers and adventure seekers. It supports organic grazing and cropping industries. It emboldens Aboriginal culture, provides food, recreation and education of the young by Elders"

(Source: One Mob statement by Terry Korn and Uncle Badger Bates 15 October 2017)

TOR 8. In relation to any found instances of illegal take or work, whether appropriate enforcement proceedings have been taken in respect of such matters and if not, why.

There have been no recent found instances of illegal take in NSW although two cases are now before the courts following the 24 July 2017 Four Corners program. One is a civil case brought by the NSW Environmental Defenders Office on behalf of the Inland Rivers Network and more recently the NSW government has initiated criminal proceedings against five irrigators as a result of the same Four Corners program.

The table below is from an 8 March 2018 correction report from the NSW Ombudsman which shows that there have been relatively few compliance activities in NSW in the period 1st July 2106 to 3rd November 2017 (see columns B and C). No prosecutions were undertaken and a maximum of two penalty infringement notices given.

Amended enforcement outcome statistics			
Enforcement Action between 1st July 2016 to 3rd November 2017	Column A: incorrectly scoped data extracted from CIRaM and reported to Ombudsman 9/11/17	Column B: Properly scoped data extracted from CIRaM 4/12/17	Column C: manually QA'd data from CIRaM extract 21/12/17
Formal Warnings	115	49	53
Advisory Letters	192	128	121
Penalty Infringement Notices	105	2	0
Prosecutions	12	0	0
Statutory Directions	63	16	19
Others	187	N/A	N/A
Total	674	195	193

(Source - Correcting the record: Investigation into water compliance and enforcement 2007-17 – 8 March 2018 NSW Ombudsman)

The Matthews report identified that constant re-structures, downsizing and policy failure resulted in the lack of appropriate metering, monitoring and compliance of irrigation activity in the Northern Murray Darling Basin. It recommended that an independent regulator be established to address this serious deficiency. The NSW government has acted on this recommendation by establishing the Natural Resources Access Regulator which will oversee regulatory activities.

TOR 10. Whether monitoring, metering and access to relevant information (such as usage data) is adequate to achieve the objects and purposes of the Act and Basin Plan and the 'enhanced environmental outcomes' and additional 450 GL referred to above.

In NSW, monitoring, metering and access to relevant information (such as usage data) are **inadequate** in the Northern Murray Darling Basin to achieve the objects and purposes of the Act and Basin Plan and the "enhanced environmental outcomes" and additional 450GL.

The Matthews report clearly identifies this as a serious failing of the NSW government and the NSW government has had to redress this deficiency by establishing the Natural Resources Access Regulator, an independent regulatory body.

The NSW government has also established a Water Reform Action Plan which includes a strong focus on metering and measurement as well as transparency. However, it is improbable that metering of all pumps will be implemented before 30 June 2019 which is when Water Resource Plans (WRP) are scheduled for accreditation the MDBA.

The question then has to be asked, "How could the WRPs be accredited if no effective metering and reporting system exists?" If you can't measure take with confidence then you cannot tell how much or how little is being contributed to the Sustainable Diversion Limit (SDL) in the Northern Basin.

TOR 11. Whether water that is purchased by the Commonwealth for the purposes of achieving the objects and purposes of the Act and Basin Plan and/or the 'enhanced environmental outcomes' and the additional 450 GL referred to above will be adequately protected from take for irrigation under water resource plans, and any recommendations for legislative or other change if needed.

The existing Barwon Darling Water Sharing Plan 2012 (WSP) offers no protection that environmental water purchased by the Commonwealth will be adequately protected from take for

irrigation. The existing WSP will form the basis of the Water Resource Plan which has to be accredited by the MDBA. It must have significant changes made before it protects environmental water. The offending elements of the 2012 WSP are:

- *“Removal of a pump size restriction from each class of licence*
- *Introduction of opportunity for 300% of Access Entitlement being extracted each year.*
- *Introduction of unlimited carry-over provisions*
- *Introduction of water tradings*
- *Application of concessional conversions*
- *Removing the authority of the Minister to “embargo” access to A Class licences*
- *No implementation of Clauses 51 or 52 of the WSP that provides the Minister an opportunity to introduce Total and Individual Daily Extraction Limits on licences.*
- *No attempt to use Clause 84 (c) to include rules for shepherding of environmental water*
- *As stated in the BD WSP, Clauses 46 (15) and (16), in association with Section 324 of the Water Management Act, provide the Minister with authority to restrict or prohibit extracting of B and C class water, but not A Class, to protect flows needed to meet Basic Landholder Rights.*

Clause 46 (16), read in association with the listed footnotes, specifies a flow of 390 ML/day at Bourke is the required minimum flow that should be protected to meet basic landholder rights requirements along the Barwon-Darling River. However, in contradiction, large volumes of A Class licences can be extracted at Bourke at 350 ML/day, without any stated ability for the Minister to intervene.” (Source: G. Wise; Northern Basin Advisory Committee Business Paper – Achieving Sustainability of the Darling River Downstream of Bourke, 12 November 2016)

The above conditions of the existing 2012 Barwon Darling WSP were added with little community consultation to allow irrigators easier access to low flows. As a consequence taxpayer owned water (community water/environmental water) can be pumped for irrigation purposes and communities downstream of Bourke have had their basic rights to adequate clean water for stock and domestic purposes severely compromised.

These elements of the existing 2012 Barwon Darling WSP must not be carried over to the new Barwon Darling Water Resource Plan.

TOR 12. Whether the Basin Plan in its current form, its implementation, and any proposed amendments to the Plan, are adequate to achieve the objects and purposes of the Act and Basin Plan, the ‘enhanced environmental outcomes’ and the additional 450 GL referred to above, taking into account likely, future climate change.

Amendments

The proposed amendment to reduce the Northern Basin environmental allocation by 70GL from 390GL to 320GL cannot achieve the enhanced environmental outcomes sought by the Basin Plan simply because it meets only 22 of the 43 environmental targets. The argument put by the MDBA is that the “toolkit measures”, a group of actions/interventions by the states and commonwealth will recover and manage water in such a way that the 320GL will yield a better environmental outcome than the 390GL. The problem is that NSW and QLD do not have the management capacity to effectively implement some of the measures, especially the metering and monitoring of flows, both in-stream and overland. The Basin wide Compliance review undertaken by the MDBA found that it had *“not given sufficient attention to compliance, has not provided a clear statement of its compliance role, and has not dealt adequately with allegations of compliance breaches”* in addition

it found that *“More than 68% of water extractions are unmetered in Queensland each year on average, and 34% of extractions are unmetered in NSW.”*

450GL Recovery

The 450GL of water to be recovered from infrastructure programs leading to improved efficiency of irrigation is unlikely to be successful based on the projects submitted by the states. According to an analysis by the Wentworth Group of Concerned Scientists only one of the 37 projects met the requirements of the Basin Plan. The rest either had insufficient information or result in the environment being worse off. The report says:

“The Murray-Darling Basin Authority has put forward a draft determination to increase the sustainable diversion limits by 605 GL on the basis of 37 projects put forward by state governments. Our assessment of these projects found that only one project should be approved, eleven projects (representing in the order of 150 to 270 GL water savings) require additional information before a proper assessment can be undertaken, and twenty five projects (in the order of 316 to 436 GL) do not satisfy Basin Plan requirements and should be rejected. (Source: REVIEW OF WATER REFORM IN THE MURRAY-DARLING BASIN. Wentworth Group November 2017)

TOR 13. Any other related matters.

(a) Structural Adjustment Package

The AFA has long held the view that there should be some form of Structural Adjustment Package provided for communities impacted by the implementation of the Murray Darling Basin Plan. It seems incongruous that the largest ever rural restructure program undertaken in Australia has no such dedicated package attached to it. The AFA raised this issue with the Ministerial Council at its March 2017 meeting in Mildura, Victoria. This point has also been repeatedly raised by the Wentworth Group of Concerned Scientists. They say:

“A major failure of water reform has been insufficient investment in structural adjustment to support communities affected by water reforms to adapt to a future with less water. Less than one per cent of the \$13 billion has been made available to assist these communities.” They then recommend:

“A regional development package that puts communities at the centre of reform, by:

- Assisting communities most affected by water recovery to restructure their economies to adapt to a future with less water. Assigning for example, 10% of the remaining \$5.1 billion would release up to \$500 million for regional development initiatives.*
- Linking public funding directly to the Basin Plan, by the Commonwealth working directly with community leaders, local government, regional development boards and natural resource management agencies to recover the water in a manner that optimises regional development opportunities for those communities.*

(Source: REVIEW OF WATER REFORM IN THE MURRAY-DARLING BASIN. Wentworth Group November 2017)

(b) Environmental Water is Community Water

It should be acknowledged that environmental water is community water which benefits everyone for cultural, social, economic **and** environmental reasons. Public ownership of this precious resource will improve if it is called community water rather than environmental water. The reasons for this are outlined in the following statement:

“Legislation says that water is to be returned to the environment – the natural environment! But the “environmental water” does more than nurture the natural environment. It plays an important social, cultural and economic role for all people and communities who live along the river or use it in any number of ways. So “environmental water” is really “community water” because the community has bought it via taxes and the community benefits from its presence through improved well-being.

Water in the river lifts the spirits. It attracts tourism, recreational fishers, photographers, bird watchers and adventure seekers. It supports organic grazing and cropping industries. It emboldens Aboriginal culture, provides food, recreation and education of the young by Elders.

Current and proposed policy favours one sector of the broader community above all others – the irrigation industry. But communities will only survive if they are resilient and resilience is dependent upon two things -industry diversity and a healthy natural environment. It is imperative that the Darling River be allowed to support diverse production systems along its length rather than just the irrigation industry. Communities along the Darling River will collapse unless proper weight is given to non-irrigation production systems and “environmental water” acknowledged as “community water” for the broader social, cultural and economic good it provides.” (Source: One Mob statement by Terry Korn and Uncle Badger Bates)

References:

Correcting the record 8 March 2018: Investigation into water compliance and enforcement 2007-17 – NSW Ombudsman

Environmental Defenders Office of Australia 24 February 2017 Submission to the MDBA on the Proposed Amendments arising from the Northern Basin Review
Geoff Wise, Northern Basin Advisory Committee November 2016 “161129 CHANGES IN RELIABILITY OF FLOWS IN DARLING RIVER AT WILCANNIA”

Geoff Wise, Northern Basin Advisory Committee Business Paper 12 November 2016– Achieving Sustainability of the Darling River Downstream of Bourke

Ken Matthews 8 September 2017 Independent investigation into NSW water management and compliance | Interim report

Ken Matthews 24 November 2017 Independent investigation into NSW water management and compliance Final Report

One Mob statement 15 October 2017 by Terry Korn and Uncle Badger Bates

The Murray–Darling Basin November 2017 Water Compliance Review

Wentworth Group November 2017 REVIEW OF WATER REFORM IN THE MURRAY-DARLING BASIN.

Thank you once again for initiating the Royal Commission and we look forward to speaking to you.

Terry Korn

President

Australian Floodplain Association

13 April 2018