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Select Committee on the Murray-Darling Basin Plan  
PO Box 6100  
Parliament House  
Canberra ACT 2600

Dear Committee Secretary,

**Re. Submission to the Select Committee on the Murray-Darling Basin Plan**

Please find enclosed a submission from the Murray Lower Darling Rivers Indigenous Nations (MLDRIN) to the Select Committee on the Murray-Darling Basin Plan.

MLDRIN looks forward to providing further detail and perspectives on this important matter at a public hearing.

Sincerely,

Darren Perry  
Chair, Murray Lower Darling Rivers Indigenous Nations (MLDRIN)



## **Murray Lower Darling Rivers Indigenous Nations Submission to the Select Committee on the Murray-Darling Basin Plan, September 2015**

### **About MLDRIN**

The Murray Lower Darling Rivers Indigenous Nations (MLDRIN) is the peak representative body of Sovereign First Nations in the lower Southern part of the Murray Darling Basin. The group currently includes Delegates from 24 Nations across Victoria, NSW and South Australia.

Our core work includes:

- Advising the Murray Darling Basin Authority (MDBA) on all matters relevant to Traditional Owners and Aboriginal people in the Southern Murray Darling Basin, in particular, the implementation of the Basin Plan
- Having an active role in Natural Resource Management and water planning
- Providing a forum for our member nations to keep informed, deliberate on issues and provide feedback and advice to decision makers across all levels of Government
- Advocating for our member Nations' rights and interests in land and water, specifically to progress the recognition of Aboriginal water rights and Cultural Flows
- Providing leadership and capacity building for our member nations

### **Summary of key points:**

- Aboriginal people in the Murray Darling Basin recognise the environmental and cultural consequences of unsustainable river regulation and water extraction. We support a water recovery target of 3200GL.
- Water recovery and well-managed environmental flows are essential to sustain and revitalise the environmental and cultural values of our traditional lands and waterways. They deliver tangible benefits to our communities.
- The Australian Government has obligations to ensure the preservation and maintenance of our cultural knowledge and traditions, which are linked in many cases to the environmental health of the Basin.
- We support the implementation of the Basin Plan, on time and in full, and have a number of specific roles and responsibilities within the Plan, which need to be properly resourced and implemented.

- We maintain some concerns about how components of the Plan will be implemented and how this may affect on our member's rights and interests.
- The Plan does not address the legacy of dispossession and the significant barriers to entry for Aboriginal people in the water market. We urge the committee to support progress towards achieving reforms that give affect to Aboriginal people's rights and interests in water management.

## Context

As First Nations, the members of MLDRIN assert our inherent rights to maintain and revitalise our cultural traditions and knowledge. We have rights to access water resources on our traditional territories and have a meaningful say in the management and planning of those resources.

The strength of our unique cultural traditions and knowledge is inherently linked to the health of the Murray-Darling Basin; its rivers, wetlands, floodplains, forests and lakes and the biodiversity that depends on them. The Australian Government has obligations, under international agreements<sup>1</sup> and domestic policy, to provide for and protect our rights to maintain and practice our cultural traditions and knowledge.

We support the implementation of the Basin Plan as the best available option to restore the Basin's water-dependent ecosystems to health. We support a scientifically defensible and effective water recovery target of at least 3200GL.<sup>2</sup>

We recognise that the delivery of over 4000GL of environmental water under the Basin Plan over the last five years is contributing to beneficial outcomes for our traditional lands and waterways including:

- Improved connectivity between rivers and creeks,
- Transport of salt through the system, helping to reduce salinity levels in the Ramsar listed Coorong
- Improved spawning of native fish and improvement in fish populations and recruitment including for the vulnerable Murray cod, silver perch, golden perch, freshwater catfish, Murray hardyhead and carp gudgeon
- Improved vegetation outcomes including growth of native plant species that support riverbank stabilisation, improved health of endangered Moira grasslands, improved health of river red gum, black box and lignum communities
- Ecosystem functions, such as nutrient and carbon cycling, that support food chains in the Basin.<sup>3</sup>

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<sup>1</sup> United Nations Declaration on the Rights of Indigenous People (UNDRIP) Article 8, Article 13 and Convention on Biological Diversity (CBD) Article 8(j)

<sup>2</sup> The Wentworth Group of Concerned Scientists (2012), *Does a 3,200gl reduction in extractions combined with the relaxation of eight constraints give a healthy working Murray-Darling Basin river system?* <http://wentworthgroup.org/wp-content/uploads/2013/10/Wentworth-Group-Evaluation-Modeling-with-Constraints.pdf> viewed 9/9/2015

These environmental outcomes are crucial to supporting the cultural traditions and values of our communities. We are also witnessing positive outcomes for communities where partnerships have been developed between water planners and Traditional Owners, allowing Aboriginal cultural values to be incorporated into environmental watering. These include:

- Recognition of Traditional Owner water dependent values
- Maintenance or revival of tribal boundaries and sacred sites such as women's and men's places
- Maintenance or revival of cultural practices through access to resources such as food, fibre and medicine plants, many of which have been significantly depleted with inappropriate watering regimes
- Mental and spiritual well being through connection to Country
- Mental and spiritual wellbeing from being on healthy Country - healthy Country, healthy people
- Preservation of cultural heritage - ie appropriate watering keeping alive scarred trees, assisting with the control of pest plant and animals, watering regimes supporting responsible visitation and use
- Generational sharing on Country
- Maintenance or revival of culture through access to resources and water dependent sites
- Economic sustainability through access to resources for food, fibre and medicines including commercial benefit
- Economic sustainability through tourism opportunities
- Opportunities for active involvement of Traditional Owners in water management, facilitating capacity building and job opportunities and enabling assertion of custodial rights - linked to cultural wellbeing<sup>4</sup>

We support the ongoing work of the Murray Darling Basin Authority, the Commonwealth Environmental Water Holder and State water management agencies in developing approaches to environmental water planning and management. We seek to build on relationships with these entities to ensure that water management supports Aboriginal cultural values and community aspirations.

However, environmental flows, alone, are not sufficient to support the rights and aspirations of our people. We assert our rights to own and manage water resources for cultural sustainability, well-being and community development, as recognised in the United Nations Declaration on the Rights of Indigenous People.

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<sup>3</sup> Commonwealth Environmental Water Office (2013), *Environmental Outcomes Report 2012-13*. Commonwealth of Australia. <http://www.environment.gov.au/system/files/resources/cd8b1f80-3ca7-4275-9100-30524335ef75/files/environmental-outcomes-report-12-13.pdf> Viewed: 9/9/2015.

Commonwealth Environmental Water Office (2015) *Monitored Outcomes: 2014-15*. <http://www.environment.gov.au/system/files/resources/c01b7e11-f61c-407b-9a9d-de4835351b0e/files/monitored-outcomes.pdf> viewed 9/9/2015

<sup>4</sup> Drawn from experience of participants in the Barapa Barapa Water For Country Project, undertaken in the Gunbower forest, Northern Victoria.

The concept of cultural flows encapsulates these rights. Cultural flows are:

*'Water entitlements that are legally and beneficially owned by Indigenous Nations, of a sufficient and adequate quantity and quality to improve the spiritual, cultural, environmental, social and economic conditions of those Indigenous Nations. This is our inherent right.'*<sup>5</sup>

This definition is included in the Basin Plan, which recognizes that 'the provision of cultural flows will benefit Indigenous people in improving health, wellbeing and provides empowerment to be able to care for their country and undertake cultural activities.'<sup>6</sup> However, the Plan does not provide an effective mechanism for achieving Cultural Flows. Securing equitable allocations of water for Aboriginal people remains the key 'unfinished business'<sup>7</sup> of water reform.

### **Basin Plan Implementation**

Aboriginal organisations have a number of specific interests and responsibilities in Basin Plan implementation including:

- Effective implementation of requirements for Indigenous engagement and the identification of Indigenous objectives and outcomes in water resource plans (Basin Plan, cl 10.52). The Murray Lower Darling Rivers Indigenous Nations and Northern Basin Aboriginal Nations (NBAN) will provide advice to MDBA on the accreditation of water resource plans.
- Basin wide environmental watering strategies and priorities that are responsive to Aboriginal cultural values (8.15 (4) (e))
- Recognition of the risks to Aboriginal cultural values, traditions and knowledge arising from the use and management of water resources in water resource plan areas (subcl 10.53(1)(g))
- Rigorous assessment and scrutiny of the SDL adjustment mechanism to ensure that any adjustment does not adversely affect environmental and cultural values and results in an SDL that achieves the required outcomes.
- Due regard to cultural flows as a pathway to achieving equitability in the allocation of Basin water resources (cl 10.54).

Our members want to see these components of the Plan properly resourced and implemented through cooperative and empowering partnerships between the States, Commonwealth and Aboriginal people. Effective implementation of these key components of the Plan is an essential step towards improving the involvement and capacity of Traditional Owners in Basin water management.

An example of a successful cooperative partnership is the *Water Resource Planning -Statement of Commitment* recently signed between the Ngarrindjeri Regional Authority and South Australian water and natural resource

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<sup>5</sup> Murray Lower Darling Rivers Indigenous Nations, 2007. *The Echuca Declaration*. [http://www.culturalflows.com.au/images/documents/Echuca\\_declaration.pdf](http://www.culturalflows.com.au/images/documents/Echuca_declaration.pdf)

<sup>6</sup> *Basin Plan*. Schedule 1, 31. p. 161

<sup>7</sup> National Water Commission: *Australia's water blueprint: national reform assessment 2014*. p 4

management agencies.<sup>8</sup> It formalizes a partnership approach and commits Aboriginal and government agencies to collaborate to achieve positive outcomes. The *Statement of Commitment* allows Ngarrindjeri to progress their interests in water, while contributing to best-practice planning and protecting cultural knowledge.

We argue that the Basin Plan must deliver positive and equitable *cultural* outcomes, alongside the traditional triple bottom line (TBL) focus on social, environmental and economic. The practice of Quadruple Bottom Line assessment has been adopted by governments in Aotearoa/New Zealand; incorporating a fourth, cultural dimension to TBL assessments.<sup>9</sup> This approach elucidates that sustainable development should include cultural continuity and development of cultural well-being for Aboriginal people.

Because Aboriginal objectives do not align neatly with the established categories of 'social, environmental and economic', impacts and benefits relating to Aboriginal people's unique rights and interests may not be adequately identified or assessed through the traditional triple bottom line approach.

## Concerns

We maintain concerns about the following aspects of Basin Plan implementation:

### Water Amendment Bill 2015

A cap on water buy-backs recently passed by Federal Parliament is likely to undermine opportunities and progress on water recovery given the costly and technically complex nature of water recovery through infrastructure upgrades as well as a potential shortfall in uptake by irrigators.<sup>10</sup>

### Resources for effective implementation of the water resource plan requirements

We note that there is still much work to be done to ensure that Aboriginal people can effectively and equitably engage in water resource planning. State governments are required to identify and have regard to Aboriginal people's objectives and outcomes in water management. The 2014 independent review of the Commonwealth Water Act found that 'effective implementation' of water resource plan requirements was essential to progress Aboriginal interests.<sup>11</sup> A road-map, including resourcing, should be developed between all jurisdictions to build partnerships, ensure the free, prior and informed consent of Traditional Owners and establish a level playing field in participation.

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<sup>8</sup> [http://www.premier.sa.gov.au/images/news\\_releases/2015/15\\_08Aug/nrabasin.pdf](http://www.premier.sa.gov.au/images/news_releases/2015/15_08Aug/nrabasin.pdf) Viewed 23/9/2015

<sup>9</sup> Annabelle Giorgetti: *Aquaculture Quadruple Bottom Line Assessment*. Prepared by Enveco for Auckland Regional Council. Technical Report: 2010. <http://www.aucklandcouncil.govt.nz/SiteCollectionDocuments/aboutcouncil/planspoliciespublications/technicalpublications/tr2010008aquaculturequadruplebottomlineassessment.pdf> Viewed 23/9/2015

<sup>10</sup> See MLDRIN's submission on the Water Amendment Bill 2015: <http://www.mldr.org.au/wp-content/uploads/2013/06/1500gl-submission1.pdf>

<sup>11</sup> Report of the Independent Review of the Water Act 2007, Commonwealth of Australia 2014.

### Barriers to entry into the water market

The Basin Plan has not addressed the underlying inequity of a water allocation framework that has been established on the basis of the dispossession and forced removal of Aboriginal people from our traditional territories and from the use and enjoyment of our natural resources. There are significant and growing barriers to the entry of Aboriginal people in the water market. These barriers can entrench the disadvantage experienced by Aboriginal people in the Basin. Restorative measures are required to address this ongoing inequity. Before its abolishment, the National Water Commission consistently called for the provision of water for Indigenous economic development through a fund to acquire appropriate water rights in allocated systems and Strategic Indigenous Reserves in unregulated or under-developed systems.<sup>12</sup>

### Possible impacts of supply measures

Works and measures intended to achieve environmental outcomes under the SDL Adjustment Mechanism, while reducing water recovery, represent a potentially significant threat to Aboriginal cultural values. While they can enhance water delivery at some specific sites, the combination of direct disturbance of culturally significant landscapes, trade-offs from a lower water recovery target and loss of connectivity within the river system all have the potential to undermine our rights as Traditional Owners. We seek a comprehensive, independent assessment of the cultural impacts of these works, in addition to planned assessments of their environmental impacts.

### SDL adjustment

We note that, under the MDBA's own modelling; a water recovery target of 2750 GL is insufficient to achieve many of the environmental targets of the Basin Plan. Similarly, Jackson et al 2014 found that flows regimes under a 2750 GL recovery scenario would not meet Aboriginal objectives in most cases.<sup>13</sup> Lowering this target further, through SDL adjustment in 2016, would be irresponsible and undermines our ability to fulfil our cultural obligations. While artificial delivery of environmental water may be the only option for some sites given current conditions, it does not mimic the hydraulics, hydrodynamics, and lateral connectivity of natural floods, risking detrimental ecological outcomes.<sup>14</sup>

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<sup>12</sup> Australian Government, National Water Commission (2012), 'Indigenous access to water resources'. <http://www.nwc.gov.au/nwi/position-statements/indigenous-access>. Viewed: 4/9/2015

<sup>13</sup> Jackson, S. et al, 'Meeting Indigenous peoples' objectives in environmental flow assessments: Case studies from an Australian multi-jurisdictional water sharing initiative', *Journal of Hydrology*, Vol. 522 (2015) pp. 141-151

<sup>14</sup> Bond, N. et al. 'Ecological risks and opportunities from engineered artificial flooding as a means of achieving environmental flow objectives' *Frontiers in Ecology and the Environment*. 2014; 12(7): 386-394.

[http://www.researchgate.net/publication/266476446\\_Ecological\\_risks\\_and\\_opportunities\\_from\\_engineered\\_artificial\\_flooding\\_as\\_a\\_means\\_of\\_achieving\\_environmental\\_flow\\_objectives](http://www.researchgate.net/publication/266476446_Ecological_risks_and_opportunities_from_engineered_artificial_flooding_as_a_means_of_achieving_environmental_flow_objectives). *Front Ecol Environ* Viewed 23/9/2015

## **Other matters**

The Commonwealth has invested in the flagship National Cultural Flows Research Project<sup>15</sup>, which aims to document Aboriginal water-related cultural values and to quantify water requirements. The outcomes of this research will provide an invaluable source of information to inform Basin water planning. We seek to ensure that the results of this research are integrated into future planning and that water allocation and management decisions made now will not rule out options for improving outcomes for Aboriginal people.

While there are a number of risks associated with implementation of components of the Basin Plan, we believe that the Plan, if properly implemented, can make a contribution to the well-being of Aboriginal communities. The risks and concerns noted above should be addressed through the ongoing implementation process.

Finally, we wish to stress that the Basin Plan does not fully address or actuate our inherent rights as First Nations and Traditional Owners. There is still a significant gap between Australia's obligations, as recognized in international agreements and domestic water policy, and the current legislative and allocation framework. We will continue to work to complete the 'unfinished business' of national water reform: recognition of the water rights of Australia's first people.

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<sup>15</sup> See the project website: <http://www.culturalflows.com.au>