

24th February 2017



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Neil Andrew
Chair
Murray Darling Basin Authority

Re. Submission on proposed Basin Plan amendments

Dear Mr. Andrew,

Please find attached MLDRIN's submission regarding the proposed amendments to the Murray Darling Basin Plan.

We trust this information will be valuable in ongoing deliberation regarding the amendments and we would be happy to elaborate or respond to any questions the Authority may have.

Yours sincerely,

Rene Woods
Nari Nari Nation
Chairperson, MLDRIN

24th February 2017



Murray Lower Darling Rivers Indigenous Nations (MLDRIN) Submission Proposed Basin Plan Amendments, February 2017

Summary

Traditional Owners across the Murray Darling Basin have consistently highlighted that adequate environmental flows play a critical role in helping to protect and sustain cultural values and to support Aboriginal wellbeing.¹

The Australian Government has obligations, stipulated in international agreements and domestic law and policy, to respect, preserve and maintain traditional knowledge² and cultural values associated with our biodiverse waterways.

MLDRIN contends that the current proposed amendments for both the Northern Basin and Groundwater resources fundamentally disregard this important obligation and threaten to further entrench the disadvantage already experienced by Aboriginal people in the Basin.

Aboriginal people have not been consulted, nor have they consented to the historic and ongoing unsustainable extraction from the waterways of the Basin. Further reductions in water recovery will exacerbate the impacts on Aboriginal cultures and communities.

We reject the proposed reduction in the water recovery target in the Northern Basin and the proposed increases to groundwater SDLs in the Western Porous Rock, Eastern Porous Rock and Goulburn-Murray groundwater resource areas.

We wish to reiterate and support the points made by the Northern Basin Aboriginal Nations (NBAN) in their detailed submission to the Authority.

1. Northern Basin Amendments

¹ MLDRIN & NBAN (2007) *The Echuca Declaration*. Viewed at: <http://www.savanna.org.au/nailsma/publications/downloads/MLDRIN-NBAN-ECHUCA-DECLARATION-2009.pdf>

² Convention on Biological Diversity, Article 8(J) viewed at: <https://www.cbd.int/traditional/>

² Convention on Biological Diversity, Article 8(J) viewed at: <https://www.cbd.int/traditional/>

1.1 Research and Decision-making

MLDRIN questions whether the methodology utilised in the Northern Basin Review ('Review'), including the 'triple-bottom-line' approach and assessment of socio-economic outcomes, has given genuine consideration to the rights, interests and responsibilities of Traditional Owners.

Aboriginal people have unique and specific interests and objectives in water management in the Northern Basin. This is because Traditional Owners retain customary connection to and responsibility for Country and because Aboriginal people have been historically marginalised from the water market and the benefits accruing from exploitation of water resources.³

The Review has involved an assessment of the impact of water recovery on towns in the Northern Basin. But it has not accounted for Aboriginal people's unique social position, by undertaking a rigorous assessment of the impacts of *reduced* recovery on Aboriginal cultural values, practices and communities.

The Socio-Cultural survey⁴ conducted by the MDBA and the Northern Basin Aboriginal Nations (NBAN) documents the links between adequate environmental flows and Aboriginal community wellbeing in three key towns in the Northern Basin, however there is no explanation of how these findings have been considered as part of the Review. Specifically, the Review report does not demonstrate how the impacts of different water recovery scenarios, on Aboriginal outcomes, have been considered and factored into decision-making. Such an assessment is essential to understand the social impacts of policy decisions on Aboriginal communities.

The National Cultural Flows Research project is currently leading research to 'quantify the volumes, flow and timing of water required to meet identified [Aboriginal] water uses and values'.⁵ Methodologies arising from the Project will support the development of indicators for cultural outcomes, that can contribute to informed assessment and decision making. We note that a recently released Module to the National Water Initiative Policy Guidelines for Water Planning and Management highlights that '[q]uantifying the volume, flow and timing of water

³ In 2010 Aboriginal people and their organisations held just 81 water licences in the Basin. MDBA's own research suggests that only around 16% of Aboriginal people have access to water through the entitlements, including stock and domestic rights. See *A survey of Aboriginal water interests in the Murray-Darling Basin - A summary report* (2016).

⁴ NBAN and MDBA (2016) *Our water, our life: An Aboriginal study in the Northern Basin*.

⁵ See overview of 'Component Three', National Cultural Flows Research Project.

http://www.culturalflows.com.au/~culturalflowscom/index.php?option=com_content&view=article&id=17&Itemid=126

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required to realise cultural outcomes is fundamental if Indigenous peoples' needs for water are to be met through water planning and management processes.'⁶

In the absence of a rigorous methodology to undertake this assessment, the proposed amendment appears to be supported by a subjective estimation of Traditional Owner needs and potential impacts. Similarly, the fact that Authority board members 'used their judgement to come to an understanding of the balance that was needed between economies, communities and the environment in the northern Basin,'⁷ is of concern given that there are currently no Aboriginal members on the MDBA Board. How does this contribute to a 'balanced' decision?

Recommendations:

- Any amendment to SDLs in the Basin must be based on proper science including a rigorous assessment of the impacts on flows that are important to support Aboriginal cultural and community outcomes.
- Upon release of the results and methodology developed for the National Cultural Flows Research Project, a full assessment of the impact of amended SDLs on Aboriginal cultural values should be undertaken in the Northern Basin.
- We request that the MDBA continue to work with MLDRIN and NBAN to develop tools and approaches to assess the impact of proposed changes on cultural outcomes across the Basin.
- We strongly encourage the appointment of at least one Aboriginal member to the Board of the Murray Darling Basin Authority to fill a critical gap in knowledge and to better inform future decision-making.

1.2 Water Recovery:

We do not support the proposal to reduce water recovery from 390GL to 320 GL in the Northern Basin. This is because reduced water recovery will compromise environmental values and undermine the continuance of cultural practices by Aboriginal people. Modelling undertaken for the Basin Plan indicates that the existing reduction figure of 390GL is insufficient to meet many hydrological indicators in the Northern Basin, which in turn means that 320GL is manifestly unacceptable.

⁶ Government of Australia (2016), *Engaging Indigenous People in Water Planning and Management*. Module to the National Water Initiative (NWI) Policy Guidelines for Water Planning and Management. p. 15.

⁷ MDBA (2016) *The Northern Basin Review*. p. 46.

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Current recovery targets are insufficient to protect and sustain Aboriginal cultural values in most cases.⁸ Further reductions will critically compromise Traditional Owner's ability to maintain cultural practices and transfer traditional ecological knowledge.

Similarly, reducing water recovery will further threaten already stressed ecosystems, interfering with the connectivity between river channels and floodplains that is critical to sustain valuable vegetation communities, mass exchange of sediment and nutrients and fish, frogs and turtles. Reduced water recovery may also impede water bird breeding events, reduce the resilience of the system to climate change and increase the risk of blackwater and blue-green algae events due to lack of flushing flows and inundation events.

We do not support any amendment that will increase the risk to the health of an already critically stressed system that is the lifeblood of the traditional culture, knowledge and identity of Aboriginal people.

In order for Australia to meet its obligations under the convention on Biological Diversity, the Ramsar Convention and international Migratory Bird Agreements, the water recovery target should be at least 415 GL.

1.2.1 Inflows to Menindee Lakes and Southern Basin

We do not accept the proposition that the proposed 70 GL reduction will impact inflows to Menindee lakes by only 7 GL. There is no guarantee that the Commonwealth will be able to secure the strategic water entitlement purchases which, it is claimed, will mitigate the reduction upstream. We are also concerned that any strategic water recoveries may still be undermined by irrigators extracting water on the Barwon-Darling. We are concerned that the amendments will impact on inflows through our Members' Country in South Australia and through to the Murray Mouth.

Recommendations

We do not support the proposed reduction in water recovery. We want to see a water recovery target of at least 415 GL.

1.3 Toolkit

⁸ Jackson et al 2014 found that flows regimes under a 2750 GL recovery scenario would not meet Aboriginal objectives in most cases. 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

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MLDRIN understands that the 'Toolkit' measures were proposed by the Northern Basin Advisory Committee to add value to the use of environmental water. They are not intended to function as substitutes for water recovery.

We do not have confidence that the proposed 'toolkit' measures can safeguard environmental values that will be compromised by a reduction in water recovery. This is because there is no guarantee that they will be implemented. We are aware of the attitude of some Basin States who have already publicly spoken out against the toolkit measures.

1.3.1 Aboriginal 'toolkit' measures

The measures proposed at recommendation 7 of the Northern Basin Report contain some positive directions, especially regarding improving Aboriginal capacity for input to water planning. However, we wish to stress that the measures, as outlined in the Review, are unclear, contingent and insufficient to address the serious concerns of Aboriginal Nations in the Basin.

Furthermore, a number of these measures are already embedded in State and Commonwealth policy and legislation and already exist as obligations on the jurisdictions.

For example National Water Initiative (NWI) requirement 52 already requires all governments to 'provide for Indigenous access to water resources, in accordance with relevant Commonwealth, State and Territory legislation, through planning processes that ensure: i) inclusion of indigenous representation in water planning wherever possible; and ii) water plans will incorporate indigenous social, spiritual and customary objective.' A recently released Module to the National Water Initiative Policy Guidelines for Water Planning and Management provides considerable detail regarding how these requirements should be implemented.

If measures are to be enacted to address Aboriginal concerns, as part of the NBR, they must be meaningful, measurable, funded, targeted and in addition to requirements that *already* exist. We stress that effort is still required to properly implement existing requirements and obligations, such as the NWI obligations and Basin Plan requirements.

We note that NBAN provided to the Authority a list of detailed proposals, with funding estimates and scoping of implementation arrangements. MLDRIN supports NBAN's proposed program and advises that the Authority endorse and progress these measures. As a minimum, any reduction in water recovery must

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be accompanied by a comprehensive program of measures to address Aboriginal disadvantage and support Traditional Owner objectives.

Recommendations

We urge the Authority to endorse and progress a comprehensive program to address Traditional Owners' concerns about impacts on the environment, culture and wellbeing arising from any proposed reduction in water recovery. We note that NBAN has provided a detailed program of measures.

We urge all Basin jurisdictions to work cooperatively to establish funds or Trusts that can be used to facilitate Aboriginal entry to the water market. Addressing barriers to entry to the consumptive pool will provide flexibility and empowerment, helping to alleviate the disproportionate impact of over-extraction on Aboriginal communities.

2. Groundwater

MLDRIN has undertaken consultation with Traditional Owners, Member Nations and affected communities to inform them of proposed changes to SDLs in the Western Porous Rock, Eastern Porous rock and Goulburn Murray Groundwater resource areas and to seek their views on the proposed changes.

Based on these consultations and further engagement with our Members MLDRIN does not support the SDL increases proposed for the three groundwater resource areas.

Views regarding the proposed changes vary between Nations. However, we highlight the following key issues and concerns:

- Groundwater is sacred. It is central to important dreaming and creation stories. These values have not been taken into account in reviews and assessments of the Groundwater SDLs.
- There is no tangible benefit to Traditional Owners from proposed SDL increases, despite the potential impacts on Country and spirituality. This perpetuates the injustice experienced by Aboriginal people.
- Traditional Owners do not feel that their views on the proposed increases are being given due consideration.
- There are no State plans, policies or local management rules to mitigate the impact of increased groundwater extraction on cultural assets
- Some Nation groups are undertaking negotiation with Basin governments regarding access to water resources as part of native title and Traditional

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Owner Settlement processes. Proposed increases in extraction undermine their negotiation and decision making rights.

Traditional Owners do not support the proposal to increase extraction from these resources.

Traditional Owners are concerned that the rationale for at least two of the proposed increases is essentially to provide access to water for certain mining proposals that will, in turn, entail further undesirable impacts on Country and communities. In short, the increased SDLs and the industrial activities they will facilitate, will exacerbate impacts while doing nothing to address structural inequality.

2.1 Consultation

We recognise the support provided by the MDBA to undertake two workshops on the proposed changes in January 2017. However, we are disappointed that a coordinated program of consultation regarding the proposed changes was not initiated at an earlier stage, to allow proper consideration and feedback of this complex matter. In this regard we draw attention a letter from MLDRIN to Peter Hyde, Director – Groundwater Planning, dated 3 April 2015, requesting that further consultation be initiated and that MLDRIN be engaged to undertake rigorous consultation with our Membership. We also wish to highlight commitments made by MDBA staff to undertake further, timely, consultation on the proposed SDL increases, at a meeting of MLDRIN Delegates in Wagga Wagga, March 2015.

At meetings held in January 2017, MLDRIN Member Nations consulted, expressed serious concerns regarding the approach to consultation. Participants in groundwater workshops felt they were given insufficient time and were being presented with a *fait accompli*, which runs counter to the MDBA's own principles of engagement and protocols of *free, prior and informed consent*.

Recommendations

- We reject the proposed increase in groundwater SDLs in the in the Western Porous Rock, Eastern Porous rock and Goulburn Murray Groundwater resource areas.
- If the proposed amendments proceed despite our concerns, there must be measures to ensure equitable outcomes for Traditional Owners whose Country and cultural heritage is subject to the increased extraction. Measures could include:
 - Compensation: Traditional Owners should receive a just share of the proceeds from any sale of water licences made available by the

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increased SDLs. Funds raised could be utilised for community development.

- Local management rules for cultural assets. Comprehensive mapping and measures for the protection of groundwater dependent cultural assets would be required.