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National Water Reform 2020
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Submission to Draft Report 'National Water Reform 2020'

Introduction

The Inland Rivers Network ("IRN") is a coalition of environment groups and individuals who have been advocating for the conservation of rivers, wetlands and groundwater in inland NSW since 1991.

Member groups include the Australian Conservation Foundation; the Nature Conservation Council of NSW; the National Parks Association of NSW; Friends of the Earth; Central West Environment Council; Healthy Rivers Dubbo; the Coast and Wetlands Society and the Wilderness Society, Sydney.

IRN provided comment on the previous Productivity Commission Inquiry into National Water Reform (Report 2017), the May 2020 Issues Paper and welcomes the opportunity to provide comment on the Draft Report on National Water Reform February 2020. Our primary focus is on NSW inland surface water and groundwater under NSW and Commonwealth jurisdiction and interaction between the two jurisdictions.

Our comments to the draft Report are in two parts.

Firstly, brief responses to the suggested modernised goal, objectives and principles for a renewed National Water Initiative and secondly, responses to the

specific information requests for further comments about climate change matters and aspirations of Traditional Owners.

Similarly to the conclusion stated in the draft Report, IRN feels that the drought has exposed significant weaknesses in NSW water planning, accounting, compliance and reporting. The draft Report identifies a number of key priorities for NSW which IRN would support: revision of water plans to better define environmental and public benefit outcomes; decision-making accountability for new water infrastructure; accountability for best use of environmental water, free from political interference; transparent community service obligations; and effective community engagement.

However, given the inevitability of the predicted impacts of a changing climate we question the priorities of current NSW government water planning and infrastructure proposals. NSW government as a signatory to the NWI must develop sustainable water plans and policies and economically viable new infrastructure to ensure improved capacity to meet the many and difficult challenges of changing climate. Otherwise, NSW inland waters will remain disconnected, degraded and contentious.

Despite NSW assurances to the Productivity Commission that it has made progress across many water management issues the environmental condition of NSW inland rivers clearly suggests otherwise. Algal blooms in the Lower Darling River and predicted mass fish kills remain in the media this week[1] in the face of these assurances outlined in your assessment of progress (2017-2020) report.

As the draft Report states there is a need for revised "modernised" goal, objectives and principles to take account of impacts from a changing climate and to manage inequity in order to ensure operation of a robust water market. However, risks to the market seem largely associated with government decision-making in the absence of strong governance and regulation oversight. This has seen major infrastructure proposals in NSW progressed in the absence of sound business cases and cost-benefit analyses.

These new infrastructure proposals would seem contrary both to the public interest and the intent of the NWI to achieve a well-functioning national water market. We urge that a body such as the previously disbanded National Water Commission be reinstated and strengthened to provide independent oversight and compliance and ensure continued progress in genuine national water reform.

[1] SMH 17.2.21 "Toxic algae threat prompts red alert for Lower Darling".

PART 1.

1.1 MODERNISED GOAL:

The Parties commit to this renewed National Water Initiative in recognition of the continuing national imperative to increase the productivity and efficiency of Australia's water use, to service the changing needs of rural, urban and remote communities and to ensure the health of river and groundwater systems and their surrounding landscapes whilst adapting to a changing climate. In continuing to implement this agreement, the Parties also acknowledge the importance of water to the lives of Aboriginal and Torres Strait Islander people.

IRN notes that the new culturally acceptable term is First Nations groups or communities when describing Aboriginal people. All references in the NWI must be updated to reflect this acknowledgement.

It is pleasing that the challenge of adaption to a changing climate is implicit in the goal of the NWI and recognition of the importance of water to the lives of First Nations communities is stated clearly.

What is not clearly identified in the modernised goal is the fundamental national imperative that the NWI achieves sustainable use and management of water.

Water systems such as the Murray-Darling Basin surface and groundwater resources have been over-allocated and over-extracted historically to facilitate the development of unsustainable types and intensity of land use. Failure to wind back water extraction levels in the face of a rapidly warming climate has led to the Darling-Baaka River being referred to as an "extinct system" by veteran ecologist Dr Stuart Rowland[2]

An emphasis on increased "*productivity and efficiency of water use*" will not necessarily correct poor management and properly meet the needs of the environment and the current and future requirements of regional towns. These requirements are prioritised under current water laws and the modernized goal of the NWI must clearly state that sustainable water use and management is the "*national imperative*".

In relation to the importance of water to the lives of First Nations people IRN does not feel it is sufficient to only acknowledge this "importance": it must be stated that it is respected and assured in a modernised goal of the NWI that will achieve access to cultural flows in line with the intentions of the Echuca Declaration 2007, and First Nations rights to water.

Recommendation:
A revised goal needs to clearly state the need for sustainable use and management of Australian water as its fundamental goal and that the importance

[2] 13th March 2021 ABC - Darling River ecology 'extinct' and Murray cod 'in real trouble', warns expert Dr Stuart Rowland

of water to First Nations communities is acknowledged, respected and access is assured.

1.2 MODERNISED OVERARCHING OBJECTIVES

The overarching objectives of the Parties in implementing this Agreement are to:

• *optimise economic, environmental, social and cultural outcomes through best-practice management of Australia's water resources. In the process, this will provide certainty for investment, water users and the environment*

• *enable entitlement holders, communities and the environment to contend with climate variability and adapt to a changing climate*

• *ensure effective, efficient and equitable provision of water services that meet the needs of customers and communities in a changing climate.*

As per the above comments to the modernised goal, best-practice must take account of the need for sustainable management of such a precious resource as water within the context of a changing climate. Without a genuine commitment to sustainable water use and management, access to reliable water supply for future generations could be jeopardised.

There is an inherent risk in an approach that "*optimise*s" the, at times, competing economic, environmental, social and cultural outcomes outside of the hierarchical context of requirements identified in water laws. Water laws prioritise water needs during time of water scarcity to ensure the environment is protected and regional communities have access to clean drinking water as is their fundamental right.

A NWI that fully reflects legal requirements is the best way to ensure certainty of water access for regional towns and First Nations communities, water dependent ecosystems remain connected and resilient and economic interests are secure in the longer term.

Further, best practice management of Australian water resources must incorporate "…*minerals and petroleum industries within entitlements and planning arrangements*" as recommended in your draft Report. There is need for clearer statement in the objectives of the NWI that all industries are included.

Water for use by extractive industries poses a significant risk to sustainable water management. The NSW Independent Planning Commission recognised this in a recent decision within the drinking water catchment for Sydney but the principle remains the same for remote communities equally reliant on access to clean drinking water.

Argument by the Minerals Council of Australia that they should be exempted on various grounds is archaic and out of touch with the requirements for an effective functioning national water market. Furthermore, suggestions by the

Council regarding geographical barriers and overlap with regulatory framework are spurious and irrelevant arguments. Such argument reflects resistance to the notions of transparency and accountability on which a robust water market relies.

All water users must be brought under the same regulatory requirements with no exemptions. This is relevant to the proposed exemption in NSW to rainfall runoff on developed irrigated land. All water interception must be accounted for and covered by an access licence.

Recommendation: Revised overarching objectives need to strongly state that connectivity within and between water sources is the major objective of the NWI whereby all economic, environmental, social and cultural outcomes can be sustainably achieved. No access to water for commercial purposes should be exempt from licensing and accounting.

1.3 MODERNISED OBJECTIVES:

IRN supports the modernised objectives summarised below from the draft Report with text in italics indicating the additional objectives proposed, including some proposed changes and additions to the wording of those objectives (highlighted):

Resource management:
Secure entitlements
Transparent statutory-based planning
Secure water for the environment
Inclusion of Traditional Owner knowledge and access to water
Water moves to its highest value through trading ***subject to environmental impacts and constraints***
Integrity of water management
Appropriate responses to adjustment issues

Service provision
Efficient service level, quality and cost, reflective of customer preferences
Cost reflective pricing (wherever possible)
Best-practice governance and regulation
Integrated water supply, wastewater and stormwater planning and management in cities and towns
Access to safe and reliable drinking water
Ecologically sustainable and economically viable new developments

Resource management objectives

IRN fully supports an additional objective in resource management, *that recognizes Traditional Owners*. Australians have deplored the mismanagement of the Murray Darling Basin waters but for Traditional Owners, with their close spiritual and cultural relations with these waterways, witnessing dead fish, dying

redgums, algal blooms, dried waterholes, loss of freshwater mussels, etc, the tragedy is extreme.

Traditional Owners rights to access water has partially and slowly been acted on, but the slow pace in granting these rights means they may be realised within dry unconnected water systems.

Service provision objectives

The inclusion of objectives around service provision, especially **dot point three and dot points six and seven,** is an important consideration for a national water market that ensures water resources are managed sustainably for all Australians and in the genuine public interest.

Dot Point three: *Best-practice governance and regulation*

The draft Report clearly identifies the significant erosion of governance arrangements since the establishment of the NWI. The lack of any independent scrutiny, collective oversight and policy leadership has often left government unaccountable for its policy implementation and decision-making in relation to compliance with the NWI.

The risk of "back sliding" in NSW due to inadequate governance arrangements has become more evident since the May Issues Paper as more information has been made public about proposed new water infrastructure.

WaterNSW originally stated the costs of Dungowan and Wyangala Dams to be 480 million and $650 million respectively: funding sources being a combination of Commonwealth government contribution, Snowy Hydro Legacy Fund (SHLF) and WaterNSW debt funded.

At some point the estimated cost to complete the projects was revised upwards to $870 million and $2.1 billion respectively. Since funding was only secure for the initial costings, identified funding sources to fill the funding shortfalls were identified as being SHLF and National Water Infrastructure Development Fund.

At this stage no business cases are publically available and cost-benefit analyses are underpinned by optimistic assumptions. Justification for the projects is primarily based on internal comparative assessment of dam site alternatives rather than a comprehensive consideration of alternative approaches to improve regional water security based on principles of integrated water management. Neither approach has been independently evaluated.

Regardless, while it waits for business cases and identified funding sources, the NSW government continues to promote and progress the proposals, causing stress to affected local communities including First Nations people and increasing risk exposure for tax payers with reduced opportunities for future infrastructure projects able to be funded from depleted Infrastructure Funds.

It would seem that NSW's infrastructure strategic plans are now being retrospectively prepared to facilitate access to established Funds as required by law but in the absence of any sound up front assessment of the value to tax payers who pay for the water infrastructure.

Whilst the draft Report identifies "*flawed decision-making*" in the case of Dungowan Dam there is minimal attention in the draft Report to the relationship generally between/within governments and State Owned Corporations (SoCs) in new infrastructure decision-making. These "close" "opaque" relationships between government and SoCs pose significant risk to the transparent and equitable operation of a national water market.

For signatories to the NWI such as NSW government there is need to ensure transparency and accountability for SoCs that are active players in the water market. The risk to transparent and accountable arrangements is especially evident when the SOC shareholders are often Treasurer and/or a Water Minister and Infrastructure Funds managed by senior Cabinet Ministers.

For NSW government, funding of major infrastructure such as a $2 billion new dam either via consolidated monies or an established Infrastructure Fund also pose asset ownership issues for the State budget. Equally problematic is how any State government money can be lent to WaterNSW and still comply with the proper accounting standards required of State budget.

How Commonwealth money derived from funding sources directed to expansion of irrigated agriculture "fits" with NSW government intentions has also not been well explained to the public. How NWI requirements to adhere to full cost recovery for capital decisions as well as their regular operations will be balanced against funding considered as a community service obligation is not explained.

The relationship between a SoC such as WaterNSW and government is pertinent to a revision of the NWI. The NSW "dams saga" represents more than a "*failure of process*" in NSW. The Commonwealth government's presumably deliberate dismantling of the governance arrangements established with the NWI creates a void where infrastructure decision-making occurs opportunistically and unchecked. This is contrary to the public interest and demonstrates disregard by government of basic principles that should underpin the operation of an efficient and effective national water market.

The failure to include the most recent drought of record in NSW water sharing plans for assessing available water determinations is also a major failing in governance and sustainable water management.

The process for assessing and allocating new, compensable private property rights in the form of Floodplain Harvesting licences is also a failure in good governance and will lead to poor regulatory outcomes. The process includes a proposed exemption for rainfall runoff on land developed for irrigation. Unless bought under the floodplain harvesting licensing framework, this water use could be outside of Plan Limits.

The irrigation industry in the NSW Northern Basin has enjoyed over 30 years of unfettered expansion based on free access to flood waters. The cumulative environmental, social and economic costs for downstream water users has not been assessed. This is a significant failure of best-practice governance and regulation that must be assessed for its long-term costs before new licences are granted.

Leading practice governance arrangements must be restored in a revised NWI as a matter of priority for objectives covering both Natural Resource and Service Delivery areas.

Dot Point 6: *Access to safe and reliable drinking water*

Water quality must be a fundamental consideration as there is no point in creating a tradable commodity as precious to life as water that sees it delivered to the environment and regional communities undrinkable, saline and/or polluted. The need for water carting, new bores etc. to supply regional towns during the last drought demonstrates this can be an expensive activity that the market cannot easily absorb and so dependent on tax payer funding.

NSW water sharing plans must comply with revised NWI objectives that give greater priority to the delivery of clean drinking water for humans and stock and ensure whole of catchment connectivity. The rules in the plans must be strong with capacity to meet prioritised need during an acute drought and take account of predicted drier landscapes as the new normal.

The delivery of safe and reliable drinking water cannot be separated from sustainable water management that functions within a leading practice governance and regulatory framework. Improved benchmarking and proper review is urgently required for inclusion in a revised NWI.

Dot Point 7: *Ecologically sustainable and economically viable new developments*

IRN has outlined above our concern about the lack of governance arrangements in relation to the processes to develop new water infrastructure in NSW. This absence of oversight and transparency creates significant risk to the achievement of objectives that new development is ecologically sustainable and economically viable. This risk is especially evident where there is a "grey area" in role and responsibility of government with a SoC such as WaterNSW.

The draft Report has identified need for a *New Water Infrastructure Element* to address management of the risks associated with the current arrangements for major new/upgraded infrastructure proposals. At its core the new element restates the need for proper assessment prior to commitment of any funding such as has been a serious omission in NSW.

Unsustainable and unviable new development is not in the Public Interest. Nor, as your draft Report identifies, is a "*just add water*" approach necessarily a cost-effective way to deliver government objectives. Other public investments can

have greater flow on results for regional communities than a new dam but it is often not politically expedient to acknowledge that such major expensive projects tend to create fewer jobs than investment in services such as health and education.

Despite "encouragement" by the Productivity Commission for an integrated management approach to how water is used, managed and supplied, clearly the Commonwealth and NSW government still like dams. A big infrastructure project such as a new dam can be an exciting idea for politicians who can align themselves to it as an example of their commitment to national progress. But as the low levels of inland dams demonstrate[3] regional water security in a drier more variable climate requires more sophisticated and comprehensive planning and policy settings.

Smaller infrastructure projects such as purified recycling systems and non-infrastructure solutions such as adjustment to water allocations or town water restrictions could improve water security in ways that are sustainable and economically viable. Comprehensive business cases and comparative cost-benefit analyses, if actually undertaken by NSW government as per their commitments to the NWI, would most likely demonstrate the effectiveness of such alternative solutions to a big dam.

Infrastructure Australia identified this opportunity in its most recent report[4]:

" Cost-effective solutions to improve the efficiency of networks exist across the infrastructure sectors. For example:……..

In the water sector, supply may be readily expanded without constructing new dams. Depending on the local environment, recharging suitable aquifers, making better use of surplus water produced by industry or smarter use of stormwater flows can supplement supply or change patterns of demand."

Greater investment in projects based on integrated water management solutions to improve water reliability needs to be a higher priority for government infrastructure funds and programs as they determine their strategic allocations. Investment in integrated water projects to support regional urban water projects should be assessed on their merit separate from the need to include an irrigated agricultural component as is currently required under the national Water Grid Authority's Investment Policy Framework.

A recent NSW Auditor-General's Report to Parliament indicated that the NSW Department of Planning, Industry and Environment - Water "*lacked a strategic,*

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[3] Chaffey Dam was doubled in size between 2010-14 at a cost of around $60 million. It filled in 2016 (media reports stating its 100,000ML could supply Tamworth's water needs for a decade) but quickly emptied and is currently at 42% and dropping. Modelling used in the draft Namoi Regional Water Strategy predicts the dam could be at 40% capacity for 20-50% of the time depending on what future climate scenario is applied.

[4] Australian Infrastructure Plan. Priorities and reforms for our nation's future. Report February 2016. Pg 24.

evidence-based approach to target investments in town water infrastructure."[5] Further, DPIE-Water support for integrated water cycle management (IWCM) planning was considered to "*lack transparency and consistency*" and to be "*ad hoc*" (pg 3).

The Auditor General conclusion stated that "*This lack of visibility limits the department's capacity to use IWCM strategies to build an evidence base about catchment-level risks or strategic issues, and to inform assessments of appropriate solutions.*" (pg 3) This lack of rigour would seem contrary to the intent of the NWI to ensure "Ecologically sustainable and economically viable new developments" as one of its objects.

1.4 OVERARCHING PRINCIPLES:

IRN supports the proposed overarching principles of a revised NWI

1. Capacity to contend with droughts, floods and shocks, and to adapt to a changing climate, is strong.
2. Management effort and regulation are fit for purpose.
3. Decisions are based on the best available information.
4. Innovation and continuous improvement are encouraged and adaptive management is required.
5. Communities are engaged effectively in all aspects of water resource management and water service provision.
6. Communities have sufficient water literacy to engage effectively.

Adherence to the overarching principles, that appear to be sound, is fundamentally dependent on leading practice governance and regulation. This importance and necessary component to a revised NWI is fundamental to how meaningfully and genuinely jurisdictions apply the overarching principles in their water policy and strategic planning.

For too long NSW government in particular has had a partisan approach to consultation with special access and/or "open door" policy to irrigators and more influential players in the water market. A recent ICAC Investigation [6] confirmed that whilst "…..*the department's decisions and approach were manifestly partial towards irrigators and industry…"* this was not *"…for corrupt or otherwise improper reasons*." (pg 9)

However, a "*manifestly partial*" approach for significant players in the national water market does have risk management implications that should be better acknowledged in the overarching principles.

[5] "Support for Regional Town Infrastructure" Performance Audit September 2020 Audit Office of NSW pg 2.
[6] Independent Commission against Corruption Report Investigation into complaints of corruption in the management of water in NSW and systemic non-compliance with the Water Management Act 2000. November 2020.

Third party "Voices" for the environmental protection are often excluded as stakeholders. There has also been a failure to respect the rights of First Nations communities and meaningfully incorporate their interests into water planning and policy.

PART 2 - comments on Commission's requests for feedback.

2.1 "….**suitable triggers for rebalancing environmental and consumptive shares in the context of climate change. What are the advantages and disadvantages of the different approaches? How could continuous adjustment be implemented in practice? Are there any other potential triggers that could be used?**"

"Rebalancing environmental and consumptive shares" against the historic over-extraction that has underpinned agricultural and mining activity in many areas is only necessary because State and Commonwealth water laws have not been applied properly to how government develops its water policies and plans. As stated above our main area of interest is inland NSW so we mainly draw on our observation of NSW government.

As stated in our submission to the Issues Paper last year:

"Effective rules to manage environmental water and protect RAMSAR wetlands, riparian vegetation and groundwater dependent ecosystems are missing from (NSW) WSP. First flush management, likely to be necessary more frequently within a changing climate, remains outside a proper statutory framework.

NSW has also been slow in meeting its commitments under the MDBP, in breach of meeting agreed significant milestones and belligerent in its attitude to this important collaborative plan to return basin waters to sustainable use and management in the national interest.

Overall, NSW government has either failed, lagged or inadequately implemented many of the key actions identified in the NWI.

Further, NSW has shifted backwards from an integrated approach to urban water cycle planning and environmental water management to expensive infrastructure proposals that are either untested or the inherent cause of the ecological collapse evident across inland NSW eg over extraction, thermal pollution, waterway barriers etc."

The most "suitable trigger" in NSW would be a change in focus by NSW government to demonstrate genuine commitment to develop water plans and policies that fully reflect the intent of existing water laws that prioritise protection of the environment and access to adequate drinkable water for regional communities.

The inclusion of the most recent drought of record in NSW water sharing plans is critical to resource use that recognises the impacts of climate change.

The other consideration for large scale agricultural water use in NSW is the inefficient irrigation method of flood irrigation plus the environmentally damaging impact of floodplain harvesting, particularly in the NSW Northern Basin.

Climate change predictions for inland NSW of increased drought, lower rainfall and runoff, higher temperatures and increased evaporation, are already being felt across all catchments.

Water dependent ecosystems such as Ramsar listed wetlands in the Gwydir, Narran, Macquarie, Murrumbidgee and Murray River systems are already suffering from climate change impacts exacerbated by long-term over-extraction.

The resilience of river ecological function is already tested by past poor water management.

The key area of management for responding to climate change is to dramatically improve water demand for agricultural crops. Flood irrigation practices, for example cotton and rice crops in NSW, can no longer be acceptable under climate change scenarios predicting less water availability.

The watering of these crops must be modernised under the object of best practice water management. This will help to make irrigation dependent communities more resilient while not adding to the pressure on natural systems.

2.2 "How could a refreshed National Water Initiative ensure that major water infrastructure investments most effectively promote the aspirations of Traditional Owners and protect Aboriginal and Torres Strait Islander people's heritage and cultural values? Should the principle guiding new infrastructure be amended to ensure that planning processes for developments are culturally responsive (in addition to those developments being environmentally sustainable and economically viable)?"

IRN restates that the appropriate, culturally acceptable term to use in agreements such as NWI is First Nations people or communities.

IRN also restates its previous support for "…*fair and clean drinking water for all people in regional towns; sustainable extraction limits; full opportunity for First Nation people to exercise their Native Title rights, appropriate cultural engagement and consultation; access to spiritual and cultural water for all Aboriginal people.*

IRN feels this engagement and consultation should occur directly with First Nations people."

Cultural sensitivity is an important principle that should underpin all water policy and plans not just for new developments. The protection of First Nations

people's heritage and cultural values affords protection of Australia's heritage values for all Australians.

New dams proposals in Australia had international media attention last year in a Wall Street Journal article raising awareness of the damage to natural ecosystems and cultural sites caused by proposed enlargement of Wyangala Dam[7].

The referral decision for the project under the *Environment Protection and Biodiversity Conservation Act 1999* stated it was a controlled action but with no controlling provisions for protection of 'Indigenous Heritage'. This apparent disregard for the need to consider 'Indigenous Heritage' was despite 329 heritage sites and a potential archaeological deposits having been identified in mostly desktop survey.

Given the significance of waterways in Traditional Owners exercising their access rights fully and the need to protect First Nations heritage and cultural values the need for cultural sensitivity should be embedded in all goals, objectives and principles of a revised NWI.

[7] Bone-Dry Australia faces Backlash against Dam projects: Dams don't make Rain". The Wall Street Journal. 19 July 2020.