

**The Hon. Dean Brown AO**

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Dr. Jane Doolan and Mr. John Madden,  
Commissioners,  
Productivity Commission.

Dear Commissioners,

**Murray-Darling Basin Plan: Five-year Assessment.**

I make this submission as a former Premier of South Australia, who first raised serious concerns about over extraction of surface water from the Murray Darling Basin in 1994, and asked there be a freeze on diversions, an audit of water extraction, and that restoration of the Basin be the national priority for the Centenary of Federation. Since then I have monitored closely the implementation of the Basin Plan and I am currently a Technical Adviser to the River Murray Advisory Committee in South Australia.

I respond to several of the Information Requests as listed in the Issues Paper as follows:

**Sustainable Diversion Limits and Adjustments.**

1. The SDL Adjustments for each project submitted by the Basin States cannot be independently verified by the public because the detailed information on each project is not publicly available. A classic example of this is the proposed reconfiguration of the Menindee Lakes.
2. Some Basin States, such as New South Wales, want the SDL Adjustments approved as quickly as possible but will not meet the existing time-lines for compliance (such as irrigation water metering and Water Resource Plans) under other parts of the Basin Plan. Therefore the approval of any SDL Adjustments should be delayed and be contingent upon Basin States meeting all requirements under the Basin Plan.
3. The SDL Adjustment for the Northern Basin was inherently flawed as it is based on poor data and did not reflect the true existing extraction of irrigation water.

4. Please refer to the Submission to the MDBA by the Coorong, Lower Lakes and Murray Mouth Tourism and Boating Group, which I chair. – Attachment 1.
5. Due to the SDL Adjustments, the water held by the CEWH will be substantially reduced to about 2,136 GL (about 20%), which will have a very significant impact on environmental flows especially in severe and prolonged droughts. This will mean the outcome at the end of the drought will not be much better than at the end of the 2006-10 drought, and yet that is why the Water Act was enacted and the Basin Plan was adopted.

#### **Constraints Management.**

1. In the last few years massive new horticultural plantings (particularly almonds with higher water demands) have occurred or have been approved in Victoria and south western NSW near Mildura (Lower Murray). These projects have changed the locations where water will be required in early and mid-summer. The modelling on water delivery requirements for the Lower Murray region is now out of date, and the removal of constraints is now more important than ever. It is obvious that water that should be stored in the Menindee Lakes for use to sustain the Lower Darling in future years, is instead being used to overcome the deliver constraints to the Lower Murray region during the December-February period. This is also another reason why the SDL Adjustment mechanism should be delayed.
2. The slowness in removing constraints is a reflection that some Basin States want the benefits of the Basin Plan but are not committed to its environmental outcomes.

#### **Recovery of water for the environment.**

1. Some of the purchases of water by the Federal Government in the Northern Basin have over stated the amount of water recovered. In addition excessive payment per GL for purchased water, that was very variable and mainly available only when there was a massive flood, has meant the expenditure of monies for the buy-back of environmental water has been very inappropriate and of poor value.

#### **Water Resource Plans.**



1. It is obvious that NSW will not meet its obligations for WRPs. Evidence for this is that the NSW Government has only recently issued a request for submissions to the Water Reform Task Force. Key decisions are yet to be made and there needs to be community consultation on final proposals. The key decisions include metering of irrigation water extractions, accuracy of floodplain harvesting, reversing the changed pumping regime implemented in 2012, and the reporting and compliance measures to be introduced. All this again points to a reluctance to commit to the outcomes of the Basin Plan.
2. In South Australia there has been extensive consultation on aspects of the WRP with more detailed consultation to occur shortly. It appears the WRP will be submitted on schedule.

#### **Compliance and Monitoring, evaluation and reporting.**

1. Please refer to Attachment 2 which is a submission I made to the NSW Water Reform Task Force earlier this month. The submission sets out my personal views on the level compliance and monitoring that should be adopted by all Basin States and the MDBA. At present there are huge risks to the MDBA's monitoring and enforcement of the WRPs and so the Basin Plan. There is a reluctance by the MDBA to challenge the compliance by NSW in particular. The media have reported several examples where information held by the MDBA on non-compliance has been with-held from the public and the Parliament, particularly in relation to the Northern Basin.
2. The success of the Basin Plan depends on the goodwill shown by the Basin States and that goodwill appears to be very limited from some States.
3. The success of the Murray Darling Basin Plan depends on whether the integrity of the Murray and Darling Rivers is maintained. Judging on the current state of the Lower Darling River below the Menindee Lakes following very good rains in 2016, the Basin Plan is failing. This is the most basic of objectives and yet there is failure.

#### **Basin institutional and governance arrangements.**

1. The implementation of the Basin Plan appears to be focussed on process and governance arrangements rather than measurable deliverables with specific timelines. This is confirmed by the Australian National Audit

Office in its assessment as quoted in the Issues Paper on page 32. The division of constitutional powers between the Commonwealth and State Governments may be responsible for some of the complex governance arrangements, but every attempt to simplify them must be made.

2. The existing institutional and governance arrangements do not provide sufficient oversight of compliance with the Basin Plan, as is obvious with the allegations screened by the ABC on several occasions.
3. There are risks to the achievement of the objectives of the Plan due to the lack of timely commitment and compliance by the NSW Government.
4. The proposed re-configuration of the Menindee Lakes lacks credibility on the scant information released so far and the lack of community consultation.
5. The lack of minimal flow of water down the Lower Darling River for Critical Human Needs for communities such as Pooncarie, highlights the failure to meet the primary objectives of the Water Act and the Basin Plan. The management operation of the Menindee Lakes needs to be completely reviewed.

I am willing to have on-going engagement following this submission.

Yours sincerely,

Hon. Dean Brown AO

26<sup>th</sup> April 2018.

# ATTACHMENT 1.

## Submission by the Coorong, Lower Lakes and Murray Mouth Tourism and Boating Group

The Committee rejects the Sustainable Diversion Limit Adjustment proposal on the basis that if this adjustment is adopted, the total volume of water available for environmental purposes is unlikely to be sufficient to meet the Basin Plan targets for the Coorong, Lower Lakes and Murray Mouth.

If this proposal were to be adopted, the actual volume of water secured and held by the Commonwealth Environmental Water Holder for environmental purposes could be as little as 2 136 GL rather than the 2 750 GL, a reduction of over 20% of the originally agreed volume.

The impact of this reduced volume of water available for the environment is likely to be most evident in the Coorong, Lower Lakes and Murray Mouth region where it is not possible to deliver the required environmental outcomes without physical volumes of water. These detrimental impacts will be felt particularly during extended periods of low inflows or drought when the resultant potential extreme low water levels will have serious and prolonged detrimental impacts on the economic and social health and wellbeing of the region as well as on the environment.

The Committee believes that, based on the limited information available, there are several serious flaws in the process and outcomes put forward for public consultation. These include:

- The lack of any mechanism to guarantee that SDL adjustments proposed beyond the 5% limit of change are fully off-set by additional environmental flows secured as part of the 450GL "up water";
- The inclusion of Northern Basin SDLs when assessing the 5% maximum limit of change in Southern Connected Basin SDLs. All of the projects and policy changes proposed are located in or apply only to the Southern Basin and the Northern Basin Review has effectively provided an SDL Adjustment process for that region. To include Northern Basin SDLs in the 5% limit of change calculation is in effect "double dipping" on this issue;
- No indication that issues such as climate change or the changing pattern in irrigation demand downstream of the Barmah Choke with subsequent impacts on channel capacity have been taken into account in the current analysis;
- The continued reliance on modelling which predicts that the Murray Mouth can remain open with the flows available under the Basin Plan when experience gained over the past few years would strongly indicate that this is significantly inaccurate; and
- The discrepancy in the timing of the proposed adjustment in SDLs (2019) and the completion and assessment of the SDL off-set projects (2024).

Failure to address these issues significantly undermines the credibility of the SDL Adjustment process as well as the Basin Plan as a whole.

In addition, the Committee has serious concerns regarding the quality, depth and timing of information on the SDL Adjustment proposal provided to the general public. These concerns include:

- The extremely limited time available for consultation on such a complex and far-reaching set of projects and policy changes;
- The lack of information or analysis provided on the detail and implications of individual projects or policy change proposals which severely inhibits public scrutiny;



- The lack of any readily available sensitivity analysis in relation to aspects such as the impacts of changes in flow at the Murray Mouth and changes in the parameters applied to determine environmentally equivalent outcomes;
- The lack of information available on the possible interactions between existing and proposed policies (eg between existing agreed South Australian storage right rules and the proposed changes in airspace management in Hume Dam); and
- The lack of information provided regarding the need to off-set any proposed SDL adjustment beyond the 5% limit of change.

These limitations seriously weaken the integrity of the whole community engagement process for the Basin Plan and will lead to increased cynicism and distrust among stakeholders.

To ensure that any changes in the Sustainable Diversion Limits as a result of this Adjustment Mechanism are fair and defensible it is strongly suggested that the following points be addressed before any decisions on changes to SDLs are made:

- Provide a clear indication that the 5% limit of change will be calculated on the basis of Southern Connected Basin SDLs not whole of Basin SDLs;
- Establish and publicise a robust guaranteed process to secure the required “up water” savings for SDL adjustments beyond the 5% limit of change;
- Make available Information on the estimated SDL savings to be made by each project or policy change; and
- Establish and agree a clear process to secure additional environmental water entitlements should the SDL Adjustment Mechanism projects not deliver the proposed environmental outcomes or water savings when the assessment is undertaken in 2024.

# ATTACHMENT 2.

**The Hon. Dean Brown AO**

Water Reform Task Force,  
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## Submission to the Water Reform Task Force.

I make this submission as a former Premier of South Australia, who first raised serious concerns about over extraction of surface water from the Murray Darling Basin in 1994, and asked there be a freeze on diversions, an audit of water extraction, and that restoration of the Basin flow be the national priority for the Centenary of Federation. Since then I have worked closely on the implementation of the Basin Plan and I am currently a Technical Adviser to the River Murray Advisory Committee in South Australia.

I have examined the Report by Mr. Ken Matthews AO (the Matthews' Report) and agree with its strong recommendations for adoption in the Murray Darling Basin of NSW. My subsequent comments do not necessarily include water extraction from rivers flowing directly to the sea along the NSW coast line. The Report recommends transparency and public accessibility to water extraction for irrigation purposed within the Basin in NSW. Water is a community owned resource and the public has a right to know how it is being used and whether there is compliance and fairness within the system.

There should be a public register of water information at one easily accessible site, which can be accessed free of charge by the public. This would be similar to what currently exists in South Australia, which has operated without difficulty. This would cover water entitlements, water licences, site and water works approvals, and annual water allocation approvals. The same information should be listed on the register as it is required for South Australia. It should also cover real-time existing use and trades of water. This register should not cover stock and domestic extractions, but should cover all irrigation extractions. I strongly support the recommendations to publish compliance and enforcement activities undertaken by the Regulator. This could be done by tabling an annual report in the NSW Parliament.

The current information published on the water register in NSW is totally inadequate, fragmented and difficult to access, hence water use has been abused and the public has little confidence in its compliance.

The issue of when water can be taken needs a complete review in NSW. Irrigators should not be able to access water in the river system unless there is a basic flow along the entire length of the river system below that extraction point. For example irrigators in the Barwon/ Darling system should not be able to access any irrigation water or storage water until there is integrity of flow for the entire length of the Darling River downstream to Wentworth. This requires the existing regulations for irrigation extraction to be scrapped and replaced by new regulations. The basis for this recommendation is that the water in the rivers is public water and the most basic requirement is for a flow down the river system for basic human needs and the environmental integrity of the river system. Such needs must take precedence over irrigation water. This principle applied in the emergency agreements for the Murray Darling Basin under the River Murray water sharing Agreement during the millennium drought.

I turn now to the water take measurement and metering. I recommend that there must be functioning meters for all irrigation and business off-takes within the Murray Darling Basin, even where flood irrigation is practiced. Such a practice has been in operation in South Australia for many years with pumped irrigation water, and for the last 10 years with flood irrigation water without pumps, where syphons and meters are required now. Meters should not be required at this stage for stock and domestic off-takes. This requirement for meters for irrigation water may not be practical for irrigators outside of the Murray Darling Basin. Only when all irrigators within the Basin are required to have operating and accurate meters will the system have credibility with other irrigators in other Basin States. This is also the means to ensure transparency and compliance, as well as protection of environmental water.

If irrigators in other Basin States such as South Australia are required to install meters, then NSW irrigators should be required to meet the same standard and cost. The suggestion in the Discussion Paper that metering 46% of water supply works would cover around 95% of water use is not a valid argument



within the Murray Darling Basin. I acknowledge that these figures may vary within the regulated and unregulated waters of the Basin. Experience in South Australia showed that if small irrigators are allowed to break the rules then bigger irrigators think the same can apply to them, and the integrity of the whole system comes under question. The Unregulated versus the Regulated Waters as current applies do not stand up to public scrutiny.

I do not profess to be a specialist on the type of meter to be used, except to recommend that it should include telemetry and have data loggers. The recommendations on the type of meters to be installed look to be appropriate. There should be no self-reporting unless there is government approval under short term special circumstances, which could be issued electronically.

The time limit for the installation of meters within the Basin should be on the basis that it be mandatory for large irrigators and high risk areas by June 2019. The NSW Government promised about one year ago that meters would be installed for large irrigators within 12 months. The licence holder should be required to purchase and own the meter, but Government compliance officers would approve the final installation.

Most importantly the NSW Government must move decisively to repair the considerable reputational damage that has been done in allowing changed irrigation-pump water extraction since 2012, and the continued extraction of un-authorized water (both un-metered and environmental water), particularly in the Barwon /Darling Rivers district. These have contributed as major factors in the lack of water in the Darling River below Bourke. It has become obvious that the NSW Government with its half-hearted and delayed responses is thumbing its nose at the Murray Darling Basin Plan obligations, so that the abuses of irrigation water extraction in NSW can continue into the future.

I am willing to have ongoing engagement following this submission.

Yours sincerely,

Hon. Dean Brown AO.

15<sup>th</sup> April 2018.