

# **Namoi Water Submission**

## **to the Productivity Commission**

### **Murray Darling Basin Plan 5 Year**

### **assessment**

### **April 2018**

Namoi Water represents Water Access Licence Holders (WAL) in the Namoi Catchment Area. These licence include regulated, unregulated and groundwater systems. Namoi Water engages in advocacy, policy development and media relations. This submission represents the view of Namoi Water, however, each Member reserves the right to independent opinion on any issue covered in this submission. A copy of this submission has been provided to our members.

#### **INFORMATION REQUEST 1**

**The Commission welcomes feedback on its approach to assessing the Basin Plan.**

Namoi Water seeks confirmation if the review also extends to the effectiveness of the regulation, where it is demonstrated implementation is impaired by a lack of prescription. For example the reasonable excuse provisions, and the ability to implement SDL compliance are not well addressed in the regulation leaving open the requirement for interpretation. As knowledge is built and the complexity is better understood it exposes a lack of prescription of the regulation and the MDBA response has been (justifiably) to make judgement on their interpretation of the act intent. These judgements are subject to qualification and question, and we raise examples within this submission, and we seek the Productivity Commission recommend greater prescription, to remove conflict and potential for legal challenge.

The establishment of the 1993/1994 Cap On Water Extractions (CAP) limited the irrigation industry to water use at this level of development. CAP remains the foundation of water sharing across the basin. It is important to consider the historical role played by the National Water Commission and National Competition Council in establishing property rights and allowing trade, for an efficient and sustainable water industry. The agreement also understood that secure property rights underpinning new investments, could only be guaranteed when environmental claims had been satisfied. These reforms were competition policy driven and the securing of water property rights allowed secure investment and the same reforms recognised that the finite resource needed to be managed for the environments needs. These principles transferred into the NWI and lead to NSW water recovery process having compensability. The Industry lost much consumptive water, some not compensated then later compensated and finally bought at market price. There will be no investment and a loss of current equity if this status is not continued.

*Namoi Water holds concerns that the translation of CAP frameworks to SDL is not accurately recognising the protections offered to investors and equity holders in the CAP framework.*

This property rights framework covered pricing, the appraisal of investment in rural water schemes, the specification of, and trading in, water entitlements, resource management (including recognising the environment as a user of water via formal allocations), institutional reform and improved public consultation. These issues are covered in the Productivity Commissions review of the Murray Darling Basin Plan. Regardless of the Basin Plan, the foundation remains CAP, and its role in the policy translation to SDL Framework should not be undervalued in terms of assessing modelling, determining impact to property rights and tracking the implementation of the Basin Plan.

Namoi Water would agree that given the growth in water licences held for environmental purposes CAP rules need revision (SDL process) to take into account water held and used for environmental purposes. We do not see this transition as requiring totally new frameworks. The existing CAP framework simply needs to be adjusted to take into account water moved from the consumptive ledger to the environmental ledger.

The accounting, auditing and monitoring for growth in use need to be adjusted for this new balance. Environmental licences are simply water licences dedicated to a non-consumptive use, they must retain the original characteristics of the purchased licence, not grow in use and not be enhanced at the expense of rights and characteristics of the license held for Consumptive use.

The industry suffered a major uncompensated transfer of water to the environment in the late 1990s and early 2000s, we were guaranteed this was a one off to allow for tradeable rights underpinned by property rights. This process led to water being transferred to the highest value use, new infrastructure investment and skills and job growth. We are concerned the two Governments are lining up for another uncompensated cut through changes in reliability at the point of Basin Accredited plans. This is not the late 1990s, the industry has decades of investment predicated on secure rights.

We hold serious concerns over the lack of transparency in the MDBAs environmental decision making tree and in the interventions in the IQQM modelling. We are concerned the MDBA models are optimised and the underpinning environmental demand constructions are improbable and subject to much human discretion unguided by regulation or transparent policy and external review. It is important to clarify the process; the Basin Plan is a subordinate instrument of the Water ACT 2007.

We point out though, that environmental watering plans are a free zone effectively where discretion is available, transparency is absent, and the actual legislative instruments apparently will accept the authority and discretion of the watering plans particularly in resource plan accreditation despite the watering plan itself not requiring accreditation.

There is no other regulatory area that we are aware of where a policy (the environmental watering plans) has complete discretion to influence the actual making of instruments as if it's a given.

We raise the concern that reliability is an essential element of water property rights, this is recognised within the Water Act and in the Inter-Governmental Agreement. We see no transparent mechanism where this right expressed in the instruments is able to push back on the demands of environmental watering plans that are required by instruments but themselves are not instruments.

This is effectively a huge black hole of currently unaccountable discretion that transfers rights and characteristics from privately held consumptive use license to the same licence held by the Commonwealth for environmental purposes.

In this regard Namoi Water would suggest the Productivity Commission consider the broader issues of the Commonwealth planning models being aspirational and desktop versus logistically pragmatic and deliverable. This process was critical to the success or failure of the initial WSP planning models developed by NSW.

The assessment process and the role that modelling played to test outcomes for the Basin Plan was developed in isolation by the MDBA. In this regard the learnings and foundation knowledge held in rural communities and the department were not well understood in the Basin Plan development phase.

For example the MDBA modelled various scenarios in the process of the Northern Basin Review, in a scenario the model removes all consumptive take (quasi Monte Carlo run). We would like to see the commission consider reconciling the “aspirational” nature of the targets set in terms of whether the implementation of the Basin Plan sets a standard that cannot ever be achieved. The authority noted that the SSFI are used as surrogates for assessing river health, and as the Long Term environmental watering plan may well be different to the planning modelling the predicted outcome is for “increased opportunities”. This “increased opportunity” becomes challenging to measure outside the flow regime in the short term.

We share in Professor John Williams concerns over the lack of a plain English explanation of the environmental decision making tree and add to those the interventions via questionable assumptions in the IQQM modelling needs to be moved despite all water being provided to the environment, a number of Site specific Flow Indicator (SSFI) targets remained unmet.

## **INFORMATION REQUEST 2**

**The Commission is seeking information on:**

### **a. risks that may prevent Basin States from successfully implementing SDL adjustment projects**

The Namoi is located in the Northern Basin and there are no SDL adjustment projects proposed in our valley, however a brief comment on SDL adjustment projects process is

warranted. The lack of transparency around the process for developing and assessment of proposals has led to poor community support and anxiety around the impacts resulting from SDL adjustment projects.

We would recommend that some level of consistent process for assessment in terms of modelling impact on licence reliability/access, land use impacts, cost effectiveness, testing of SDL offset volumes etc. Whilst the concept approval approach used by Ministerial Council recognised the complexity of some of the proposed projects the methodology to assess impact for licence holders in affected water resource regions appears to be a critical area that will require both state and federal government cooperation.

**b. the extent to which adopting a different definition of ‘neutral or improved socioeconomic outcomes’ for efficiency measures to what is in the Basin Plan would affect the likelihood of projects being delivered on time and on budget**

In 2010 Namoi Regional Organisation of Councils funded a socio-economic assessment report titled “The value of Water”, this report provided an assessment of the flow through impacts on regional communities because of reduced water availability. The test for neutral or improved socio-economic outcomes should include a cost benefit analysis at regional and national scale to determine if the outcomes are improved as they are distributed or if there are any impacts and if so are they material and similar to approach taken in the Namoi socio-economic model.

The example of the decimation of Collarenebri demonstrated the impacts of direct buy back, however the assessment of projects either constraints or SDL offset projects requires a more detailed approach. In the MDBA’s own socio-economic modelling for the Northern Basin Review it was difficult to allocate impacts between communities, it resulted in the effects being diluted in larger regional centres. Where comparatively speaking the impact was a smaller % of overall economic activity. It is well understood the quantum of change for a small community and their ability to be resilient or adaptive is generally less than larger regional centres. The time it takes to provide this level of assessment in detail is significant.

How this relates to the delivery of projects depends on the process agreed to, resources allocated to the assessment, capacity of jurisdictions work collaboratively (if required). It is unlikely that projects will be delivered on time regardless of the change in definition. The

assessment requires transparency around its process and timelines and how this interacts with the development of the projects is an important question to be answered.

There is clearly political pressure to reduce the test of neutral or improved socioeconomic outcomes, we are resistant to this; the intent of the test is clear and should be respected.

**c. whether there are other novel approaches to recovering water for the environment, such as purchase of entitlement options, that may contribute to Basin Plan outcomes while achieving neutral socioeconomic outcomes**

Namoi Water has for some time encouraged the MDBA, CEWH, DWAR, NSW DOI Water to consider downstream unregulated licences that can contribute to Lower Namoi Site specific flow indicator sites most efficiently and under natural ques.

Modelling assessment by the MDBA has been completed, however the process for assessing flow protection requirements (if any) are not defined responsibilities and the matter continues to be unaddressed despite clear indication of the value of this water in achieving the Namoi instream requirements. The level of socio-economic impact from these licences is lower due to the variability of the flows and the offsetting of impact when compared to purchase of a General security licence.

### **INFORMATION REQUEST 3**

**The Commission is seeking information on actions governments should now take to achieve SDLs in the Northern Basin.**

Critical to the finalisation of the SDL for the northern valleys is the finalisation of “Cap Factors”, the requirements for the remaining recovery are dependent on these figures being publicly available following the Ministerial Council review of the final NSW method and numbers for the Northern Basin.

The assessment of CAP factor is being inexorably moved from a planning assessment based on long run water availability, the intersection of this with the 1993/1994 cap on water use combined with WSP limitations into a political bargaining algorithm. The original planning based assessment of CAP factor and CAP limits on consumptive usage must be reinstated to allow proper translation of previous rights and environmental benchmarks into the SDL process used for Basin Resource Plan accreditation. The annual CAP usage assessment (to

monitor for growth in uses and irregularities such as metering issues) and independent audit is a savings provision in the Water Act 2007 where the responsibility for this role was passed from the MDBC to the (then) new MDBA.

The MDBA has failed to carry out assessments in a timely way and failed to have the assessments audited. This failed process is a major threat to basin plan accreditation.

Under the current recovery targets (Basin Plan 2012) Northern NSW has met the target.

\*Includes adjusted CAP factors for the Macquarie and NSW.

| Water Recovery Table 2018 | Local target | Shared Target | total target | Recovered | Plus Cap Factor adj |       | total |
|---------------------------|--------------|---------------|--------------|-----------|---------------------|-------|-------|
| Condamine-Balonne         | 100          | 40            | 140          | 88.2      | 0                   | 88.2  | 51.8  |
| Moonie                    | 0            | 2             | 2            | 2.5       | 0                   | 2.5   | -0.5  |
| Nebine                    | 1            | 0             | 1            | 3.8       | 0                   | 3.8   | -2.8  |
| Paroo                     | 0            | 0             | 0            | 0         | 0                   | 0     | 0     |
| QLD Border Rivers         | 8            | 14            | 22           | 13.8      | 0                   | 13.8  | 8.2   |
| Warrego                   | 8            | 3             | 11           | 20.1      | 0                   | 20.1  | -9.1  |
| Northern Basin QLD Zone   | 117          | 59            | 176          | 128.4     | 0                   | 128.4 | 47.6  |
|                           |              |               |              |           |                     | 0     |       |
| Barwon-Darling            | 6            | 11            | 17           | 32.6      | 0                   | 32.6  | -15.6 |
| Gwydir                    | 42           | 18            | 60           | 46.9      | 10                  | 56.9  | 3.1   |
| Intersecting Streams (8)  | 0            | 0             | 0            | 8.1       | 0                   | 8.1   | -8.1  |
| Macquarie-Castlereagh     | 65           | 24            | 89           | 82.5      | 19                  | 101.5 | -12.5 |
| Namoi                     | 10           | 19            | 29           | 11.5      | 0                   | 11.5  | 17.5  |
| NSW Border Rivers         | 7            | 12            | 19           | 3.3       | 0                   | 3.3   | 15.7  |
| Northern Basin NSW Zone   | 130          | 84            | 214          | 184.9     | 0                   | 184.9 | 0.1   |
|                           |              |               |              |           |                     |       |       |
| Northern Basin Zone Total | 247          | 143           | 390          | 313.3     |                     | 313.3 | 76.7  |

However, in recognition of the limitations of the current portfolio (as indicated prior to purchase, in the 2008 Land and Water, copy attached) there needs to be greater consideration of “held” water to achieve environmental outcomes. The Commonwealth have been advised to consider turning “held” water into rules-based water that meet their specific environmental requirements. It is unlikely the requirements for low flows will change, therefore the balance of achieving environmental outcomes in flood runners at Toorale vs low flows at Bourke require consideration.

This will challenge the CEWH in their statutory provisions (which we understand provide for this very scenario) and government’s experience (knowledge/capacity) to determine priority of water outcomes. Given the CEWH experience is limited and the Basin Plan relatively untested, it is likely this option will be ignored for the first iteration and reconsidered when they have reached a level of maturity in understanding water management.

Enduring solutions to the achievement of SDL are tied to the deliverability of water to achieve environmental outcomes and should be considered differently in Northern NSW. Market based mechanisms for achievement of specific environmental outcomes, implementation of telemetry and gauging in the unregulated system and the implementation of Computer aided river management all contribute to an efficient system delivering, measuring and improving environmental outcomes.

#### **INFORMATION REQUEST 4**

**The Commission is seeking information on:**

**a. why progress to remove constraints has been slower than expected**

Constraints requires a clear process of assessment to provide certainty, transparency and validity of the impacts to land holders and water licence holders. We recommend that an independent panel be established with representatives from effected stakeholders eg; land holders, water licence holder's council, indigenous representatives and government to determine a process for assessment including independent processes.

#### **INFORMATION REQUEST 5**

**The Commission is seeking information on:**

**a. the extent to which the Australian Government's strategy to recover water in areas where gaps remain will be cost effective, align with the Basin Plan's environmental objectives, and be transparent.**

Namoi Water seeks and understanding of how the Productivity Commission will define cost effectiveness of recovery? For example, the On-farm modernisation program delivered 1256 megs of water from the Peel with an average price of \$4299 per mega litre. The average of Peel water trades has and remains on the commercial market a value of \$1100 per mega litre, and when combined with the 2.5 times value applied to projects it appears this price was significantly inflated. If the current administration of the program is followed, the water should have been obtained at a maximum value of \$2750.

We assert this water purchase has not been cost effective in terms of water value or environmental outcome considering the recently augmented Chaffey dam included an



Environmental Contingency Account of 5000 mega litres. Being a new environmental holder, it can only be guessed at why this transaction for the 19 projects proceeded without transparency around the determination of the value being over inflated. Transparency around the value of water, the value of the licence to farm, value the value of the licence to the region, comparison to other forms of water entitlements are important elements for the Productivity commission to review in relation to the Peel purchase example.

Unregulated Water inclusion in the On farm modernisation program was considered by DPI Ag as being unfeasible due to the reference price and the volume that would need to be traded to enable an effective project to be proposed. In April 2015 CEWH and the Department of Environment participated in a forum facilitated by DPI Ag in Sydney to consider this issue further. A report was drafted "Recovery of environmental water in the Unregulated water sources of the Northern NSW Murray-Darling Basin through irrigated farm modernisation" a copy is available from NSW DPI Ag.

The table below is an example of what was predicted if Unregulated licences had been included in the modernisation program. What this table does not consider is if unregulated entitlement was included as one of a range of water portfolios traded within a project. The issue of deliverability from the Commonwealths perspective is more relevant.

|   |       |     |
|---|-------|-----|
| Cost of infrastructure (\$/ha)                | 1500  |     |
| Area (ha)                                     | 25    |     |
| Total Infrastructure cost                     | 37500 |     |
| Government proportion                         | 30000 | 80% |
| Investment price (\$/ML)                      | 1500  |     |
| Water use (ML/ha)                             | 6     |     |
| Total water use (ML)                          | 150   |     |
| ML to be returned to meet purchase price (ML) | 20    |     |
| Total Water holding required                  | 170   | 6.8 |

We would seek Productivity commission review of these two examples as part of understanding the remaining recovery priority and point to the Water Taskforce established by the previous Minister to determine the above issue and the report delivered earlier this year.

**b. risks to achieving water recovery targets by 1 July 2019 and, where not already addressed under current arrangements, how any shortfalls may be resolved.**

The recovery of environmental water in the unregulated water sources of the Northern NSW Murray-Darling Basin through direct buy back was progressed with the Water Taskforce established by the previous Water Minister. The value of this licence is quantified in terms of its location, its reliability, its ability to have protection measures implemented with minimal impacts, its ability to deliver to the environmental outcomes. The MDBA have stated in a formal meeting with Namoi Water that the above is confirmed and that it is a matter for Department of Agriculture and Water Resources to pursue. The Department have advised that they are not currently pursuing this option.

**c. examples of water recovery (both infrastructure projects and purchases) that have been either well implemented or had major deficiencies, including risks to securing contracted but not yet delivered water from water-saving infrastructure projects.**

There are numerous learnings from the recovery of water, the market value needs to be sufficient (regardless of reference price evidence) to attract licence holders to participate. The On-farm Modernisation program had 9 rounds, the Namoi did not participate until late into the program and only then after adjustments were made to include additional types of water timeframes, and a program administrator. The Northern Basin Program Taskforce report: Northern Basin Review undertaken by the Department of Agriculture and Water Resources is a good summary of current issues.

## **INFORMATION REQUEST 6**

**The Commission is seeking information on:**

**a. what specific assistance has been provided to help communities adjust to the Basin Plan**

None in our community that we are aware of, and some in communities that have no relation to the water reductions such as Coonamble. We find it confusing that the assistance would be provided to a community that appears unaffected by water reforms directly.

**b. the extent to which this assistance has supported particular industries or regions**

Unable to comment as per the above.

**c. evidence that this assistance has facilitated adjustment that would not have otherwise occurred and has contributed to meeting the intended outcome of the Basin Plan, including more resilient industries and communities with confidence in their long-term future**

Unable to comment as per response to (a).

**d. whether future structural adjustment assistance is warranted, and if so, what lessons can be learnt from past programs.**

Namoi Water fully supports that in impacted communities structural adjustment is warranted and history shows that tourism does not and cannot take the place of an efficient industry. The critical aspect of structural adjustment is that it cannot replace what was lost from the community, and the ability of community to develop projects and concepts in the period during the removal of an asset is low. Broader consideration of how local government strategy informs structural adjustment and the quantum of adjustment needs to be considered within the context of the Basin Plan.

## **INFORMATION REQUEST 7**

**The Commission is seeking information on:**

**a. the main risks to remaining WRPs being finalised and accredited by mid-2019**

It is likely that WRP will be finalised and accredited by 2019, the Basin Plan legislative requirements are such that it is viewed as impossible to extend this timeframe, and the alternative is unpalatable to Basin States (MDBA developed WRP). The result is that Water Sharing Plans are currently being rolled over without the legislated review being effective.

The NSW timeline issues have been exacerbated by the NSW restructure and associated VR offers leading to the decimation of knowledge and experience within planning and policy teams, this has resulted in poor outcomes within Stakeholder Advisory Panels. This is despite

the best efforts and intentions of current staff who have worked diligently but have been tasked with two requirements; a review of Water Sharing Plan and development of Water Resource Plan and the former has suffered as NSW grapples with quantum of detail required for the WRP's.

**Key Risks :**

- MDBA and NSW unresolved policy positions resulting in inability to progress assessment and development of Water Resource plans (example no process for the criteria and assessment against s10.28 and protection of PEW).
- NSW's poor performance in the development of numerical models for Groundwater.
- Decision making being deferred and undertaken within NSW Interagency Panels without transparency and without the process being linked to SAP.
- There is a risk of perceived conflict arising from the MDBA inconsistency in their position regarding science projects informing LTEWP and by connection the WRP outcomes. DOI Water funded a Fish and DOC project 3 years ago to test the science that informs the Namoi supplementary flow rules. The MDBA were unwilling to participate in the DOI Steering committee on the basis it would be a conflict with their role in accrediting WRP, despite the committee not being a decision making body but a mere oversight of a science project. MDBA have since funded DPI Fisheries to undertake a desktop assessment of flows required for native fish in the Namoi. The SAP was informed this desktop work will form a major part of the LTEWP that influences the WRP, yet this is a project the MDBA clearly have influence over. We are advised the LTEWP is not required to be accredited, however its discretion and authority to prioritise environment to influence outcomes in WRP directly impacts the reliability of water entitlements contrary to NWI and IGA.
- Effective Water Sharing plans contribute to the success or otherwise of the existing base of water management in NSW and contribute to how SDLs are achieved. The 10-year review of plans is not occurring in the development of Water Resource Plans. The policy settings chosen and resulting application of the no net reductions test under s10.28 is stifling any review opportunity, which may result in negative outcomes for both environment and consumptive users.

- Another example of the risks to the WRP being finalised is the resolution of the protection of environmental flows. In 2012 the Water Shepherding Implementation Plan was submitted by NSW as part of the IGA/MOU on Water Shepherding. This plan has been disregarded by the MDBA and Commonwealth. This NSW constructed implementation paper pointed out accurately the issues and difficulties in the delivery of Commonwealth owned water through Northern unregulated systems. The current NSW Water Management Act 2007 Amendment exposure bill is a poor replacement of this detailed implementation plan that highlighted the need for loss delivery accounts and the likely losses into the unregulated system of as much as 85% of Commonwealth water released from water storages out of regulated systems through several unregulated systems to lower northern basin delivery targets.
- The Commonwealth has not accepted the NSW Shepherding Implementation Plan and weight is brought to bear on the NSW Government to deliver the undeliverable. The net result is the rights and characteristics of Commonwealth owned water assets is being enhanced by transfer of rights and characteristics of privately owned water assets. There is no greater risk to the Basin Plan and accreditation of Basin Resource Plans than the transfer of rights and characteristics of privately held water assets to Commonwealth held water and to State and Commonwealth planned environmental water assets
- The lack of third party impact assessment, by the avoidance of WSP process results in the potential acquisition of irrigator rights by the prioritisation of rights for the environment in the potential proposed Water reform package as a shortcut proposal to implement protection for environmental water in breach of NWI, IGA and National Partnership Agreements.

**b. how, and to what extent, recent measures to make the WRP accreditation process more efficient and streamlined have sped up the preparation of WRPs and whether there are opportunities to further streamline the accreditation process for WRPs**

What are the recent measures? Streamlining suggests short cutting and in effect this is already beyond any capacity for proper review, most stakeholders view the process as easier to roll over existing plan than waste time on the WRP process (refer Macquarie Valley).

NSW is undertaking a desktop review for all plans, but particularly for Groundwater with wording changes and little else, despite plans containing review provisions and commitments to communities that reviews would be undertaken. An example is provided in the Upper Namoi Groundwater sharing plans where clearly communicated reviews during plan development were included as clauses within plans made in 2004/05. The department have defended their position to not undertake a review on the basis of the plan wording “the Minister may”. This despite the clearly communicated commitment to community and expectation by water licence holders. These reviews and expectation of new information informed water management decisions on the basis of the precautionary principle being used whilst additional data was generated throughout the life of the plan.

In the Namoi example, Upper Namoi Groundwater zone 1 received a 95% reduction in entitlements, zone 5 received an additional reduction based a singular Phd report findings, many of the zones did not have a numerical model developed at the time of the Water Sharing Plan conclusion and this was a firm commitment from NSW. This could be modelling has had 10 years to be developed and delivered as part of the WRP process. It has not been delivered to date despite the risk assessment and GDE assessment reports being completed without this critical component being finalised. If DoI Water did not use modelling outputs or scenario modelling to assist in determining the risk assessments, how was the review done? In effect the NSW Groundwater Sharing Plans will not be reviewed using informed models until 2026, we consider this a breach of the commitments made at the time of plan development.

Whilst these issues are out of scope for the Productivity commission they are relevant to the implementation of WRP and are a risk as Water users are left with no option but to withdraw from a process that is non genuine.

**c. other ways WRPs or associated planning processes (e.g. consultation, modelling inputs) could be changed to better meet the objectives of the Basin Plan**

A materiality test is required for changes to Water Sharing Plan arrangements post 2012, for example the NSW IQQM model may show an impact of .01 or 1% as a result of a rule change, and this is considered within model variability provided in the original NSW model development.

A 3% tolerance was provided within NSW IQQM WSP for model uncertainty however, the interpretation of s10.28 by the MDBA (position paper 6 A) results in no change being accepted for accreditation where changes are made to planned environmental water being acceptable without offsetting (or consideration as a package of change) regardless of this principle and effect. Namoi Water notes that the current supplementary flow rule is not listed as planned environmental water, and under Water Management Act 2000 PEW water can only be defined by reference. Under the Upper and Lower Namoi Water Sharing Plan the supplementary rule change is not planned environmental water until the making of a Water Resource Plan under the Water Management Act 2007. However there is clear requirement if the change affects the reliability of water users then the compensatory provisions are triggered. The interpretation by MDBA of the supplementary rule as PEW is in our view inconsistent with the NSW Water Management Act 2000.

The MDBA addition of an effectiveness test despite it not being specified in the basin plan is also questioned as to its legitimacy. This is a gap in the specificity of the legislation and is an interpretation by the MDBA that requires independent assessment by the commission. This implementation approach may ultimately have a negative impact on environmental outcomes, as there will be a time when the environment requires a rule change and it will not be acceptable for the environment to change rules in water sharing plans on the basis of this strict application. It is therefore relevant that a materiality test is applied.

**d. how effective Basin States have been in consulting with all relevant stakeholders**

The SAP consultation processes, despite best attempts are returning to decide, advise and defend (DAD) tactics of the late 1990s and early 2000s. Examples of this is available upon request by the Commission.

The SAP content is light and the agendas are fixed away from discussions on the transfer of rights and the highly discretionary nature of the impending non statutory environmental watering plan driven accreditation process. The backdrop to this is already a non-transparent MDBA environmental decision making tree and interventions in the IQQM assumptions including the optimising of the joining of river systems for modelling specific events within IQQM processes.

**e. the main risks to planning assumption work being finalised on time.**

Lack of external scrutiny of the MDBA work is a major risk to completion on time, there is the real risk of legal challenge on poor work, the complexity of the process is allowing the MDBA trust us response to NGO and industry scrutiny There needs to be properly resourced external scrutiny including access to all MDBA data and relevant modelling including assumptions and decision making trees.

*What is the assessment process for the performance of the MDBA? The author and constructor is the MDBA?*

The implementation of the Basin Plan objectives and the move from Long term averages into the Long term Environmental Watering plans (LTEWP) needs to be clarified regarding the status of this document in relation to the basin plan. In the proposed Water Resource Plans, the LTEWP is an appendix to the Water Resource Plan (WRP). Therefore, it will not be “accredited” by the MDBA, yet this document is now being used as an assessment tool for changes to Water Sharing Plans. A non-binding, non-statutory, appendix that is ultimately a continuation of the aspirational and non-deliverable objectives that now determine water sharing rather than the previous iterative approach of WSP.

The Namoi for example, has some SFI targets that cannot be met from held environmental water, in fact if all the water in Lake Keepit and Split Rock dams were used, regulated delivery could not create the events modelled. The MDBA is quick to assert that the development of the Estimated Level of Sustainable Take model may not be replicated in the Long Term Environmental Watering plans and flow outcomes are likely to be delivered at different times and patterns. However the method of identify Key Indicator sites provides for surrogate for environmental health. The usefulness of this approach should be considered by the Commission in terms of how the implementation of the Basin Plan is progressing.

## **INFORMATION REQUEST 8**

**The Commission is seeking information on:**

**a. how environmental water planning under the Environmental Management Framework is, or is not, facilitating achievement of the Basin Plan’s environmental objectives within legislated timeframes, and what improvements should be made.**



Namoi Water have not seen our environmental watering plan, we recently had a presentation at the SAP of the framework of a plan however no consultation has occurred. It appears these plans are being finalised without stakeholder engagement and there is limited transparency and capacity for input into this process.

How are the Productivity Commission assessing CEWH, DWAR procurement process?

How is OEH planning process being assessed?

**b. how effective and efficient the delivery of environmental water is — including through coordination among owners of held environmental water, managers of planned environmental water and other stakeholders — and how any barriers could be reduced.**

Fundamental problems exist in the delivery of environmental water and this is clear in exposure bill and the move to market based mechanisms with purchase of temporary water to achieve “event” outcomes.

**c. whether Australian and State Government objectives for the delivery of environmental water align, any examples of where this has not been the case, and how differences are resolved through the Environmental Management Framework**

In the Namoi we suggest this hasn’t happened and ask where is this document? The CEWH have provided their intended water use objectives in a range of documents, however there are limits to the ability of CEWH to achieve outcomes anywhere beyond mid catchment. The use of CEWH water is being combined with Peel ECA and it will be interesting to watch the next event of water delivery in the Namoi to determine outcomes in the Lower system following a coordinated attempt at watering to improve native fish outcomes in the Lower Namoi (particularly when there is limited monitoring in the Lower system).

The Northern Valleys commissioned a review of the MDBA Northern basin science, this report assesses the practicalities of environmental water delivery. A copy can be provided. Most significant flow events in the Barwon-Darling that may be suitable for enhancement to reach environmental flow targets within the Barwon-Darling River originate in the lower reaches of the tributaries downstream of the headwater storages and within the adjacent Barwon-Darling catchment area.

These events are relatively short duration events (several days to perhaps a fortnight) with a well-defined short peak. The opportunities of enhancing or “piggybacking” these flows with storage releases are severely limited because of their short duration nature and the generally longer travel time for dam releases. NSW Governments own submission highlighted these same risks and difficulties based on practical experience in managing the system and implementing previous reforms. This is also borne out by the MDBA’s own assessment that 6 of 11 SFI target ranges failing to be met under the most optimistic of Barwon Darling coordinated watering scenarios (Scenario F in Table 4) in the MDBA Northern Basin Review Outcomes report.

Embargoing legitimate water entitlement users access for environmental purposes is a breach of Section 5.2 of the IGA. *‘Except as otherwise agreed between the Commonwealth and the relevant state (s) to facilitate improved environmental watering, basin states agreed that the characteristics of licence entitlements held for environmental use will not be enhanced or diminished relative to like entitlements held and used for other purposes’.*

To achieve environmental water planning outcomes we suggest the initial Land and Water Australia Report 2008 dealt with the risk associated with purchasing different licence types and the risks associated with using these licences within the existing state legislative frameworks for environmental outcomes. Consideration of turning held water into rules based water for particular flow thresholds that are prioritised within environmental watering plans. We would suggest the Productivity Commission would obtain relevant information on this issue from the local river operators to reconcile practicality achievement vs aspirational targets.

**d. the extent to which the Prerequisite Policy Measures (PPMs) assumed to exist under the Basin Plan will be in place by the target date of 30 June 2019, so that the Plan’s environmental objectives can be achieved under the SDLs agreed by governments, and how any identified concerns should be addressed**

NSW Government have advised PPM’s will not be implemented in the Northern System in the short term. The system cannot deliver this type of water and there are known limitations.

**e. any opportunities to better integrate environmental water planning and management with natural resource management programs and complementary works to facilitate achievement of the Basin Plan’s environmental objectives.**

The Northern valleys understand that without addressing Carp, continued improvement in riparian management, restocking of all species of native fish, installing fishways (cost effective infrastructure), cultural access and better gauging of water flows the Basin Plan will not result in improved outcomes. Namoi Water is currently seeking formation of Namoi Cooperative NRM 2.0 to achieve local objectives in a more appropriate timeframe with many of the above complementary measures.

#### **INFORMATION REQUEST 9**

**The Commission is seeking information on:**

- a. any inconsistencies between the various national water quality guidelines and the water quality management plan requirements in WRPs and whether these inconsistencies are being resolved and managed**
- b. the adequacy of the actions of water managers to achieve the water quality objectives of the Basin Plan.**

These actions are primarily outside the scope of water flow to address, the greater impact of land use and the potential for Mining expansion in the Namoi to result in salinity trading that adversely impacts water quality is of concern.

#### **INFORMATION REQUEST 10**

**The Commission is seeking information on:**

- a. whether the Basin Plan trading rules advance the water trading objectives and outcomes stated in chapter 5 of the Plan**

The current unregulated trade rules prevent trade in the northern unregulated systems, it is not fit for purpose and it is at risk due to the tight timeframes for the Water Resource Plan development. The Upper and Lower Namoi unregulated water sharing plan included a 2 year review mechanism for the trade rules. This review has been complete but is not prioritised in the current reform agenda.

The draft Water reform amendments will allowing the CEWH to undertake “trade” that is not available to all forms of licence holders. This appears inconsistent with the current trade rules.

**b. whether changes to state trading rules made to date as part of implementation of the Basin Plan adequately recognise and protect the environment and third party interests**

The Namoi Regulated Water Sharing Plan includes a provision for trade between the Namoi and Peel systems. The trade conversion factor was set at .4 conversion that is 60% of the Peel water is forfeit in the permanent trade to the Lower Namoi. The conversion included the loss factor of 50% and 10% for the recognition of the difference in value of water between the two systems. The Peel permanent water trades at \$800 - \$1100 meg post water sharing plan and Namoi permanent water trades at \$2000 - \$2500 meg post water sharing plan. The removal of this “noncompliant” portion of the conversion factor results in an additional third party impact on Lower Namoi licence holders.

**c. whether implementation of the Basin Plan has improved access to market information and what further actions Basin States, irrigation infrastructure operators or the MDBA might need to take.**

No. The Basin Plan has not improved access to market information in NSW this information was available on the NSW register and the trade market developed once water was removed from its attachment to Land. NSW have developed a more robust report on Water Trades.

**d. whether processes for reviewing Basin State trading rules — including the roles of the MDBA and the water trade working group — are sufficiently transparent, evidence-based and consultative.**

Whilst the process for reviewing trading rules did include public consultation, the water trade working group to our experience has not been particularly transparent however we have not had a need to pursue additional information on the evidence base before now.

**INFORMATION REQUEST 11**

**The Commission is seeking information on:**

**a. risks to meeting critical human water needs (CHWN) under the Basin Plan, how the Plan addresses these risks, and what, if any, further measures are required?**

Namoi Water has reviewed the provisions for the Namoi Catchment and the current Water Sharing Plan provides adequate assessment of CHN risks and mitigation measures. This information is also included in the Critical Issues Incident Management Response Guide presented to all SAPs.

**b. any concerns about provisions in WRPs relating to CHWN under extreme conditions.**

The use of Section 324 in the NSW Water Management Act 2000 should continue to be restricted in use to secure Critical Human Need supply only. This provision avoids offending compensation clauses, it does not have appeal rights, transparency or public scrutiny in the information used to evidence the triggering of the s324. The regulation is reported to be temporary however in the Zone 11 Groundwater example it was applied for a period over 5 years which we suggest is well outside the classification of temporary. The use and proposed broadening of s324 for environment purposes and additional regulatory mechanisms drafted by NSW Water Reform Taskforce is an affront to the intent of the WMA 2000 given that WSPs are the primary regulatory tool for water management and the protection of property rights as per NWI & IGA sec 5.2

## **INFORMATION REQUEST 12**

**The Commission is seeking information on:**

**a. risks to the MDBA's ability to monitor and enforce compliance with the Basin Plan and WRPs from July 2019, and what, if any changes should be made to address these risks.**

The key issue of risk to the basin are the reasonable excuse provisions and SDL compliance. We understand the MDBA has recently commissioned work on this matter and will release this publicly in June. There can be no SDL compliance unless the environmental behaviour is reassessed in modelling, there is enough understanding of environmental use behaviour in major catchments Gwydir, Macquarie etc. to update the model. Further there cannot be SDL compliance without the environment also being managed for its contribution to growth in use within individual Water Resource Plans without penalty to consumptive water users.

There are a number of ways that false breaches of SDL's can occur and the MDBA commissioned report must ensure there is no impact on water users as a result.

We do not consider the MDBA role in compliance should be anything other than high level compliance of SDL's and contributing to the development of nationally agreed standards.

**b. the extent to which non-compliance with the Basin Plan will be addressed by recent changes to compliance and enforcement announced by governments.**

The key findings of the Interim Matthews report related to the compliance capability, those changes have been largely addressed by the establishment of the Natural Resources Access Regulator. Those changes must be given time to take effect.

**c. any further changes that should be introduced to increase water take compliance across the Basin.**

### **INFORMATION REQUEST 13**

**The Commission is seeking information on:**

**a. how well current arrangements for monitoring, evaluation and reporting support the delivery of the objectives of the Basin Plan; and how they could be improved to increase the likelihood of the objectives being met.**

They are not well understood at a stakeholder level. In fact we have had limited engagement on the issue of MERI programs regarding the basin plan to date.

**b. whether there is a clear delineation of responsibilities for monitoring, evaluating and reporting on the Basin Plan, and, if not, how it could be improved.**

We are not aware of the delineation of responsibilities and therefore are seeking how it can possibly improve when it has not commenced?

**c. the usefulness of the MDBA's Framework for Evaluating Progress and its recent application in evaluating the Basin Plan**

This review could not be considered independent and we would seek reviews such as this should be subject to proper public peer review processes.

**d. how data and information obtained through monitoring, evaluation and reporting could be made more useful for decision making and evaluation of the Basin Plan (including how to make this data and information more outcomes-focused).**

Our primary concern is that the monitoring and evaluation is cherry picked such as desktop assessments now being used to inform the development of LTEWP. We have no confidence in State or Federal government in fulfilling this requirement, the Water Sharing Plans are a key example of top heavy development and implementation processes that fail to raise interest with government funding for the continuation of proper monitoring. We are yet to seed forward estimates for funding arrangements to ensure this process is conducted with longevity.

**e. the general information required to provide confidence to communities and others that the Plan is being implemented well and is achieving its objectives.**

Peer reviewed modelling, review of the ESLT methodology, a shift away from the ineffective SRA audits and implementation of regional monitoring including funding of Computer Aided River Management for the environmental water use to provide transparency to the public the intended outcomes are truly deliverable and not aspirational targets that if not partnered with effective complementary measures will result in failure as per the monte carlo scenarios developed by the MDBA for the Northern Basin Review Scenarios.

**f. whether processes are in place to monitor key risks to the continued availability of Basin water resources.**

#### **INFORMATION REQUEST 14**

**The Commission is seeking information on:**

**a. whether current institutional and governance arrangements provide for sufficient oversight of the plan and support engagement with the community.**

Namoi Water would seek testing of this through qualitative and quantitative surveys of regional communities. Much was made of “localism” however there is little to demonstrate

on the ground that these arrangements provide any benefit other than another warm body at meetings.

**b. whether there are risks to the achievement of the objectives of the Plan that arise from the current institutional and governance arrangements**

**c. what improvements can be made to ensure that institutional and governance arrangements are fit for the next phase of implementing the Plan.**