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Winner 2009 Jill Hudson Environmental Award

The River Lakes and Coorong Action Group welcomed the opportunity for consultation and to make a submission to the Productivity Commission 5 year evaluation of the Murray Darling Basin Plan. We welcome the opportunity now to comment on the Draft Report and recommendations.

Back to the Water Act

Overall RLCAG welcomes the findings and recommendations of the Report, and agrees that it is important to implement recommendations as a 'stitch in time' given the challenges of developing and implementing the Basin Plan and the challenges facing the Plan in the next five years, but we would also like to advocate for a 'back to basics' approach.

Terms of reference

We acknowledge the complexity of this major Five Year Evaluation and we acknowledge the focus of the Terms of Reference that :

…. the Commission should focus on progress towards a pathway for three key priorities including:

- supply measures to offset the Basin Plan water recovery target of 2,750 GL by 2019, using the Sustainable Diversion Limit (SDL) adjustment mechanism;
- constraints measures to address impediments to delivering environmental water; and
- efficiency measures to recover an additional 450 GL by 2024, consistent with the Basin Plan legal requirement to achieve neutral or improved socio-economic outcomes.[1]

Evaluation against progress to meeting relevant international agreements

We acknowledge that the Report evaluates progress against almost all of the objectives of the Basin Plan.

[1] p.3 Overview, Draft Report Productivity Commission

- establishment and enforcement of environmentally sustainable limits on the quantities of surface water and groundwater that may be taken from Basin water resources;
- Basin-wide environmental objectives for water-dependent ecosystems, and water quality and salinity objectives;
- use and management of Basin water resources in a way that optimises social, economic and environmental outcomes;
- water to meet its most productive use through the development of an efficient water trading regime across the Murray-Darling Basin;
- requirements that must be met by water resource plans; and
- improved water security for all uses of Basin water resources.

However we could not find anywhere in the Report recommendations for achieving the first objective:

- giving effect to relevant international agreements, including the Biodiversity Convention and the Ramsar Convention, to the extent they relate to the use and management of Basin water resources

Kildea and Williams have concluded that "While some social and economic factors can be taken into account, they cannot be given such weight as would prejudice the faithful implementation of the international environmental conventions upon which the validity of the Act depends."[2]

Timeframe

While accepting and largely supporting the level of review, structural and administrative change recommended by the Productivity Commission in order to meet the challenges of the next five years, we are concerned that this should happen with a degree of urgency, given the state of the system and the forecast of increasing drying periods.

We note that 1995.8 GL of the adjusted target of 2075 GL has been delivered to environmental water holders after five years, and that the Australian Government recovered almost 60 per cent of this water purchasing from willing sellers. Most of the remainder was recovered through programs that modernise water infrastructure and return a share of water savings to the Australian Government. We acknowledge that there has been significant progress in recovery of water for the environment and its administration by the CEWH, but we note that this has been on the back of significant medium flows boosted by rainfall in 2016, and there is no prospect of similar medium flood events in the forthcoming weather patterns.

Concern about further delays

Ongoing slippage of SDL projects is a real cause for concern as stated in the Report. We welcome the findings about Basin States' lack of commitment to the Plan, the delays in preparing Water Resource Plans and implementation of pre-requisite policy measures

[2] Kildea, Paul and Williams, George Public Law Review 22 PLR 9 2011

(PPMs) to enable the efficient use of environmental water, without which, a water recovery target of more than 4000 GL would be required to achieve the outcomes of the Basin Plan.

450 GL through efficiency measures

We cannot overstate the importance of returning the full 3,200 GL to the system, including the 450 GL currently designated through efficiency measures.

During the development of the Basin Plan in November 2011 the Wentworth Group of Scientists found that the best publicly available science presented in the 2010 Guide to the draft Plan said that 3,856 - 6,983 GL of water was needed to be recovered from consumptive use to achieve hydrologic and environmental goals. This was later revised to a minimum of 4000 GL.

We understand that the Australian Government has an obligation to recover the volume of water mandated under the Basin Plan, which currently stands at 2,750GL, by mid-2019 and that it also has the legal powers to recover the balance of this volume if a Basin State decides to 'walk away' from the Plan.

We contest the statement that Efficiency measures must meet the Basin Plan requirement for neutral or improved socioeconomic outcomes. We understand that the Plan as a whole must **optimise** socioeconomic outcomes.

Lifting the cap on buybacks?

RLCAG wonders if it possible to make recommendations about achieving the water within a time-frame. The current 1500GL limit on 'buybacks' added in 2015 to the Water Act 2007 could impede this if it is not physically possible to recover the remaining volume via on-farm water saving projects in time. We understand from the Environmental Defender's office in NSW that Parliament could in choose to lift the 1,500GL limit in order to guarantee delivery of the 2,750GL by the statutory deadline. (EDO NSW 16 feb 2018) We note the Productivity Commission's advice that 'If constraints are not eased, rushing to recover the full 450 GL by 2024 would risk the Australian Government bringing forward significant expenditure for an asset that cannot be effectively utilised for many years, at a cost of up to $184 million' but feel this issue is so critical that it requires further modelling.

Over-recovery?

We do not understand the term 'over-recovery' (p. 14). If more than a proposed bare minimum of 3200 GL is recovered, will that not contribute to the outcomes of the Basin Plan, in particular achieving resilience? The Plan is already a compromise providing for watering in riverbeds, banks and some medium flows into floodplains.

Basics of good management

We support recommendations for clarity, processes for collaboration with shared goals and cooperative working arrangements, transparency and clear accountability,

meaningful community engagement, and having adequate reporting, monitoring, evaluation and review processes in place

SDL's

The River Lakes and Coorong Action Group holds the position that the Federal and Basin State governments and the MDBA must re-negotiate all Sustainable Diversion Limit Mechanism projects to ensure that they meet the 12 Wentworth Group conditions before projects are considered for inclusion in an SDL adjustment.

Need to take climate change into account in modelling

We are concerned that there needs to be modelling and assessment of the impact of climate change on the Murray Darling Basin Plan. The 2009 report of the "River Murray-Darling to Sea Expert Technical Workshop" states reduced rainfall and changed seasonality of rainfall can have a significant effect on runoff. In general a 1% decline in rainfall equates to a 2-3% decline in runoff. In addition to the impacts of reduced rainfall on runoff, research has shown that a rise of 1 C leads to an approximate 15% reduction in the annual MDB inflow. This seems significant.[3]

FURTHER COMMENT

Socio-economic considerations

1.1 p 49 states The development of the Basin Plan was a lengthy and an often-contested process, involving much negotiation and compromise before it was finalised and became law in November 2012.

We note the recognition that "Its development involved the consideration of a series of substantial trade-offs between balancing the environmental benefits across the Basin and the socioeconomic impacts on industries and regional communities of a permanent reduction in water available for irrigation. "

The intent and purpose of the Basin Plan is to restore water to the environment. Economic benefits flow from improved environmental conditions. Our understanding of research into socio-economic impacts of the Basin Plan being carried out by the MDBA indicates that the socio-economic impact of the Basin Plan is no greater and sometimes less than a number of substantial other factors, like mechanisation, falling prices at the farm gate, lack of economic diversity, that have impacted on Basin communities since the implementation of the Plan.

With regard to socio-economic impacts of the Basin Plan, water available for irrigation is not the only factor.

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[3] p. 58 http://www.environment.gov.au/system/files/resources/2aa3f5d4-c6ac-4044-961c-9c1a6ed38316/files/workshop-river-murray.pdf

Ongoing monitoring of fisheries productivity suggests that the fishery is currently at approximately 10% of its pre-1981 productivity, this, combined with the rapid reduction in irrigation at Lake Albert due to legacy salinity and risk impacts of this period, has drastically impacted on the socioeconomic well-being of the Lakes and Coorong community. When considering the socioeconomic impacts of the plan, it is important to consider the costs already borne by this community, prior to the plan, due to the prior lack of a plan.[4]

Chapter 3 Recovering Water for the environment

It is concerning that only 1995.8 GL has been recovered against a target of 2075 GL (Finding 3.1 and elsewhere).The 2075 Gl target does not include the required 62 Gl of updater so sits outside the 5% limit.

We note the advice of Environment Victoria that:

The Commission does not include buyback as a water recovery tool in its 'no regrets' approach to upwater recovery (DR5.2), despite outlining the need for a 'coherent water recovery strategy' that demonstrates how socio-economic impacts will be mitigated. This is a remarkable omission considering that the PC has consistently been a strong proponent for buyback as an equitable and efficient response to the structural change of water recovery for the environment, most recently in its 2017 assessment of progress on National Water Reform.[5] Including buyback as a tool would take a lot of pressure off the 2024 deadline for water recovery, in addition to relieving budget pressures. We suggest the PC makes a recommendation to lift the 1500GL cap on buyback to enable the achievement of water recovery targets and SDLs in the Basin Plan in a timely manner.

Over-recovery?

As stated above we do not understand the term 'over-recovery' in Rec 3.1. If more than a proposed bare minimum of 3200 GL is recovered, will that not contribute to the outcomes of the Basin Plan, in particular achieving resilience? The Plan is already a compromise providing for watering in riverbeds, banks and some medium flows into floodplains.

Finding 3.5 notes the lack of transparency in 'strategic' water purchases and the premium paid on infrastructure projects but does not provide recommendations for dealing with this.

Chapter 4 Supply measures and toolkit

We support the recommendations of Chapter 4 in the main but the prospect of an extended timeline is of concern as discussed above.

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[4] Faith Coleman EcoProTem pers.comm. 24 September 2018

[5] Productivity Commission (2017) Draft Report on National Water Reform p423

Chapter 5 Efficiency measures

The findings in Chapter 5 do not appear to take into account the benefits of efficiency measures and that efficiency measures are now central to the successful implementation of the Plan. We support Rec 5.1 because the MDBA making modelling public and open to peer scrutiny will be an important step in restoring public confidence in the Plan.

Rec 5.2 states that the no regrets water recovery strategy must be developed and put in place in a timely fashion. We support the suggestion of Environment Victoria in noting that:

The Commission does not include buyback as a water recovery tool in its 'no regrets' approach to upwater recovery (DR5.2), despite outlining the need for a 'coherent water recovery strategy' that demonstrates how socio-economic impacts will be mitigated. This is a remarkable omission considering that the PC has consistently been a strong proponent for buyback as an equitable and efficient response to the structural change of water recovery for the environment, most recently in its 2017 assessment of progress on National Water Reform.[6] Including buyback as a tool would take a lot of pressure off the 2024 deadline for water recovery, in addition to relieving budget pressures. We suggest the PC makes a recommendation to lift the 1500GL cap on buyback to enable the achievement of water recovery targets and SDLs in the Basin Plan in a timely manner.

We are concerned the recommendations in Chapter 5 could pave the way for abandoning the recovery of the 450 GL.

Chapter 6 Water Resource Planning

We broadly support the recommendations regarding states' Water Resource Planning and the need for extensions to Water Resource planning to allow for sufficient consultation, but with regard to Rec 6.1 we are concerned that this should not open up opportunities for delay by recalcitrant states.

Ch 7 Indigenous values and uses

We support the work of the Murray Lower Darling Rivers Indigenous Nations (MLDRIN) and the Northern Basin Aboriginal Nations (NBAN) in advising the MDBA and the active involvement of these organisations in water management.

We note there are no recommendations supporting the findings in Ch 7.

Chapter 8 - Water Quality

The objective for salt export of two million tonnes per year from the Basin into the Southern Ocean, site-specific salinity targets for flow management in the River Murray and the Lower Darling, and end-of-valley salinity targets were reached after considerable community consultation and scientific input in the development of the Plan.

The RLCAG strongly opposes re-specification or abolishment of the salt export objective and site-specific salinity targets because these targets are critical to achieving water

[6] Productivity Commission (2017) Draft Report on National Water Reform p423

quality that is suitable for a range of purposes and is a real measure of the overall working of the Basin Plan. This is not supported by the people who know and work the Lower Murray and Lakes Alexandrina and Albert.

In our initial submission to the Productivity Commission's Five Year evaluation of the Plan we hope to draw attention to the importance of the salt export objective and salinity targets:

> Part 2 of The Basin Plan specifies the overall environmental objectives of the Basin Plan, at 8.04
> (a) to protect and restore water-dependent ecosystems of the Murray-Darling Basin; and
> (b) to protect and restore the ecosystem functions of water-dependent ecosystems; and
> (c) to ensure that water-dependent ecosystems are resilient to climate change and other risks and threats.
> Part 2 includes specific markers of improvement in relation to Lakes Alexandrina and Albert, the Murray Mouth and the Coorong, a wetland of international importance. This wetland is a complex estuary, with the main water bodies being of marine, brackish and freshwater salinities, surrounded by hypersaline groundwater-fed salinas. The health of Lakes Alexandrina and Albert, the Murray Mouth and the Coorong is a clear indicator of the health of the system as a whole, acting as 'the canary in the mine'. It is apparent that while there have been improvements registered since 2006 - 2012, nowhere is there evidence of full recovery and certainly not to the point of resilience. The Ramsar wetlands of the Coorong, Lakes Albert and Alexandrina remain in a fragile state.
>
> "It is quite likely that the Southern Lagoon has gone over both the biotic and abiotic thresholds, with irreversible changes to the entire Southern Lagoons sediment chemistry. A more extensive area (including areas of the Northern Lagoon and Lakes) appear to have crossed the biotic threshold during the Millenium drought and the period of low flows leading up to it, requiring significant biotic (animal and plant) manipulation to restore primary process to full functionality." [7]
>
> The Basin Plan S 8.06 provides specifically that the Murray Mouth remains open at frequencies, and for durations, sufficient to ensure that the tidal exchanges maintain the Coorong's water quality (in particular salinity levels) within the tolerance of the Coorong ecosystem's resilience.

[7] Faith Coleman, Founding Partner, EcoProTem per. Comm. 24 September 2018

Basin Plan modelling indicated that the recovery of 3200 Gl for the environment would ensure that the Mouth stayed open nine years out of ten, without the need for dredging. In fact, dredging at the Mouth of the Murray has not stopped, except for maintenance of the dredges. Given other successful outcomes of the delivery of environmental water, and the importance of flushing salt through the Mouth, we believe that this target should not be abandoned but that there should be a reexamination of the modelling to establish how to achieve this target.

During the development of the Basin Plan in November 2011 the Wentworth Group of Scientists found that the best publicly available science presented in the 2010 Guide to the draft Plan said that 3,856 - 6,983 GL of water was needed to be recovered from consumptive use to achieve hydrologic and environmental goals. This was later revised to a minimum of 4,000 GL just to flush out the 2 million tonnes of salt accumulated in the system annually. The final iteration of the Plan compromised on 3200 GL. Currently …… Gl has been restored and there is no confidence about the return of the water remaining. The River needs to flush the equivalent of five 20 tonne semi-trailers of salt and toxic nutrients out the mouth every day for the health of the whole Basin.

We are aware of salt interception schemes at Renmark which have apparently been successful but require ongoing monitoring and funding, and ultimately all the salt goes back into the river system, a questionable outcome.

We question whether the Water Quality Management Plan for the New South Wales Murray and Lower Darling Water Resource Plan will resolve the concerns about management of water quality (Rec 8.2)

Chapter 9 - Critical human water needs

We question whether Basin Plan provisions for supplying critical human water needs in the River Murray system in periods of low water availability are robust (Draft finding 9.1)

We question whether development of the extreme event provisions in the New South Wales Murray and Lower Darling Water Resource Plan is the process to resolve the concern of the management of critical human water needs during periods of low flow in the Lower Darling.

Chapter 10 - Water Trading Rules

Chapter 11 Environmental Water Planning and Measurement

It is a concern that PPMs have not been implemented, and that only seven out of 20 long-term watering plans (LTWPs) have been developed and published, with the

remaining 13 due to be published by the ACT, New South Wales and Queensland Governments by 30 June 2019 or earlier
We support Rec 11.2 regarding guidance to States and maintaining an on-line register of LTWPs including their status.

Chapter 12 Compliance
RLCAG welcomes the progress in ensuring compliance that has been achieved by Basin States and the MDBA. We support Draft Rec 12.2.

However members of the group have a number of concerns. These are:
No consistency in metering requirements across all States.
Independent Third Party compliance by Authorised Officers is essential. Users cannot audit their own meters.
All meters should be checked, calibrated (by NATA registered laboratories) and resealed every six months.
All pumping stations should be registered and located on GPS
There needs to be ongoing, random checking for unauthorised pumps along all river systems.
Another concern is for the water users of the Darling River, from Bourke to Wentworth, who are dependent on water from the Darling.
Will they be guaranteed water from the Darling River, after the Wentworth to Broken Hill pipeline is in operation? With the high water use upstream from Bourke, will it require another pipeline from Bourke, Wilcannia to Menindee to ensure a water supply to all along this section of river.

We feel that Draft Rec 12.3 does not go far enough and should state the options for enforcement by referral to another authority that are available to the MDBA.

> Enforcement of illegal water take is the responsibility of Basin States.
> The Murray-Darling Basin Authority (MDBA) should publicly report instances where Basin States are not effectively responding to concerns of illegal water take.
> In instances where public reporting is ineffective, the MDBA should use system-wide enforcement levers such as Sustainable Diversion Limit accounting compliance mechanisms to enforce limits on water take.

Chapter 13 - Reporting monitoring and evaluation
RLCAG supports the Draft recommendations to strengthen intergovernmental agreements (13.1) development of a revised Basin Plan evaluation framework (13.2) and a Basin Plan monitoring and evaluation strategy (13.3) Te Murray Darling Basin Authority should lead the states in the development of the strategy to ensure a timely approach.

Chapter 14 - Institutions and governance

The Report finds that Basin States have shown a lack of commitment to the Basin Plan as a whole. We are concerned therefore that Draft recommendation 14.1 risks handling too much power to Basin States when there is evidence that some individuals in positions of power in Basin States have actively undermined the Plan.

We understand the conflict of interest within the Murray Darling Basin Authority (Draft rec 14.2) and wholly support a statutory authority as the regulatory unit, but members are concerned that removing regulatory powers from the MDBA will further weaken its powers and increase its vulnerability to state politicking. It is also important that the office of Minister for Agriculture and Minister for Water should be separate in all states and at federal level. Combining these portfolios creates a singular conflict as has been demonstrated.