

27th November 2015



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Mr Tony Slatyer
Chair, Sustainable Diversion Limit Adjustment Assessment Committee
GPO Box 1801
Canberra ACT 2601

CC: Mr Neil Andrew: Chair MDBA, Mr David Parker Chair BOC,

Dear Mr Slatyer,

Re. cultural implications of supply measures and SDL Adjustment

The Murray Lower Darling Rivers Indigenous Nations (MLDRIN) appreciates the information provided to date by MDBA staff and others on the development and implementation of supply measures and the operation of the Sustainable Diversion Limit (SDL) Adjustment Mechanism.

We wish to communicate the serious concerns of our membership regarding the possible impacts of supply measures and trade-offs arising from an anticipated increase in the SDL on our cultural values and water-dependent cultural assets.

These concerns have been previously communicated in the following forums:

- Peak bodies briefing on the supply measures stocktake report 14 August 2015
- Environmental NGOs briefing on Supply measures and SDL Adjustment Mechanism 17th September 2015
- MLDRIN Board Meeting briefing 18th September 2015
- MLDRIN Full Gathering 5th November 2015

We appreciate the acknowledgement of our concerns in these forums and now seek clarification on the issues raised and information about possible management responses. This letter has also been forwarded to the Chair of the Murray Darling Basin Authority and the Basin Officials Committee (BOC) Chairperson.

We reiterate our concern about the potential for detrimental ecological and cultural outcomes arising from further infrastructure development in environmentally and culturally significant parts of the Basin. Recent research by Bond *et al* (2014) highlights that engineering approaches may risk detrimental ecological outcomes, including reductions in biotic connectivity, river–floodplain productivity, and water

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quality, and thus may fail to support the range of ecological processes required to sustain healthy river–floodplain systems.¹

We strongly urge all parties to support ongoing research and stakeholder dialogue to examine the ecological, cultural and socio-economic risks, trade-offs, and opportunities in both the construction and operation of engineered-flood-associated infrastructure, to ensure that the range of potential trade-offs is fully understood and explored before further major investment occurs.

A key gap in the current approach to assessing the costs and benefits of supply measures and SDL adjustment is the potential impact on Aboriginal values, uses and knowledge.

Our membership has expressed concern regarding the impacts of reduced connectivity, physical disturbance and large-scale construction works on Country. These concerns relate to both the physical aspects of cultural heritage, as well as the spiritual, intellectual and metaphysical values associated with features of Country.

Proponents should seek the free, prior and informed consent of Traditional Owners in developing supply projects. We refer to the *Akwe:Kon Guidelines*, developed pursuant to task 9 of the program of work on Article 8(j) of the Convention on Biological Diversity. These guidelines have been adopted as a standard for the conduct of cultural, environmental and social impact assessments globally and within the Murray Darling Basin.² MLDRIN requests that State government proponents align their engagement and assessment processes with these Guidelines. A summary of key points from the *Akwe:Kon Guidelines* is included below.

In assessing supply measures against the Phase 2 Assessment Guidelines, we request that the MDBA, Sustainable Diversion Limit Adjustment Assessment Committee (SDLAAC) and BOC have regard to the standard established by the *Akwe:Kon Guidelines*.

Environmental Equivalence (EE) methodology

An anticipated increase in the SDL will entail ‘trade-offs’, with localised negative impacts (against the Basin Plan ‘benchmark’) in parts of the Southern Basin. Negative impacts arising from reduced water recovery will impact on Aboriginal people’s water-related values and uses.

¹ Bond, N. *et al.* ‘Ecological risks and opportunities from engineered artificial flooding as a means of achieving environmental flow objectives,’ *Frontiers in Ecology and the Environment*, 2014; 12(7): 386–394.

² *Report of the Independent Review of the Water Act 2007*, Commonwealth of Australia 2014.

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While the EE methodology aggregates outcomes for ecological classes across the Basin regions, to determine 'equivalent' outcomes, we argue that this approach is not appropriate to apply to Aboriginal cultural values and outcomes. Positive and negative outcomes for specific, unique and localised Aboriginal groups cannot be averaged out across a region.

Therefore, while an SDL adjustment will result in trade offs, with positive and negative impacts occurring in different locations, these cannot be averaged out to achieve neutral or equivalent outcomes for Traditional Owners, in the manner proposed for environmental outcomes.

We are concerned that some Traditional Owners will see diminution in their water dependent cultural values and assets, while some may experience improvements. This would be an inequitable outcome.

Modelling conducted by MDBA using the Living Murray works and Hume Airspace change with a 200 GL increase in SDL produced negative scores for all ecological classes in specific reaches, notably in the Murrumbidgee and Goulburn, and positive scores in the Murray reaches. As the CSIRO evaluation of the EE method highlights 'Score differences are mostly small and negative in other reaches [apart from the Murray] reflecting the impact of the SDL adjustment volume reduction, fewer SFIs are met in these reaches.'³

While we understand this modelling does not reflect the final outcome of works and SDL adjustment, we are concerned that it highlights the potential for disparate outcomes across the system, with corresponding localised impacts on Indigenous objectives, outcomes, values and uses.

The decision-making tool developed to inform any adjustment of the SDL does not take these matters into consideration. We note acknowledgements from MDBA staff that the current EE methodology is not capable of providing an assessment of the overall impact of the SDL adjustment and trade-offs on cultural values and outcomes.

We consider it a significant gap that the potential impacts on Aboriginal cultural values are not integrated into the assessment tools and decision-making for supply measures and the SDL Adjustment.

The principle of free, prior and informed consent establishes a requirement for full and accurate disclosure of information regarding possible negative impacts on Aboriginal culture and country. To this end, we seek clarification and additional information to inform a position on these matters.

³ Overton IC, Pollino CA, Grigg NJ, Roberts J, Reid JRW, Bond NR, Barma D, Freebairn A, Stratford D and Evans K. 2015. *The Ecological Elements Method for adjusting the Murray-Darling Basin Plan Sustainable Diversion Limit*, CSIRO, Canberra. p. 20.

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- How will potentially detrimental cultural outcomes, arising at a local scale as a result of the SDL adjustment, be addressed or ameliorated?
- What pathways exist for Traditional Owners to ensure that their concerns about potential negative impacts are addressed or ameliorated?
- How can Traditional Owners come to a clear understanding and make informed decisions about the likely local impacts of SDL adjustment? What sources of information are available to inform this consideration and decision-making?

In accordance with the principle of free, prior and informed consent, we request that MDBA make available to MLDRIN detailed mapping of the Southern Basin, utilising the most comprehensive available modelling of supply measures and SDL adjustment, and indicating likely positive and negative scores for all ecological classes in each reach. Traditional Owners across the Basin have a right to know how decisions regarding adjustment of the SDL will affect them and their country.

We would also appreciate clarification regarding an assessment process informally outlined by MDBA staff at recent meetings and forums. MDBA staff have explained that there is the potential to check and report on the impact of an SDL adjustment on culturally important flows, if these can be defined. MLDRIN understands this to mean that modelling could be undertaken to assess the impact of an adjusted SDL on the achievement of flow objectives, as defined by Aboriginal people, at specific locations.

We request that MDBA provide a detailed outline of how such assessment could operate. We would be happy to work alongside MDBA and other agencies to ensure that an assessment is undertaken.

It is essential that all proponents and agencies involved in the development of supply measure and the SDL adjustment ensure the free, prior and informed consent of Traditional Owners in the Southern Basin. We look forward to working with all stakeholders to progress this objective.

Yours sincerely,

Darren Perry

Chair, Murray Lower Darling Rivers Indigenous Nations (MLDRIN)
On behalf of the Board of Directors of MLDRIN

Akwe:Kon Guidelines. 2004, Secretariat of the Convention on Biological Diversity. III: Procedural Considerations. pp.8-9

The following steps may also be considered in carrying out an impact assessment for a development proposed to take place on, or which is likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities:

- . (a) Notification and public consultation of the proposed development by the proponent; ^[L]_[SEP]
- . (b) Identification of indigenous and local communities and relevant stakeholders likely to be affected by the proposed development; ^[L]_[SEP]
- . (c) Establishment of effective mechanisms for indigenous and local community participation, including for the participation of women, the youth, the elderly and other vulnerable groups, in the impact assessment processes;
- . (d) Establishment of an agreed process for recording the views and concerns of the members of the indigenous or local community whose interests are likely to be impacted by a proposed development; ^[L]_[SEP]
- . (e) Establishment of a process whereby local and indigenous communities may have the option to accept or oppose a proposed development that may impact on their community; ^[L]_[SEP]
- . (f) Identification and provision of sufficient human, financial, technical and legal resources for effective indigenous and local community participation in all phases of impact assessment procedures; ^[L]_[SEP]
- . (g) Establishment of an environmental management or monitoring plan (EMP), including contingency plans regarding possible adverse cultural, environmental and social impacts resulting from a proposed development; ^[L]_[SEP]
- . (h) Identification of actors responsible for liability, redress, insurance and compensation; ^[L]_[SEP]
- . (i) Conclusion, as appropriate, of agreements, or action plans, on mutually agreed terms, between the proponent of the proposed development and the affected indigenous and local communities, for the implementation of measures to prevent or mitigate any negative impacts of the proposed development; ^[L]_[SEP]
- . (j) Establishment of a review and appeals process. ^[L]_[SEP]