

Submission to the Murray-Darling Basin Authority

Guide to the Draft of the Proposed Murray-Darling Basin Plan

101118

Andrew Gregson
Chief Executive Officer

Introduction

NSW Irrigators' Council (NSWIC) represents more than 12,000 irrigation farmers across NSW. These irrigators access regulated, unregulated and groundwater systems. Our members include valley water user associations, food and fibre groups, irrigation corporations and commodity groups from the rice, cotton, dairy and horticultural industries.

This document represents the views of the members of NSWIC. However each member reserves the right to independent policy on issues that directly relate to their areas of operation, or expertise, or any other issues that they may deem relevant.

General Comments

New South Wales Irrigators Council (NSWIC), as the peak body representing 12,000 irrigators in this state, has been extremely disappointed with the public and stakeholder engagement process entered into by the Murray-Darling Basin Authority (MDBA). We note the following matters;

1. Rejection by the MDBA of the proposal by stakeholders to assist in the design of a stakeholder engagement strategy;
2. Failure to release the Draft Plan in the timeline first publicised;
3. Delay in the release of the “Guide” for political reasons;
4. Refusal to release, subject to a Freedom of Information request, legal advice on which the decision to defer release of the Guide was made;
5. Release of the Guide at a time clearly designed to deflect negative media coverage;
6. Failure to heed stakeholder criticism of release timing, evidenced by the release of Volume 2 in the same timeslot; and
7. Disastrously inadequate preparation for “community consultation” sessions, as evidenced by the number of people unable to be accommodated inside venues.

Background

We understand that submissions in respect of the Guide are to be accepted by the MDBA, but note that there is no formal process identified for this.

It remains the position of NSWIC that the National Water Initiative (NWI), as agreed by all Basin States in 2004, remains the driver for national level water reform. It is the NWI that was intended by all States as the platform for reform that provided the guiding principles.

The NWI clearly laid out that a triple bottom line outcome was to be sought as part of its Objectives, *viz*;

... optimises social, economic and environmental outcomes...¹

It contemplated that this would be achieved by weighing these competing objectives equally, *viz*;

Decisions about water management involve balancing sets of economic, environmental and other interests.²

The NWI went on to more explicitly note that balance must necessarily involve adjusting the demands of the competing interests, *viz*;

¹ Ibid, paragraph 23

² National Water Initiative, paragraph 2.

... settling the trade-offs between competing outcomes...³

In the submission of NSWIC, the chasm of difference between the Guide to the Basin Plan and the intentions of the NWI are best identified by this simple requirement. The NWI envisaged a trade-off approach to balance – neither the Guide nor the Commonwealth *Water Act* contemplate such a possibility.

The terms “balancing” and “trade-off” as used in the NWI to indicate the development of a *subjective* list of assets. The *Water Act*, however, artificially creates an *objective* list of environmental assets, by reference to international treaties and conventions in order to give it a head of power under the Constitution, which it then necessarily determines is unassailable.

The social and economic considerations able to be undertaken by the MDBA have been the subject of what appears to be conflicting legal analysis, although provided on both occasions by the Australian Government Solicitor (AGS). NSWIC understands that the MDBA sought advice in the first instance upon which they acted to provide a Guide which focuses solely on environmental outcomes, with social and economic consequences limited in role to description only. We have been extremely critical of the outcomes of that descriptive work in any event and continue to advocate as such in this document.

Subsequent to the release of the Guide and the public statements by MDBA Chairman Mike Taylor and Chief Executive Rob Freeman⁴ that the *Act* required environmental precedence, Commonwealth Minister for Water Tony Burke obtained (and released) further legal advice from the AGS in respect of the consideration of social and economic matters. Whilst Minister Burke interpreted that advice such that the Authority *is* able to take social and economic matters into consideration in setting Sustainable Diversion Limits (SDLs), NSWIC has publicly questioned that interpretation of the advice⁵. In our submission, the advice says that social and economic consequences can be taken into account where decisions are available in servicing an environmental asset.

NSWIC submits that this process most certainly does not provide balance as it clearly does not treat environmental, social and economic outcomes as equivalents. It clearly treats the latter two as secondary considerations which can be taken into account only after the environmental outcome is given primacy.

Moreover, this approach does not even consider the NWI concept of “trade-offs”, demonstrably undermining the approach agreed in the NWI.

NSWIC has publicly questioned both MDBA Chairman Mike Taylor and National Water Commission (NWC) Chairman and CEO Ken Matthews as to the compliance of the Basin Plan with the triple bottom line outcome advocated by the NWI. Both responded that a Basin Plan focused on only one outcome was not compliant⁶.

³ Ibid, paragraph 36.

⁴ Comments at both Consultation sessions and Senate Estimates.

⁵ See <http://nswic.org.au/pdf/Briefings/101027%20-%20Water%20Act%20Legal%20Advice.pdf>

⁶ Ken Matthews at NSWIC meeting in Sydney, July 2010, Mike Taylor at Australian Cotton Conference, Gold Coast, August 2010.

In the submission of NSWIC, the Guide to the Basin Plan is not compliant with the National Water Initiative. It is our submission that the *Act*, for reasons of political expediency, has abandoned the principle of balance in order to achieve Constitutional relevance.

The capacity to “consider” social and economic impacts is insufficient to approach the balance that the NWI demanded.

It is therefore the submission of NSWIC that the MDBA must advise the Government that, in fulfilling its obligations pursuant to the *Act*, it will be in breach of the NWI.

Submissions on Guide

In consideration of the triple bottom line approach that NSWIC maintains must be the aim of water reform, our submissions are categorised as to those matters and how they are addressed by the Guide.

Environmental Considerations

Environmental Watering Plan

NSWIC submits that the lack of an environmental watering plan is a key weakness of the Guide. The fact that the Commonwealth has become the single largest owner of water in the Murray-Darling Basin without any published plan on how, when or where to use that water is anathema to sensible, practical and rational management of the resource.

A key component of the Basin Plan is the environmental watering plan. The fact that the Guide did not provide – nor even mention the watering plan – has contributed to a dramatic slump in already wavering stakeholder confidence. They ask a simple question – how can you know how much you need in the absence of any plan to apply it?

NSWIC submits that an environmental watering plan with clearly defined objectives and methodology must be an integral part of whatever the Authority publish next, be that an amendment to the Guide or a full Draft Plan.

Identification of Assets

The term “key environmental assets” is not defined in the NWI.

In the *Water Act*, the term is defined by reference to international treaty and convention obligations together with “ecosystem function”. Whilst the later correctly relates to river systems themselves, the former relates primarily to a series of off-river assets.

The Guide does not provide a list of the “key environmental assets”, but provides instead a series of “indicators assets” which, according to the MDBA, will ensure the health of the full list of assets through their own health. Whilst NSWIC does not dispute (nor necessarily endorse) this methodology, we submit that it is entirely inappropriate to identify a volume of water required for a list of assets without providing that full list of assets.

Moreover, NSWIC fundamentally disagrees with the manner in which that full list was identified. The NWI clearly envisaged a “trade-off” process which has demonstrably not occurred. We further note that the NWI did not note the Ramsar convention (nor any other convention or treaty relied upon by the *Act*) in order to determine a list of assets.

It is the submission of NSWIC that the *Act* has been written such that the Guide identifies environmental assets as an *objective* process whereas the NWI clearly suggested that it was to be a *subjective* process.

NSWIC submits that the MDBA must identify the full list of assets, identify how that list was derived and clearly state their belief as to whether that list can be changed by reference to

social and economic impact studies. In the event that the Authority determines that the list cannot be changed, they must indicate why they believe as such and provide reference to both the *Water Act* and the NWI in making that decision.

End of System Flow as Indicator

In respect of ecosystem function, NSWIC understands that end of system flow has been calibrated as the determinant of health. The Guide provides no justification for use of this indicator, nor any peer review thereof. We are concerned, particularly in respect of the lower Lakes, that end of system flow when used in conjunction with an assets list may result in double counting of requirements.

We submit that justification of the end of system flow regime for determining environmental health must be provided.

Capacity to Account for Environmental Water

Significant confusion has emerged since the release of the Guide as to which environmental acquisitions already undertaken are to be used as offsets and which are not. This appears to particularly be the case with State-held environmental watering entitlements.

NSWIC submits that a simple table of all identifiable environmental holdings – State, Commonwealth or Private – as part of the Guide together with an understanding of whether they are accounted for as offsets or not must be provided.

Alternative Approaches

NSWIC continues to be critical of the “just add water” approach to environmental asset management. Whilst Government has made much of “works and measures” as offsets against Sustainable Diversion Limits, the MDBA have been content to advise that this is the position of Government and is outside their capacity.

NSWIC submits that the role of the MDBA must be significantly beyond the mere letter of the *Act*. During the course of two years of deliberations, the MDBA must surely be aware of instances where “works and measures” could be applied to minimise the volumes of water required to deliver environmental outcomes. NSWIC submits that it is incumbent on the MDBA to provide a comprehensive report to Government on this matter.

Further, NSWIC submits that a full suite of environmental management alternatives both can and must be presented by the MDBA. In particular, complementary land management alternatives must be explored along with the possibility of purchasing environmental assets where they are privately owned.

NSWIC submits that a failure to examine alternatives to the simple provision of vast quantities of water clearly fails the objects of the *Act*, and the professed policy of Government, to limit the social and economic consequences of the removal of productive water whilst maximising environmental circumstances.

Averaging Period

NSWIC is dismayed the now averaging period for Sustainable Diversion Limits has been professed in the Guide. This indicator is vital to develop an understanding of impacts on environmental, social and economic assets. The absence of this vital information is a sad indictment on the value of the Guide subsequent to two years work.

Economic Considerations

The economic impact data provided in the Guide to the Basin Plan is, in the submission of NSWIC, an indictment on the capacity of the MDBA to deliver a meaningful, practical and implementable Basin Plan. The callous and, frankly, negligent manipulation and presentation of the data calls into question the very independence of the MDBA.

NSWIC submits that the economic data and its analysis to date must be immediately withdrawn and substituted with sensible, unbiased and practical data. Waiting for further reports and analysis will not satisfy stakeholders. A simple and immediate acknowledgement from the MDBA that the data as presented is grossly misleading is necessary together with a withdrawal of the analysis in the current Guide must occur.

The issues of lost employment and productivity were first raised at the lock up prior to the public release of the Guide, where stakeholders and the media had been separated. In the submission of NSWIC, it was that separation – a blatant attempt to media manage the reporting of the Guide – that led to the reporting of figures that are entirely misleading. The Guide to the Basin Plan clearly states that lost employment from the reductions proposed will be limited to 800 jobs and productivity to \$800m. This information was presented to media in the absence of stakeholders. The information was then used to create copy. By the time stakeholders were able to interact with the media, the figure had essentially become fact by virtue of the passage of time.

Since publishing the figures, MDBA Chairman Mike Taylor and CEO Rob Freeman have repeatedly distanced themselves from them. In the submission of NSWIC, this is well beyond inappropriate. If the Authority is not prepared to stand behind figures and testify to their veracity, accuracy and accountability, then they should not propagate those figures. In short, if you don't believe it – then don't say it!

NSWIC has examined the data upon which the 800 job loss/\$800m productivity loss extrapolations were based and notes the following;

- The results are based on a 20 year simulation;
- The 20 year simulation provides analysis of end point impact, which clearly shows that the MDBA *did not* take into account short or medium term impacts or the proposals contained within the guide;
- The simulation assumes full employment economy wide across the full two decades of the data analysis, a situation which has *never occurred* across any economy in recorded history;
- The simulation assumes a frictionless scenario for labour or, in simple terms, assumes that individuals cast into unemployment in the Basin are prepared to immediately move elsewhere despite having significant equity (their house) in the Basin;
- The use of Gross Value of Irrigated Agricultural Production (GVIAP), an experimental dataset, is used to suggest bottom line impacts. This is an entirely

misleading and inaccurate use of the dataset, as it *does not calculate profitability*. Further analysis on this point is provided below;

- The year-on-year analysis of GVIAP against water allocations, aside from the incorrect interpretation of GVIAP as a measure of profitability or economic sustainability, is statistically invalid. Both GVIAP and profitability are driven by a wide range of variables, of which water availability is but one. The economic analysis in the Guide fails to consider other inputs (fertiliser, labour, cost of capital and so on) and other market factors (exchange rates, commodity prices and so on); and
- The Guide suggests that irrigated agriculture adjusts due to water shortages such that productivity decline is small. Those very same figures fail to take into account the basic economic certainty of inflation, rendering them utterly useless.

GVIAP is based on taxation receipts. It provides a figure that is simply output multiplied by output price. It does not in any way address bottom line performance and as a result is not a measure of profitability. To suggest otherwise – either directly or via extrapolation of allocation across multiple years – is either deliberate misuse of the data or gross negligence in economic analysis.

By way of example, GVIAP for 2006/07 would suggest a stellar performance. The reality was far different. Those irrigation entities that continued to produce did so in the face of massive input costs. They proceeded thus in order to keep permanent plantings alive, paying record prices for water as they did so. This was only achieved through the mining of capital reserves resulting in significant erosion of equity. To assume profitability on the basis of equity mining is an accounting error of enormous proportions, and example of which was the well documented collapse of Enron. The fact that the MDBA has made such a glaring and egregious assumption must send a shiver down the spine of all Australians.

The sheer enormity of basic error in calculation of economic impacts suggest something far more sinister than incompetence. In the submission of NSWIC, the calculation and presentation of the figures was *deliberately* designed to mislead and has achieved exactly that aim. NSWIC submits that the figures must be withdrawn immediately, a public apology issued to the tens of thousands of people across the Basin who rely on irrigation for employment for economic existence and urgent work undertaken to remedy this matter.

Social Considerations

The lack of analysis of social impacts within the Guide clearly shows that a triple bottom line approach has been ignored.

Moreover, social impact analysis is essentially limited to consideration of flow on effects from reduced economic activity. This analysis has again relied on an incorrectly interpreted GVIAP dataset, rendering it essentially useless even as a small part of the social impact calculation.

Communities across the depth and breadth of the Basin rely on irrigated agriculture to achieve critical mass. With the lack of that critical mass, those communities face oblivion. The fact that but three paragraphs of the Guide, at page 98, are devoted to long term social consequences is anathema to a true triple bottom line approach.

NSWIC acknowledges that the MDBA have commissioned further social and economic impact studies, but believe that such a reaction is merely admission of the fact that initial work was completely insubstantial to a level of neglect.