



Nature Conservation Council

The voice for nature in NSW

Committee Secretary
Senate Standing Committees on Rural and Regional Affairs and Transport
PO Box 6100
Parliament House
Canberra ACT 2600
Via email - rrat.sen@aph.gov.au

September 28, 2017

RE: Submission into the integrity of the water market in the Murray-Darling Basin Senate Inquiry

Dear Committee Secretary,

Thank you for the opportunity to provide a submission in to the integrity of the water market in the Murray-Darling Basin Senate Inquiry.

The Nature Conservation Council of NSW is the peak environmental organisation in the state, representing over 150 community conservation organisations with a combined membership of 60,000 people. Many of our member groups and supporters have extensive experience in water management and the Murray Darling Basin Plan and we take great interest in this issue.

Introduction

Preventing the over-extraction of water is critical to protecting the health of the rivers, floodplains and wetlands in the Murray-Darling Basin. This includes 16 wetlands listed as wetlands of international importance under the *Ramsar Convention*. Water for the environment is also significant for preventing the extinction of dozens of threatened animal species including fish, amphibians and birds. In fact, it is through its role in water management that the Commonwealth probably has the greatest opportunity to prevent the extinction of threatened species, which the Commonwealth also has an international responsibility to protect the *Convention on Biodiversity*.

The Murray-Darling Basin Plan mandates that 2,750GL of water annually should be returned to the environment. This figure represents a significant reduction compared to the original 3,200GL originally modelled by the Murray-Darling Basin Authority as being necessary to enable the recovery of water-dependent ecosystems throughout the Basin. So, already, the environment is slated to receive less water than the experts say it needs to return to health. The environment cannot afford to have its share further eroded by widespread water theft.

The ABC Four Corners program “Pumped: who is benefiting from the billions spent on the Murray-Darling” contained allegations about major irrigators in the Barwon-Darling Basin extracting water in excess of their entitlements, and pumping water at times when pumping was prohibited under NSW law. This included a single farm allegedly extracting a billion litres, or five times the amount of water that it was licenced to extract. Even more alarmingly, a former enforcement officer of the

New South Wales Department of Industry-Water said that of all the meters he inspected in the North Western NSW, he didn't see a single one functioning as intended. The program and subsequent media has also highlighted a lack of willingness on the part of the Department of Industry-Water to take enforcement action against large irrigators in the Barwon-Darling in cases where there was evidence of very significant over extraction, non-existent metering or breach of pumping rules.

The Four Corners program demonstrates that a lack of compliance has the potential to completely undermine the stated intention of the Murray Darling Basin Plan in returning water to environment. Therefore, there is an urgent need to strengthen compliance across all Basin States. While the program only deals with compliance issues in New South Wales, problems with the enforcement of water allocations could be occurring in other states as well. Enforcement provisions in all states are similar, as a result of adherence to the National Framework for Compliance and Enforcement Systems for Water Resource Management. This framework needs urgent updating in light of what we now know about how the rules are being flouted in least one catchment.

The Interim Report of the Independent investigation into NSW water management and compliance, by Mr Ken Matthews AO found that most of the allegations aired in the Four Corners program were objectively supported, and made a number of recommendations to improve the enforcement of water law in New South Wales. The Nature Conservation Council supports those recommendations, and urges the Commonwealth government to consider recommending the adoption of similar measures in all basin states, through the Council of Australian Governments (COAG) process.

While the Federal government does not have direct responsibility for enforcing state water regimes, it has a critical role through COAG in promoting the harmonisation of enforcement provisions and practices to ensure water allocated to the environment under the Murray-Darling Basin Plan is not stolen by rogue operators. It is also a major funder of the water reform process and, as the owner of environmental water through the Commonwealth Environmental Water Holder, it has an immediate interest in protecting its investment from misappropriation through illegal or inappropriate pumping.

Recommendations

To improve the integrity of the water market in the Murray-Darling Basin, and in particular to protect environmental flows, the Commonwealth should:

1. Immediately commence a judicial inquiry into water theft in the Murray Darling Basin, with terms of reference to include:
 - a. Examine allegations of water theft by individual licence-holders in all basin states;
 - b. Examine the extent of enforcement and monitoring of water allocations in the different basin states, and whether a lack of an enforcement has created an opportunity for water theft in those states;
 - c. Examine the extent to which the delivery of environmental water and the environmental outcomes targeted from the release of that water are likely to have been compromised by a lack of enforcement and monitoring in any or all of the basin states;
 - d. Examine whether the Commonwealth's investment in purchased environmental water may have been rendered ineffective by water theft;

- e. Make recommendations to prevent water theft in the future, particularly after the Murray-Darling Basin Plan comes into effect in 2019.
2. As a condition of providing Commonwealth funding for water-related projects, require that all states immediately implement a “no meter, no pump” rule and require the installation of fully compliant meters on all licenced works.
3. Consider how pumping rules across all basin states need to be amended to prevent the legal taking of environmental water for extractive purposes.
4. Consider how enforcement measures in all basin states could be enhanced to provide for water to be returned to the environment as part of the penalty regime for offences involving over-extraction.
5. Unless and until all basin states are able to demonstrate that they can achieve a high level of compliance with water licence allocations, consider whether the Sustainable Diversion Limit under the Murray Darling Basin Plan needs to be reduced to include a buffer for water taken illegally.

Yours sincerely,

Kate Smolski
CEO
Nature Conservation Council of NSW