



National Farmers' Federation

**Submission to the Senate Legal and
Constitutional Affairs Committee Inquiry into
Provisions of the Water Act 2007**

18 March 2011



Member Organisations



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1. The National Farmers' Federation

The National Farmers' Federation (NFF) is the peak national body representing farmers and, more broadly, agriculture across Australia. It is one of Australia's foremost and respected lobbying and advocacy organisations.

Since its inception in 1979, the NFF has earned a formidable reputation as a leader in the identification, development and achievement of policy outcomes - championing issues affecting farmers and dedicated to the advancement of agriculture.

The NFF is dedicated to proactively generating greater understanding and better-informed awareness of farming's modern role, contribution and value to the entire community.

One of the keys to the NFF's success has been its commitment to presenting innovative and forward-looking solutions to the issues affecting agriculture, striving to meet current and emerging challenges, and advancing Australia's vital agricultural production base.

The NFF's membership comprises of all Australia's major agricultural commodities. Operating under a federated structure, individual farmers join their respective state farm organisation and/or national commodity council. These organisations collectively form the NFF.

The NFF recently implemented a re-structure of the organisation. An associate member category has enabled a broader cross section of the agricultural sector to become members of the NFF, including the breadth and the length of the supply chain.

Each of the state farm organisations and commodity council's deal with state-based 'grass roots' issues or commodity specific issues, respectively, while the NFF represents the agreed imperatives of all at the national and international level.

2. Introduction

The NFF welcomes the opportunity to make a submission Senate Legal and Constitutional Affairs Committee Inquiry into the Provisions of the Water Act 2007 (the "Inquiry"). It is obvious that the release of the Murray-Darling Basin Authority's (MDBA) Guide to the Basin Plan (the "Guide") in 2010 has garnered significant community concern and angst regarding the direction of the Basin Plan and impacts to rural and regional communities and farmers across the Basin.

However, predating the public release of the Guide, irrigation stakeholders had concerns about the interpretation of the Water Act by the MDBA. The MDBA had clearly indicated during stakeholder consultations that the interpretation and their legal advice was that the environment was given primacy and that once these requirements had been considered, then the task of the MDBA was to optimise the social and economic consequences.

Following the 2010 Federal Election and the appointment of The Hon. Tony Burke as Minister for Sustainability, Environment, Water, Population and Communities (SEWPC), the Minister indicated that there was sufficient scope within the Act to ensure that social, economic and environmental matters were treated equally in the Basin Plan. The view was derived from legal

advice from the Australian Government Solicitor¹ that the Minister made public. Incoming MDBA Chair, the Hon. Craig Knowles also reiterated those comments.

The NFF supports a balanced approach to deliver on social, economic and environmental aspirations of the Basin's communities. This submission provides some insights into how the NFF believes this can be achieved. However, solutions also include clever implementation of the Water for the Future purchase and infrastructure programs, along with dedicated environmental works and measures that will maximise environmental outcomes while minimising the required transfer of water from irrigation to environment, i.e. smarter solutions.

While the Minister and the new MDBA Chair have indicated an ability to deliver a balanced approach, if this cannot be achieved within the Water Act 2007, then NFF supports amendment of the Act.

Even if the Government can deliver a balanced Basin Plan, there remains longer term concerns that subsequent Basin Plans may not be (given the grey areas in the construct of the Water Act). To remove any doubt and to provide certainty and security, it may be appropriate for the Water Act 2007 to be amended.

3. NWI Outcomes

The National Water Initiative (NWI) has been strongly supported by the NFF – and NFF was involved in high-level discussions during the negotiations for the NWI. The key aspects were the provision of certainty – certainty over water property rights, certainty over future changes by Governments that are constrained by the application of risk assignment, certainty over the balanced approach to the treatment of social, economic and environmental considerations in planning.

A key question is whether the Water Act 2007 delivers on the intent of the NWI. The answer to this is not simple and is confounded by the fact that the Water Act 2007 post-dates the NWI and the Commonwealth Government's accredited NWI implementation plan. Regarding the latter, there has been no amendment to allow the Commonwealth's new responsibilities derived from the Water Act 2007 to be assessed under the NWI Biennial Assessments. NFF has recommended that the Commonwealth's NWI Implementation Plan be amended to reflect these responsibilities².

Moreover, if the 2011 Biennial Assessment states that the Guide to the proposed Basin Plan is NWI compliant (i.e. the NWC believes that the Guide is balanced) then the significant support that the National Water Commission (NWC) and the NWI has enjoyed from the irrigation sector may be withdrawn. The loss of such significant support for the premier framework for water reform in Australia will have major ramifications for future reform measures.

4. NFF Outcomes from the Basin Plan

A key consideration for NFF is whether the environmental issues in the Basin have been identified and are the solutions to those problems appropriate. Moreover, the question remains

¹ 2010, AGS, The role of social and economic factors in the basin plan

² See NFF submission to the NWI 2011 Biennial Assessment. Available online: <http://www.nff.org.au/policy/submissions.html>.

whether the environmental focus for the Commonwealth ought to be the focus on which the officers charged with the implementation of the legislation are reliant. In that respect it appears that, in the first instance, every environmental or other³ asset listed on every available Commonwealth or State/Territory list was included. The original list named some 9000 environmental assets, which upon geocoding was reduced to 2442 assets.

NFF is of the view that a more appropriate list is that of the Ramsar Wetlands. Moreover, species listed for protection are already dealt with via Commonwealth or State/Territory recovery plans. It is unrealistic to expect that species will be improved simply by the application of water.

The use of large “indicator assets” by the MDBA was purely to determine the water needs of the Basin. It does not necessarily follow that the water apportioned from irrigated agriculture to the environment will necessarily be required on all of these large sites – the Guide requires that the Basin States accredited Water Resource Plans determine the environmental assets that will be the focus for environmental watering.

The Water Act 2007 proposes that all environmental problems are solved by the pure application of water. This is an incorrect approach. The Sustainable Rivers Audit states that the poor rating in many rivers arises from the high number of alien fish species in upper catchments. The addition of water is not an appropriate solution to a pest control problem.

The above discussion means that the MDBA must identify the environmental issues that the Basin Plan and the Commonwealth must be responsible for managing. The MDBA must then identify the correct solution to the problem, which may or may not include water flow and water quality. Once this work has been undertaken, the MDBA may then be in a position to determine the Sustainable Diversion Limit. To do otherwise, risks taking more water from irrigated agriculture than is necessary.

In determining the Sustainable Diversion Limit, the MDBA has also restricted the likely available solutions and tradeoffs that may be appropriate. The use of environmental works and measures is a good example. Recent public comments by both the MDBA and the Minister indicate a growing support for such approaches to reduce the environment’s water requirements and increase the SDL.

NFF reiterates that every solution must be contemplated. The role of experts such scientists and economists is to assist in determining what the appropriate tradeoffs (and their positive and negative impacts) might be so that Government can make an informed value judgement on the final Basin Plan.

For a fuller discussion on these and other issues relating to the Murray-Darling Basin Plan, please see Attachment 1 for NFF’s submission to the Guide⁴ (without its original attachment – for the full document, please see the NFF website).

5. NFF’s position on Changing the Water Act 2007

³ For example, environmental assets include hydrometric gauging stations which are arguably not environmental assets.

⁴ The attachment does not include the full submission with all its attachment. The full submission is available online at <http://www.nff.org.au/policy/submissions.html>.

NFF accepts that the Water Act 2007 is opaque and does not deliver on a balanced approach to social, economic and environmental considerations in the Basin Plan. However, the Federal Government has indicated that it can deliver on the intent of balancing these three important dimensions. Importantly, such a Basin Plan must be passed through both Houses of the Australian Parliament. This is an important test in balancing the three dimensions, particularly in the light of the significant backlash against the Guide in recent months. This angst must remain in the front of every Member of Parliament and every Senator when assessing the Basin Plan.

The Commonwealth Government has indicated that it intends to deliver the Basin Plan in early 2012. This provides some short term certainty if indeed the Basin Plan is balanced. However, it should be noted that the 2012 timeframe is a timeframe determined by two intergovernmental agreements. In other words, the Council of Australian Government's (COAG) have the power to determine the timeframe.

Moreover, any High Court challenged to the Basin Plan, if successful, will likely result in the MDBA and the Commonwealth re-doing the Basin Plan, i.e. the High Court will not draft the Basin Plan itself.

6. Conclusion

This Inquiry is investigating the Basin Plan provisions of the Water Act 2007 and due to its very nature the Inquiry may or may not provide clarity for stakeholders. This will very much depend on the recommendations and the willingness of the Government to implement the Inquiry recommendations.

However, if the construct of the Water Act 2007 means that the Basin Plan is skewed towards the environment and that the social and economic consequences are not given equal weighting in the decision of the MDBA and value judgements of Government, then the NFF supports amendments to the Water Act 2007 in order to provide this outcome.

NFF Contact

Deborah Kerr

Attachment 1: NFF Submission to the Guide to the Murray-Darling Basin Plan

1. Introduction

The NFF welcomes the opportunity to make a submission to the Murray-Darling Basin Authority's (the "MDBA") Guide to the Proposed Basin Plan (the "Guide").

The NFF has been a strong advocate in support of reform of water management in Australia. It was the NFF who advocated to the Council of Australian Governments (COAG) for recognition of water and biodiversity property rights. While the latter failed, COAG agreed to improve on the 1993 Water Reform Framework and introduced the National Water Initiative (NWI). The Water Act 2007 (Clth) seeks to improve the Basin's water management in a more holistic and sustainable way. If done appropriately it can deliver this. However, the Guide will not deliver in this intent.

While the MDBA is constrained in what they can deliver in the Guide, the Government must show leadership to deliver a robust workable Basin Plan that truly delivers a balanced Basin Plan. This may require early instruction to the MDBA on what the Government expects the final Basin Plan to look like. It will also require a change to the way in which the Basin Plan is being developed to be inclusive of the States. Otherwise, the Commonwealth risks the withdrawal of State support and a Basin Plan that is unworkable.

The NFF believes that the process requires adjustment to the following:

- **An identification of the environmental outcomes being sought for each key environmental asset (KEA) and key ecosystem function (KEF).** This necessarily includes a decision around tradeoffs to reach a final list of KEAs AND KEFs.
- **Identification of the non-flow outcomes for each environmental asset.** These cannot be resolved by flow and the MDBA needs to work with the States to deliver appropriate solutions.
- **Development of an environmental watering plan and environmental water requirements (EWR).** This requires:
 - An environmental works and measures program to ensure that efficient use of water for the environment as well as minimising the amount of water required to be transferred to the environment.
 - Investigation of changes to river operations that will lead to improved environmental outcomes. This may or may not result in water savings.
 - An assessment of the deliverability of environmental water to environmental assets, such as physical constraints and the unaccepted and unintended flooding of private land. This may lead to a decision not to water certain assets at certain times or to use other options to deliver environmental water.
 - An investigation of policy changes that may minimise the amount of water for the environment, e.g. tailored carry over provisions for environmental water.

- The inclusion of all environmental water products to offset the EWR. This includes Commonwealth, State and privately owned held and planned/rules based water.
- **Determination of the Sustainable Diversion Limit**
 - Ensure that Critical Human Needs (CHN) is offset by considering alternative water sources such as desalination and storm water harvesting, efficiency measures and international trends in human consumption.
 - The SDL must be set in a way that considers the other changes that will affect entitlement reliability, e.g. the temporal and spatial changes to irrigation allocations, reduced dam airspace, reserves policies, harmony rules, spillage rules etc.
- **Development of the Basin Plan**
- **Implementation of the Basin Plan via Water Resource Plans**
 - This must be simple and workable
- **Monitoring and Compliance**
- **Review**
 - 10 yearly with any adjustments to the EWR being delivered through investment in more efficient delivery of the environment's share of water, i.e. no further change to irrigation SDLs or policy changes that further reduce the reliability of water.

The MDBA and others might believe that this is being done already via the Guide. However, some aspects are clearly not being considered. The MDBA indicates in the Guide that if Government's chose to do certain things, then the SDL might be changed. NFF is adamant that this must occur now to deliver a balanced, robust and sustainable long-term management regime for the Basin and its communities.

2. Sustainable Diversion Limits

The MDBA has decided on consulting on three Sustainable Diversion Limit (SDL) scenarios for decision – 3000 GL/annum, 3500 GL/annum and 4000 GL/annum. While the MDBA considered that the upper limit of additional water for the environment was a Sustainable Diversion Limit (SDL) of 7600 GL/annum, the MDBA believed that this would deliver unacceptable socio and economic consequences. NFF agrees and particularly for agriculture, this level of SDL would result in a 92% reduction in agricultural water take, specifically irrigated agriculture as shown below in Table 1. Therefore, requests by environmental groups and scientists to include the 7600 GL/annum scenario in the decision making process are misguided at best.

Table 1 SDL scenarios and reduction in agricultural water use

	MDBA CONSIDERING THIS RANGE DUE TO SOCIO-EC IMPACTS			SCIENTISTS & ENVIRO GROUPS
Current Diversion Limit (CDL) - surface water ⁵	10942	10942	10942	10942
CDL - interception ⁶	2735	2735	2735	2735
Total CDL	13677	13677	13677	13677
Proposed SDL ⁷	3000	3500	4000	7600 ⁸
SDL	10677	10177	9677	6077
Less interception ⁹	-2735	-2735	-2735	-2735
Less estimated regulated non-agricultural use ¹⁰	-2188	-2188	-2188	-2188
Less minor unregulated surface water use ¹¹	-272	-272	-272	-272
Residual Basin agricultural use	5482	4982	4482	882
Estimated Ag water use				
80% of surface water CDL	8754			
Plus farm dams BLR CDL ¹²	591			
Plus farm dams irrigation CDL ¹³	1803			
Total Estimated Ag Water Use	11148			
% reduction in agriculture water use	-51%	-55%	-60%	-92%

It should be noted that **Table 1** considers the Current Diversion Limit (CDL) as a given. NFF does not accept this as a statement of fact and seeks further clarification from the MDBA on the changes from the MDB Cap to modelled regulated surface water and modelled groundwater use that result in the CDL and a clear substantiation of the estimated use for unregulated water use and groundwater use that have resulted in these CDLs.

The MDBA has claimed that implementation of the SDL will result in impacts ranging from 27% to 37% at the Basin Scale, and impacts at regional levels ranging from 0% (e.g. Wimmera-Avoca and Paroo) to as high as 40-45% (depending on the scenario and capped at this amount by the MDBA). In making this assessment, the MDBA has clearly based the impact on an across the board reduction for all water use. Nevertheless, the States will not apply this methodology but will need to implement in accordance with their legislative requirements and as a result, there will be quite different impacts on different water users.

The NFF has analysed (with the exception of Queensland) the impact that the proposed SDLs might have at a water product level. Essentially, the NFF analysis allocates the SDL according to the State legislated hierarchy, i.e. riparian/basic landholder rights, town water supply, industry, recreation, high security/reliability water products, and finally general security/low reliability water products. The analysis for Victoria, NSW and South Australia is located at **Error!**

⁵ As per Guide, includes major unregulated water use

⁶ As per Guide

⁷ As per Guide

⁸ As per Guide – upper limit but not a proposed SDL

⁹ Taken off as unlikely to be reduced by the States

¹⁰ The Guide states that agricultural water use is 80%, this figure is 20% of surface water use. Unlikely to be reduced by the States and legislation generally prioritises this above irrigation water use

¹¹ As per Table 4.13, Vol 2, Part I, p. 181 of the Guide. Subtracted, as again, States are unlikely to reduce use due to large numbers of smaller water users

¹² As per Table 4.13, Vol 2, Part I, p. 181 of the Guide.

¹³ Ibid

Reference source not found. on page **Error! Bookmark not defined.** In this analysis, NFF included more current information on water recovered than the MDBA considered in the Guide but due to lack of information could not include State based water recovery that the MDBA included.

The NFF analysis clearly shows that some there will be insufficient water to deliver against some water products such as low reliability products in a number of Victorian catchments. The MDBA indicated that South Australia's high security entitlements would be affected between 26% and 35%, whereas the NFF analysis shows this range is likely to be 34% to 47%. For Victorian high reliability water products, there was significantly more variability with a range of impacts from 12% through to 69%. For NSW, high security entitlements are largely shielded likely due to the much smaller volume of these entitlements when compared to the total pool of entitlement than Victoria and South Australia (the latter having only high security entitlements). However, like Victoria there was significant variability in the impacts to general security entitlements ranging from 11% to 89%.

The reason for the differences between the impacts predicted by the MDBA and the NFF analyses in agricultural water use is that the implementation by States requires agricultural water to be the last water allocated, i.e. prioritising water for towns, industry, environment and recreation first, and then followed by higher security entitlements then lower reliability water products. Moreover, monitoring and compliance of interception activities (e.g. basic landholder right farm dams and plantation forestry) and unregulated surface water use is challenging. This is mainly due to the large number and small amount of diversions in comparison with irrigated agriculture. In other words, the cost of such compliance will outlay the benefits of doing so.

Moreover, the MDBA claims that the three nominated scenarios can deliver the needs of the environment but with varying risk profiles. Good planning requires such a trade off, i.e. a decision that trades off preferred risk against socio economic impacts. In this case, there is a divergence of views on whether this ought to be the role of the MDBA, Government or indeed the Parliament.

Certainly, the role of the MDBA is to develop the risk profiles and the role of scientists is to provide the relevant information on the range of risks and appropriate tradeoffs. The decision maker is the Minister and ultimately the Parliament.

3. Impact of the Guide to the Proposed Basin Plan

NFF notes that the Guide suggests that entitlement reliability will be affected in essentially two ways – establishment of the SDL and through a whole range of other measures that will affect reliability, e.g. reserves policies or prioritising environmental water above irrigation water.

NFF notes that the SDL process (while there might be disagreements on the actual figures and how these were determined) is more transparent than the range of other factors that may affect entitlement reliability.

The MDBA has stated that they cannot determine the quantum of these impacts until the States have accredited water plans. This is clearly incorrect. The MDBA is using State models, which are benchmarked to the existing water resource plans and it is these models that have set the current reliability enjoyed by entitlement holders. The models should be run with the range of new proposals to determine the impact to entitlement reliability. A comparison between the existing reliability and the new reliability (determined by the Basin Plan) is not only doable but it

is required to inform stakeholders of the extent of the impact to entitlement holders – including the Commonwealth.

Moreover, this is required to differentiate the risk assignment liabilities for the Commonwealth as opposed to the States. NFF recommends that this work is done for the proposed Basin Plan.

4. Specific Guide Concerns

The NFF has undertaken a comprehensive critique of the Guide and rather than go into the detail of each of the significant number of issues within the substantive submission, it is included at **Error! Reference source not found.** on page **Error! Bookmark not defined.** NFF encourages the MDBA to consider each of the issues and address these concerns in the proposed Basin Plan when this is released in 2011.

5. The importance of local and cooperative solutions

NFF is of the view that local catchments/regions and local communities can assist in identifying and delivering real solutions to some of the challenges facing the MDBA.

NFF notes that many in these communities (including State agencies and private and public water delivery business) are very aware of:

- Environmental assets and ways in which these can be watered efficiently, i.e. maximising environmental outcomes and minimising water use;
- Works that ought to be implemented under an environmental works and measures program to assist in delivering the above;
- Improvements to river operations that will deliver outcomes without the need for additional water; and
- How private land managers might be able to assist in delivering environmental outcomes.

NFF notes some good examples, such as Murray Irrigation's program to water private wetlands using their irrigation delivery system and recently, farmers in the Lowbidgee Floodplain using their irrigation works to deliver water to assist bird-breeding events. A recent ABC news story clearly shows how farmers are practicing environmentalists:

"And what makes the Lowbidgee wetlands unique is the landholders who have become bird lovers. They have helped make this mega breeding event happen. Farmer Steve Blore and a couple of his neighbours have given up some of their water allocation and even diverted the flows through channels to deliver what the birds need to breed.

"We run water, reticulate the water through. We're able to micro manage the water here for best outcome for birds. Everybody gets a buzz out of it.

"We're showing lots of people through, you can see we've got a line-up of boats here and fuel cans on the levy banks, there's a lot of interest in it and we get a lot of enjoyment out of it.""¹⁴

¹⁴ ABC News 2 December 2010, Birds from rejuvenated wetlands take flight, online: <http://www.abc.net.au/news/stories/2010/12/02/3082394.htm>. Accessed 9 December 2010.

Perhaps this cooperative model can be adopted by the MDBA in the development of the Basin Plan.

Moreover, three notable academics agree. In an article in the Australian on 1 November 2010, Prof. John Langford, Prof. John Briscoe and Dr Michael Porter noted that, since the release of the Guide, three things were clear:

- “*An acceptable strategy cannot be an either-or, but a solution that will improve environmental outcomes while also improving the lives of farmers*”;
- “*The idea that “science will tell us the answer” is flawed, both because of the limitations of the ecological knowledge, and because balancing competing needs is a political and not a scientific question*”; and
- “*Solutions cannot be devised behind closed doors and must actively engage both the environmental and the rural communities*”.¹⁵

NFF can only agree. The NFF has been advocating a balanced approach that delivers efficiency and effective environmental outcomes while maintaining food production and vibrant Basin communities.

Moreover, the MDBA itself acknowledges the constraints of the science, with this being listed as one of the biggest risk factors. The Basin Plan itself is not about any new science or knowledge but collates existing data much of which is of only moderate quality and even in some cases low quality, i.e. are unpublished reports. Importantly, the use of such data for the Basin Plan likely goes beyond its intended purpose.

Finally, solutions that engage both environmental groups and rural communities, and particularly the farm sector can deliver real solutions. The NFF has also worked with the National Irrigators’ Council (NIC) and the Australian Conservation Foundation (ACF) to advocate for other approaches including an environmental works and measures program, looking at river operations and investigating appropriate policy changes that could be implemented without third party impacts on entitlements holders. It would appear that Governments, at least, are hearing the message.

6. A More Robust Process

NFF has been advocating to the MDBA and to the Government for a better process – one that will deliver on environmental outcomes but also minimise the social and economic impacts. A balanced robust Basin Plan is one that will provide for the environment, maintain food production and have vibrant sustainable communities.

NFF has never advocated for no change. In fact, NFF has been a strong supporter over a long time for water reform. Nevertheless, this water reform must deliver on the triple bottom line. Moreover, this can be done.

Figure 1 on page 13 shows what a better process might entail. Essentially, the MDBA could claim that the existing process meets those boxes coloured in the darker green. However, the process clearly omits those lighter green coloured boxes.

¹⁵ The Australian 2010, *Creating wealth from our water*, John Langford, John Briscoe and Michael Porter, 1 November 2010, online: <http://www.theaustralian.com.au/creating-wealth-from-our-water/story-fn6nj4ny-1225945844874>. Accessed 1 December 2010.

An important differentiation on the NFF proposal is also that the MDBA and indeed the Government, needs to work with the States to deliver such an outcome. The statement issued by the Chair of the MDBA, Mr Mike Taylor, on his resignation, points to such an approach:

“A successful plan would require both the Commonwealth and States to work together on a comprehensive range of policy, planning and implementation issues....While the Authority has an important part to play, it is neither empowered nor equipped to undertake the entire complex task.”¹⁶

Mr Taylor also points that the decision on a sustainable Basin Plan would require far more than a decision by the Authority on how much water ought to be transferred to the environment. In other words, the outgoing Chair has clearly indicated the need for a different process, which encompasses the States and delivers on a truly balanced and sustainable management of water in the Basin. NFF can only agree.

The difference between the NFF proposal and the process outlined in the Guide is that the Guide can only seek to deal with the environment by flow quantity alone. Many of the causes for environment concerns do not relate to flow quantity. For example, the Sustainable Rivers Audit states that the reason for the poor rating of many catchments is alien fish in upper catchments. This is about pest management and its resolution cannot be simply dealt with via water quantity. Moreover, looking at end-of-system flows as a measure of environment health cannot be justified. Again the Sustainable Rivers Audit states:

“When all valleys were ranked by Ecosystem Health rating, the Lower Murray and Darling valleys were toward the middle. This indicates that impacts are not simply cumulative from headwaters to the mouth of the Murray.”¹⁷

What is also required is some clarity on the MDBA roles in regard to the Basin Plan, what the Government expects to see in the Basin Plan and perhaps most importantly, how the balance is to be delivered, i.e. via the Basin Plan or other mechanisms. A water recovery and a structural adjustment program is a start but is not the only or best solution. A more comprehensive program must include:

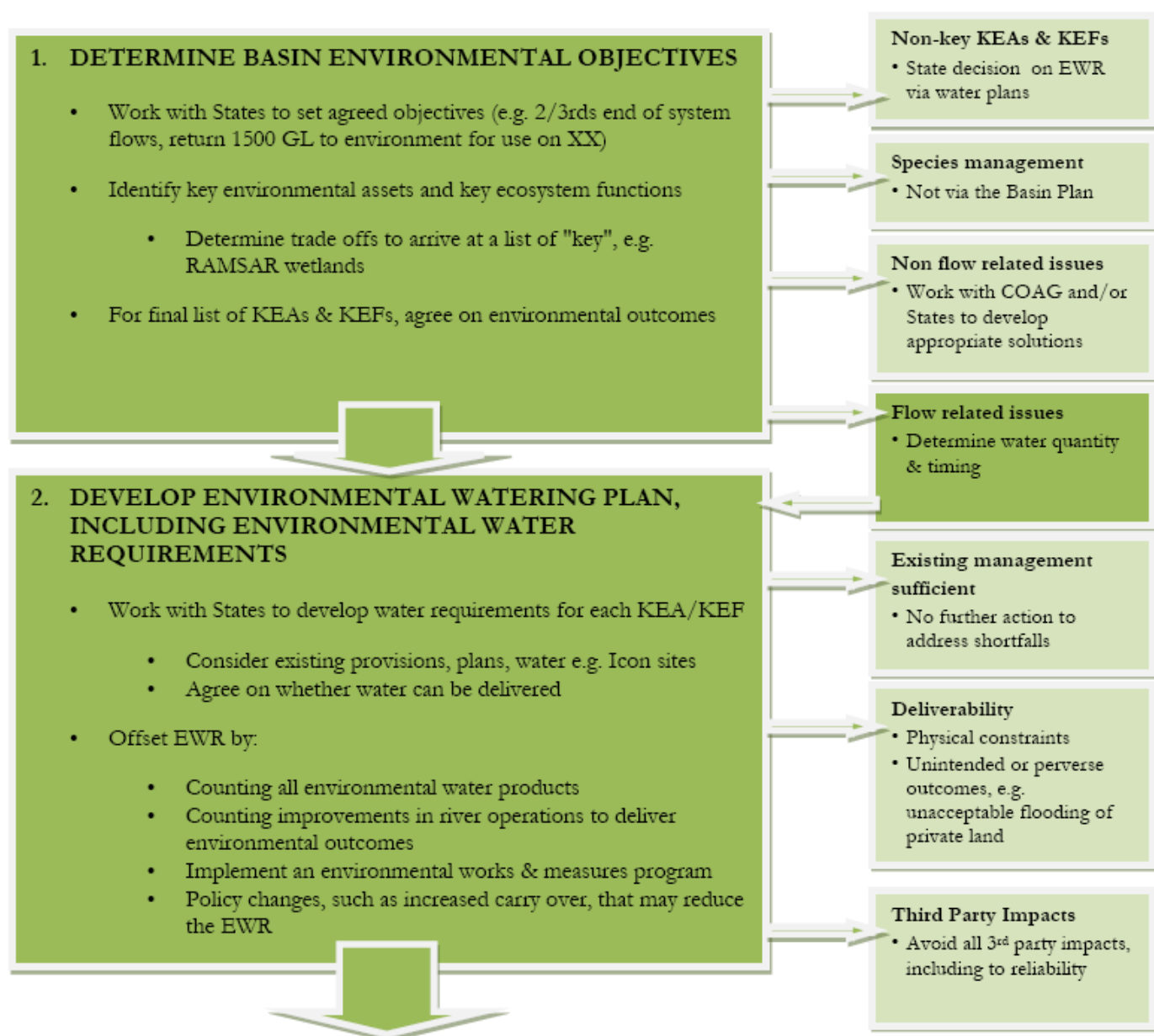
- Determining the trade off between key environmental assets, key ecosystem functions, productive base and key environmental outcomes on which the environment’s water requirement is based. It is the NFF’s view, given the external powers basis for the Water Act, that this list encompasses RAMSAR wetlands.
 - Those assets etc that are determined to be non-key are a decision of the States on whether to provide additional water.
 - Species are not included as key environmental assets. Recovery plans under state and federal legislation should provide for recovery measures. For those without a recovery plan, a decision of the relevant jurisdiction is required on whether a recovery plan is needed.
- Any environmental issues caused by non-flow drivers.

¹⁶ Murray-Darling Basin Authority 2010, *Plan for the Murray-Darling Basin – Role of Authority Chair*, statement issued by the MDBA on the resignation of Mike Taylor, 7 December 2010

¹⁷ Sustainable Rivers Audit Report Key Findings and Recommendations. Available online <http://mdba.gov.au/sustainable-rivers-audit>. Accessed 1 December 2010.

- The appropriate solution must be negotiated between the State and the Commonwealth, e.g. removal of floodplain barriers, fish passage, pests and weeds.
- For flow related issues:
 - Determine whether existing provisions deliver against the agreed environmental outcomes. If so, include the provisions in the Basin Plan. If not, determine additional water requirements.

Figure 1 NFF view of a more robust Basin Plan Process



An important differentiation on the NFF proposal is also that the MDBA and indeed the Government, needs to work with the States to deliver such an outcome. The statement issued by the Chair of the MDBA, Mr Mike Taylor, on his resignation, points to such an approach:

“A successful plan would require both the Commonwealth and States to work together on a comprehensive range of policy, planning and implementation issues....While the Authority has an important part to play, it is neither empowered nor equipped to undertake the entire complex task.”

Mr Taylor also points that the decision on a sustainable Basin Plan would require far more than a decision by the Authority on how much water ought to be transferred to the environment. In other words, the outgoing Chair has clearly indicated the need for a different process, which encompasses the States and delivers on a truly balanced and sustainable management of water in the Basin. NFF can only agree.

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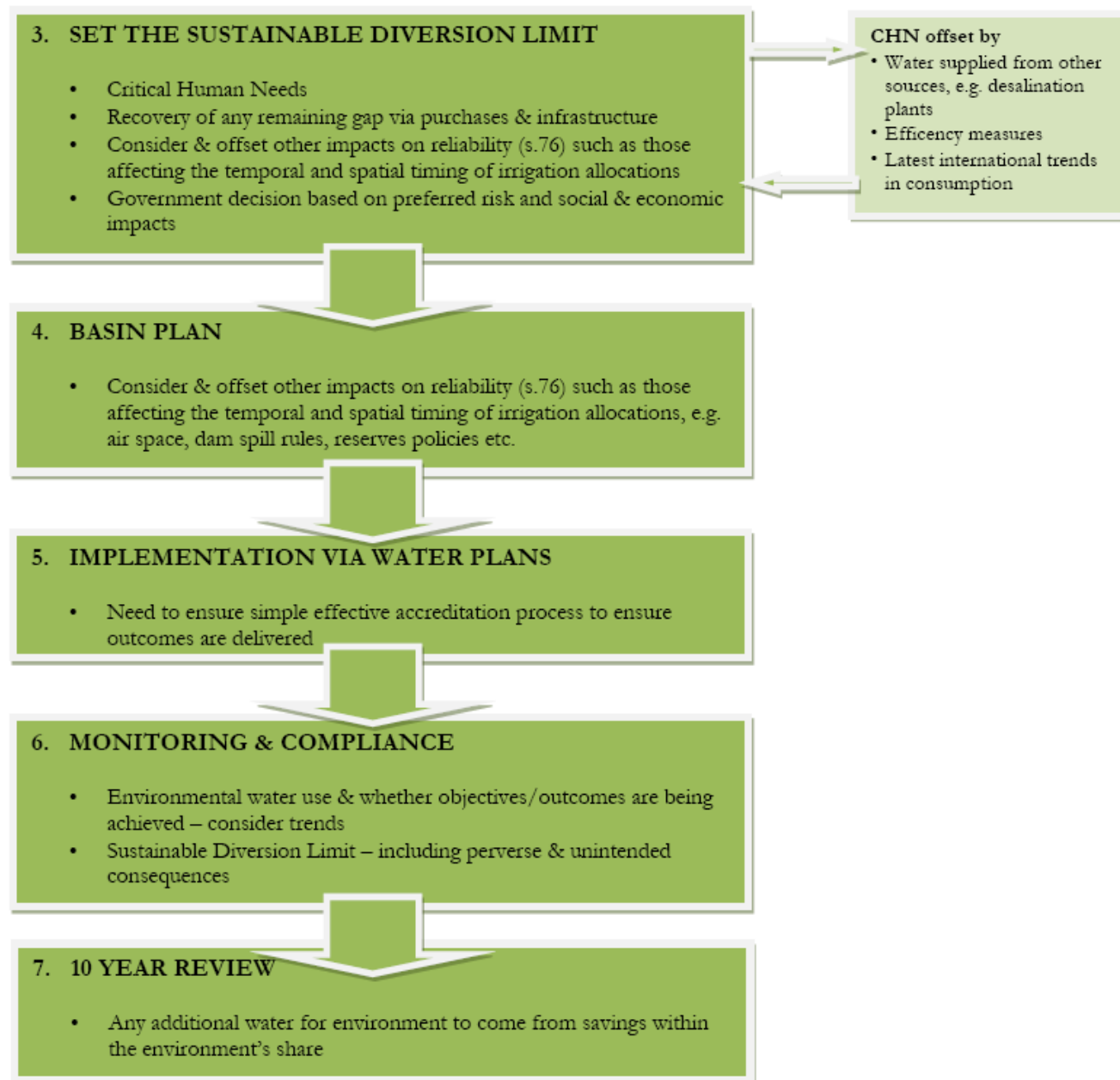
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“When all valleys were ranked by Ecosystem Health rating, the Lower Murray and Darling valleys were toward the middle. This indicates that impacts are not simply cumulative from headwaters to the mouth of the Murray.”

What is also required is some clarity on the MDBA roles in regard to the Basin Plan, what the Government expects to see in the Basin Plan and perhaps most importantly, how the balance is to be delivered, i.e. via the Basin Plan or other mechanisms. A water recovery and a structural adjustment program is a start but is not the only or best solution. A more comprehensive program must include:

- Determining the trade off between key environmental assets, key ecosystem functions, productive base and key environmental outcomes on which the environment’s water requirement is based. It is the NFF’s view, given the external powers basis for the Water Act, that this list encompasses RAMSAR wetlands.
 - Those assets etc that are determined to be non-key are a decision of the States on whether to provide additional water.
 - Species are not included as key environmental assets. Recovery plans under state and federal legislation should provide for recovery measures. For those without a recovery plan, a decision of the relevant jurisdiction is required on whether a recovery plan is needed.
- Any environmental issues caused by non-flow drivers.
 - The appropriate solution must be negotiated between the State and the Commonwealth, e.g. removal of floodplain barriers, fish passage, pests and weeds.
- For flow related issues:
 - Determine whether existing provisions deliver against the agreed environmental outcomes. If so, include the provisions in the Basin Plan. If not, determine additional water requirements.

Figure 1 NFF view of a more robust Basin Plan Process continued...



- Offset the additional water requirements by:
 - The inclusion of all environmental water – both public (State and Commonwealth) and private and including all held and planned/rules based water.
 - The implementation of an environmental works and measures program to reduce the environment's water needs while maximising environmental outcomes. This may include a trade-off in the level of outcome to be achieved against the additional costs of doing so, e.g. by installing regulators and pumps is the optimal outcome watering 60% of a floodplain with 20% of the required water. If such measures are reasonable, is this an acceptable cost and benefit rather and a near perfect natural watering regime.
 - Investigating changes to river operations to deliver environmental outcomes. This is not about additional water but using the existing water to deliver both extractive use and environmental outcomes. A good example is the dropping of Steven's Weir during autumn/winter to allow revegetation of the Edward River banks, which in turn reduces bank slumping.
 - Determining if the proposed environmental water requirements are deliverable given physical constraints (e.g. chokes) and unintended and perverse outcomes for private landholders (e.g. flooding). An agreement with the landholder might be required. Otherwise, this may rule out delivering some environmental water.
 - Investigating changing certain policies to allow less water to be used to deliver better environmental outcomes. This might mean increasing the carry over provisions for the environment, providing there is available airspace and the environmental water is the first to spill. The caveat NFF place on this option is that there should be no third party impacts to other entitlement holders. The current example is the Barmah Millewa Forest Allocation.
- Setting the SDL
 - The Government has agreed to offset the SDL by water recovered. NFF supports this; however, it should be noted that the previously mentioned measures will significantly close this gap.
 - In terms of the arrangements for critical human needs and the associated conveyance water, this must be offset by:
 - Water able to be substituted from other sources, e.g. stormwater harvesting and desalination;
 - Efficiency measures; and
 - International trends in average water use.

- Actions or alternatives that would ameliorate any impacts from non-SDL reliability impacts, e.g. impacts through the prioritisation of water for the environment in Spring at the cost of irrigation allocations and preventing the “ceasing” of individual carry over to use for other water users.

The above will deliver a balanced Basin Plan that delivers on a long-term sustainable environment, enable food and fibre to continue to be produced at levels comparable to today and leaves a vibrant Basin community intact. However, the Government must show leadership and clearly show how and when the above will occur. It is the view of the NFF that this needs to happen as part of the proposed Basin Plan. To do otherwise will mean a duplication of effort by the MDBA and significantly risk the ongoing goodwill and support of the States. Moreover, the discussion with the States must commence immediately.

Much of the extreme conditions experienced by farmers and the environment over the past decade are now being resolved. Many of the wetlands are full, the Lower Lakes are 92% full and water is flowing over the Barrages and is flushing the Coorong. Water will fill remaining wetlands as it passes through the system – most of these located either in the Lachlan and west of Barham on the Murray River. The Basin is now alive with fish and birds, and breeding events are underway. The vegetation of the Basin is recovering and new trees are germinating.

The significant rainfall events currently occurring over much of the Basin has bought valuable time to enable the MDBA and Government to put in place a good process and deliver a robust Basin Plan.

In the end, however, if the above fails to deliver the approach described by the NFF, then the NFF does support a bipartisan approach to changing the Water Act.

7. Conclusion

NFF remains concerned about recent comments that indicate that the MDBA will continue to use the Guide as the basis for the proposed Basin Plan, albeit with some changes to account for the first consultation process. This is driven by the MDBA’s legal advice.

NFF views this as a flawed process that will not deliver a robust long-term solution to improving environmental outcomes in the Basin while still maintaining food production and viable rural communities. There is a better way, which ultimately will also be good for the environment.

The preferred NFF options looks to a discussion on what environmental outcomes are desired as the starting point, i.e. what environmental assets are key and what are the trade-offs. Once this is known, what are the desired environmental outcomes? Clearly, non-flow issues cannot be dealt with via water quantity solutions. For flow related solutions, what environmental works and measures will deliver outcomes for least water, what river operations changes are required, what policy changes might require less water for the environment and a requirement to count all environmental water products. Moreover, for critical human needs, other water sources must be used to offset these needs.

Importantly, where any gap remains, the NFF supports the Government continuing to invest to close the gap.

Then there remains the issue of the myriad of proposals in the Guide that will further negatively affect water entitlements. These must be removed.